

Narendra Singh Vs. the State

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Court : Rajasthan

Decided On : Apr-13-1955

Reported in : 1957CriLJ243

Judge : Ranawat, J.

Appellant : Narendra Singh

Respondent : The State

Judgement :

Ranawat, J.

1. This is a criminal reference by the Additional Sessions Judge of Bundi, dated the 29th January, 1955.

2. A case under Section 395, I. P, C., is pending inquiry in the court of the Sub-Divisional Magistrate, Bundi, on a police report. One of the accused, namely, Narendra Singh was also an accused in that case. but he was shown as absconding by the police and he appeared before the Sub-Divisional Magistrate subsequently, A test identification was then arranged and the prosecution witnesses failed to identify him.

Thereafter, the prosecution moved the Magistrate for arranging another identification parade on the ground that in the previous proceedings the faces of

the accused were so hid that the witnesses could not possibly identify them. The learned Magistrate turned down the request. The prosecution then moved the District Magistrate who ordered the Sub-Divisional Magistrate to reconduct the identification proceedings for Narendra Singh.

The learned District Magistrate assumed that in the previous identification proceedings the faces of the accused were so hid as not to allow a fair opportunity to the witnesses to identify the accused. The accused then went to the Additional Sessions Judge, Bundi and it was urged on his behalf that the District Magistrate had no jurisdiction to interfere in the judicial discretion of the Sub-Divisional Magistrate in asking him to arrange a fresh identification parade when the Magistrate had already turned down such a request.

The learned Additional Sessions Judge accepted this objection of the accused and demanded explanation from the District Magistrate who reported that the test identification proceedings were part of investigation and as such he had full authority to order, such proceedings to be arranged and that these proceedings were not in the nature of judicial proceedings.

The learned Additional Sessions Judge was not satisfied with this explanation and he has made this reference recommending that the order of the District Magistrate, dated the 10th October, 1954, should be set aside and the Sub-Divisional Magistrate be directed to be not influenced by it.

3. The main question which has cropped up in this case is relating to the jurisdiction of the District Magistrate to interfere in the exercise of the discretion of the Sub-Divisional Magistrate who was seised of the case. The stand taken by the District Magistrate is that test identification proceedings are in the very nature part of the investigation side of the case and he was, therefore, well within his powers to issue a direction to the Magistrate for arranging test identification proceedings.

He has cited two Lahore cases - 'Amar Singh v. Emperor' AIR 1943 Lah 303 (A); and - 'Sajjan Singh v. Emperor' AIR 1945 Lah 48 (B).

4. There is no clear provision in the Criminal P. C., as to the holding of test identification parade after a case has come before a court. In both the Lahore cases the point whether identification proceedings after a case has come up before the court form part of investigation has not been discussed.

What the Court observed was that when an accused person applied for test identification after a case came up before the court it was not fair for the court to turn down such a request and the accused must be allowed an opportunity to test the capacity of the prosecution witnesses to identify him even at a late stage in a case.

These authorities are, therefore, not of much assistance in the determination of the point whether identification proceedings should be considered to be part of investigation of a case even after a case has been challenged to a court. This point came up for consideration before the Madras High Court 'In Re, Sangiah' AIR 1948 Mad 113 (O. The learned Judge who decided the case observed that

An identification parade belongs to the stage of investigation by the police. The question whether a witness has or has not identified the accused during the investigation is not one which is in itself relevant at the trial. The actual evidence regarding identification is that which is given by the witness in Court.

The fact that a particular witness has been able to identify the accused at an identification parade is only a circumstance corroborative of the identification in Court. If a witness has not identified the accused at a parade or otherwise during the investigation the fact may be relied on by the accused, but I find nothing in the provisions of the Code which confers a right on the accused to demand that the investigation should be conducted in a particular way.

Thereafter, the learned Judge discussed the two Lahore authorities and then went on to observe that

In my opinion it does not take into account the Important fact that an identification parade is a part of the investigation and once the case has reached the stage of an enquiry before the Magistrate the investigation is at an end and all that takes

place thereafter should take place in Court and form part of the record of the case.

In 'State v. Ghulam Mohiuddin' : AIR1951 All475 , the aforesaid Madras decision was followed. It may be pointed out that by its very nature test identification proceedings may be considered to form part of investigation but once a case has been challaned the investigation is over and if the prosecution desires to complete or undertake some portion of the investigation it can do so only with the approval of the Court who is seised of the case.

It would be wrong on principle to allow investigation of a case independently of the Court when it has taken cognizance of it. When the Sub-Divisional Magistrate who was holding the inquiry did not consider it necessary to order a fresh! test identification parade on the request of the prosecution it was not competent for the District Magistrate to interfere in his discretion by issuing a direction to the contrary.

The District Magistrate, therefore, cannot be held to be justified in issuing a direction to the Sub-Divisional Magistrate overriding; his Judicial discretion. Moreover, the learned District Magistrate failed to verify the allegation of the prosecution that in the previous test identification the faces of the accused were so hid as not to allow a fair opportunity to the witnesses to identify them.

In case the District Magistrate felt that there was any substance in the allegation of the prosecution he could only direct the prosecuting inspector to place that circumstance before the Sub-Divisional Magistrate for his consideration. Evidently, therefore, the order of the District Magistrate was without jurisdiction and uncalled for. He should not have interfered with the exercise of the judicial discretion of the Sub-Divisional Magistrate in the matter.

It may also be pointed out that no useful purpose can be served by the second test identification parade in the circumstances of this case, because it would be of no value whatsoever when the witnesses had in the first parade failed to identify the accused and even if they identify subsequently that cannot in any way assist the prosecution in any manner.

5. This reference is accepted and the order of the District Magistrate dated the 10th October, 1954, is set aside, and the Sub-Divisional Magistrate, Bundi, is directed not to be governed by the direction of the District Magistrate and to proceed with the inquiry according to law.

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