

**Umed Singh Vs. the State**

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**Court :** Rajasthan

**Decided On :** Jul-27-1955

**Reported in :** 1955CriLJ1518

**Judge :** Dave, J.

**Appellant :** Umed Singh

**Respondent :** The State

**Judgement :**

ORDER

**Dave, J.**

1. This is a revision application by the complainant and it arises in the following circumstances:

2. The petitioner filed a complaint Under Sections 147, 323 and 424, IPC against 10 persons in the Court of the Magistrate at Jetaran. After recording the complainant's evidence. 5 of the accused were charged by the Court Under Sections 323 and 424, IPC and the rest were discharged. Thereafter, the prosecution witnesses were recalled for further cross-examination by the accused. One of such witnesses was Daljitsingh, sub-inspector of Police. He was cross-examined on 18-1-1954.

After his examination, it was submitted by the witness that he had attended the Court on a previous date also viz. 1-8-1952 but he could not be examined on that date as the Magistrate was not present at the headquarters and, therefore, he requested that he should be paid his expenses for that date as well. The witness requested the Court to verify the fact of his attendance from some Vakils. Accordingly, the Magistrate verified from three Vakils Shri Abhey-karan, Shri Bachhraj and Shri Badridan and being thus satisfied, he ordered the complainant to pay the expenses of the witness for the previous date (1-8-1952) as well.

3. Against the said order dated 18-1-1954, the complainant filed a revision application in the Court of the Sessions Judge, Pali. It was urged by him that the attendance of the said witness was not recorded on the order-sheet of 1-8-1952, and that the Magistrate's finding about his attendance on that date was incorrect. It was further contended that even if the witness was entitled to receive expenses for 1-8-1952, they should be borne by the Government because the witness had to go back on account of the absence of the Magistrate.

Lastly, it was urged that in warrant cases, the expenses for recalling the witness, after a charge is framed, should be borne by the State. The learned Sessions Judge came to the conclusion that the finding of the Magistrate regarding the attendance of the witness on 1-8-1952 was not incorrect. He also turned down the objection regarding the liability of the State to pay the expenses. The complainant has, therefore, come to this Court,

4. learned Counsel for the petitioner has raised two contentions in this Court. In the first place, it has been urged that in a warrant case, which is initiated on a private complaint, the expense's should be borne by the State after the charge is framed and the witnesses are recalled for further cross-examination. Secondly, it has been urged that the finding of both the Courts regarding the presence of the witness on 1-8-1952 is incorrect.

5. Now, the first question which comes for determination is whether in a non-cognizable warrant case which is instituted on a private complaint, the State must bear the expenses of the complainant's witnesses when they are recalled for their cross-examination after the charge against the accused is framed. In this present

case, the complaint was filed Under Sections 147, 323 and 424 Penal Code, as stated above, but no charge Under Section 147, IPC was framed against any of the accused. It was only Under Sections 323 and 424, Penal Code, that charges were framed against five accused.

Thus none of the accused has been charged with any cognizable offence. The offences Under Sections 323 and 424, Penal Code, are certainly warrant cases but they are not cognizable. According to learned Counsel for the petitioner, it is incumbent upon the State to bear the expenses of the complainant's witnesses after the charge is framed. It is urged that when the charge is framed, the complainant should be deemed to have prima facie established the charge against the accused and, therefore, it becomes the duty of the State thereafter to bear their expenses.

In support of his argument, he has referred to the case of 'Faiz Mohammad v. Nabu,' AIR 1928 Lah 175 (A). In that case it was remarked that

it is doubtful whether under the Criminal Procedure Code it is the duty of the complainant to pay the expenses of his witnesses over again for further cross-examination- There seems to be no provision in the Criminal Procedure Code to justify this procedure.....The language of Section 257 Criminal P. C. seems to imply that it is the accused who applies for recalling of prosecution witnesses for cross-examination and it is he Who should pay the expenses and not the complainant.

It may be remarked that we are not here concerned with Section 257, Criminal P. C. but only about the question of recalling the witness under B. 256, Criminal P. C. The learned Judge who made the above remark was himself in doubt whether it was the duty of the complainant to pay the expenses and, therefore, this case is not of much help to the petitioner. learned Counsel has next referred to the case of 'Nandkishore Misra v. Kalika Miisra,' AIR 1924 Pat 695 (B), in which it was observed by a learned Single Judge that all criminal prosecutions are at the instance of the Crown and the Crown is really the prosecutor in a criminal case and all costs ought to be paid by the Crown for summoning witnesses for the prosecution.

With due respect, it may be observed that howsoever desirable this view might be, Section 544, Criminal P. C. which deals with the question of expenses of witnesses to be paid by the Government in certain events, requires the Magistrate to exercise judicial discretion and not to proceed with the view expressed above.

If the State were to bear the expenses of all criminal prosecutions even though started on private complaints, a provision to that effect ought to have been made in the Criminal Procedure Code. In that case, there would have been no necessity of giving a discretion to the criminal Courts as laid down in Section 544, Cr P. C. Section 544, Criminal P. C. runs as follows:

544 Subject to any rules made by the State Government, any Criminal Court may, if it thinks fit, order payment, on the part of Government of the reasonable expenses of any complainant or witness attending for the purposes of any inquiry, trial or other proceeding before such Court under this Code.

6. It is clear from the provisions of this section that it contemplates that the State Government may lay down rules dealing with the payment of expenses of a complainant or witness attending criminal Court for the purpose of any inquiry, trial or any proceeding in the Court. If such rules are framed, then the criminal courts should be guided by them.

If there are no such rules, or the rules are silent on some matter arising in that connection then it is left to the judicial discretion of the criminal Court to order payment on the part of the Government of the reasonable expenses of any complainant or witness attending that Court. When the case was argued, learned Counsel for the petitioner was under the impression that the Government of Rajasthan had not made any rules Under Section 544, Criminal P. C. and he thought that under this section, the State was bound to bear the expenses of his witness. Reference was also made to the case of *Serumal v. Saran Behari*, 1951-2 Raj LW 302 (c).

It may be pointed out that by the time the said decision was given, the Government had not; made any rules. But that is not the position now. Soon after the decision of the said case, the Government of Rajasthan laid down the rules in

exercise of the powers conferred upon it by Section 544, Criminal P. C, 1898. The said rules have been published in the Rajasthan Gazette dated 24-2-1951. The relevant notification runs as follows:

No. P. 21 (250) Jtid./49. In exercise of the powers conferred by Section 544, Criminal P. C., 1898, a adapted to Rajasthan, the Government of Rajas-than is pleased to make the following rules relating to the payment of expenses to witnesses in Criminal Courts:

1. Cases in which Government is to pay the expenses.

The Criminal Courts are authorised to pay at the rates specified below, the expenses of complainants or witnesses,

1. In cases in which the prosecution in instituted or carried on by or under the orders or with the sanction of the Government, or of any Judge, Magistrate, or any other public officer or in which it shall appear to the presiding officer to be directly in furtherance of the interests of the public service;

2. In all cases entered in column 5 of Schedule II appended to the Code of Criminal Procedure as not bailable;

3. In all cases which are cognisable by the Police, and

4. in all cases in which they are compelled by the Magistrate, of his own motion, to attend Under Section 540, Criminal P. C.

7. Rule 1 which is reproduced above enumerates the cases in which the criminal Courts are authorised to pay the expenses of complainants or witnesses. It is clear that the present case is not covered by the said rule and, therefore, al-though the learned Magistrate has not referred to it, he was correct in asking the complainant to bear the expenses of his witness. According to the said rule, the State is not bound to bear the expenses in a case instituted on a private complaint even though it is a warrant case and the witnesses are recalled for cross-examination after the charge is framed. The first point is, therefore, decided against the petitioner.

8. The next objection raised by learned Counsel for petitioner was that the witness Daljitsingh was not present in the Court on 1-3-1952 and that the decision of the trial Court is incorrect. It would suffice to say in this connection that the question whether a particular witness was present in the Court on a particular day or not is purely . one of fact and when the trial Court and the learned Sessions Judge have given a concurrent finding on that matter, it is not proper for this Court to interfere in revision. This objection is, therefore, also fit to be dismissed.

9. Before parting with the case, however, it seems necessary to point out to the trial court that if Daljitsingh was summoned to give evidence of facts which had come to his knowledge in his official capacity then instead of giving the expenses to him directly, it should proceed in the manner laid down in Rule 6 of the rules referred above.

10. The revision application is dismissed.

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