State Vs. Raghunath

State Vs. Raghunath

SooperKanoon Citation : sooperkanoon.com/751963

Court : Rajasthan

Decided On : Aug-07-1962

Reported in : AIR1963Raj85; 1963CriLJ484

Judge : C.B. Bhargava, J.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Sections 173(4), 251A(7) and 537

Appeal No. : Criminal Ref. No. 175 of 1962

Appellant : State

Respondent : Raghunath

Advocate for Def. : M.M. Singhvi, Adv.

Advocate for Pet/Ap. : B.C. Chatterjee, Adv.

Disposition : Appeal allowed

Judgement :
ORDER

C.B. Bhargava, J.

1. This is a reference by the learned Additional District Magistrate, Jodhpur recommending that the order of City Magistrate, Jodhpur dated 23rd October,

1961, passed in Criminal Case No. 317 of 1961, under Section 415 of the Indian Penal Code be set aside.

2. Against Raghunath and one other person the Police submitted a report under Sections 420 and 419 of the Indian Penal Code in the Court of the City Magistrate, Jodhpur. The learned Magistrate after complying with the provisions of Sub-sections (i) and (2) of Section 251-A of the Code of Criminal Procedure framed charges against the accused under Section 420 of the Indian Penal Code on 6th June, 1961. The accused did not plead guilty. The learned Magistrate fixed a date forthe examination of the prosecution witnesses. On 23rd October, 1961, when Munirkhan P. W. 3 was being examined, prosecution wanted the witness to prove certain entries from a log book pertaining to Jeep No. 723 of the Excise and Taxation Department. This was objected on behalf of the accused on the ground that this document was neither relied on by the prosecution nor was its copy furnished to them. This objection prevailed with the learned City Magistrate and the prosecution was not permitted to prove the entries of this log book. A revision was preferred against this order in the Court of the learned Additional District Magistrate, Jodhpur, who came to the conclusion that the prosecution could not be prevented from patting in the document at the trial even if its copy had not been furnished to the accused. He, therefore, made this reference.

2a. Mr. Makhtoor Mal Singhvi learned counsel for the accused Raghunath opposes the reference. It is urged that the provisions of Section 173 (4) of the Code are mandatory. The prosecution is not entitled as a matter of right to put in any additional document in evidence at the trial copy of which had not been supplied to the accused in accordance with the provisions of Sub-section (4) of Section 173. He says that if the prosecution is allowed to put in additional document in this manner it will render the provisions of subsection (4) of Section 173 nugatory and will be prejudicial to the interest of the accused. In support of his argument he has placed reliance on Thota Ramalingeshwara Rao v. State of Andhra Pradesh, AIR 1958 Andh Pra 568, In re Rangaswami Goundan, (S) AIR 1957 Mad 508 and Chandu Veeraiah v. State of Andhra Pradesh, AIR 1960 Andh Pra 329.

3. It is true that under Section 173 (4) there is an obligation on the prosecution to furnish or cause to be furnished to the accused copies of all the documents on which it proposes to rely. The, object of furnishing copies referred to in Section 173 (4) to the accused is to safeguard his interests so that he may have notice of the case he is required to meet. There is however, nothing in subsection (4) which prevents the prosecution from putting in such documents at the trial which at the time of the report were not available to them or if they were available their copies were not supplied to the accused. This sub-section came to be interpreted by the Supreme Court in Narayan Rao v. State of Andhra Pradesh, (S). AIR 1957 SC 737 in which it was held that :

'The provisions contained in Section 173 (4) and Section 207A (3) have been introduced by the amending Act of 1955, in order to simplify the procedure in respect of inquiries leading upto a Sessions trial, and at the same time, to safeguard the interests of accused persons by enjoining upon police officers concerned and Magistrates before whom such proceedings are brought to see that all the documents necessary to give the accused persons all the information for the proper conduct of their defence, are furnished.

But non-compliance with those provisions has not the result of vitiating those proceedings and subsequent trial. The word 'shall' occurring both in Sub-section (4) of Section 173 and Sub-sec. (3) ofSection 207, is not mandatory but only directory, because an omission by a police officer, to fully comply with the provisions of Section 173, should not be allowed to have such, a far-reaching effect as to render the proceedings including the trial before the Court of Sessions, wholly ineffective.'

It will thus be clear that the provisions of the said sub-section are not mandatory but only directory. It therefore, follows that a non-compliance of this provision cannot debar the prosecution from examine any witness or producing any document during the course of the trial. On the other hand Sub-section 7 of Section 251A which lays down the procedure to be followed by the Court in cases instituted on police report is in very wide terms and the Magistrate is bound to take all such evidence as may be produced in support of the prosecution. No restriction

has been put on the right of the prosecution to produce evidence at the trial in this sub-section. Sub-section (4) of Section 173 does not control Sub-section (7) of Section 251A of the Code. The) words 'all such evidence' do not mean only such evidence as is referred to in Sub-section 4 of Section 173. If that were so then something more will have to be read in Sub-section (7) which is not there. All that can be inferred from Sub-section (4) of Section 173 is that before the prosecution is allowed to put in additional document it should furnish a copy of the same in advance to the accused so that he may not be prejudiced in his defence. If it is shown that by the production of additional, evidence the rights of the accused are prejudiced in any manner the Magistrate may recall any witness for the purpose of cross-examination and also give him opportunity to meet that additional evidence.

However, the provisions of Sub-section 173cannot be read to mean that the prosecution is prevented from putting in additional document at the trial copy of which had not been supplied to the accused. In Thota Ramalingeshwara Rao'scase, AIR 1958 Andh Pra 568 relied on by Mr. Singhvi it was held that the provisions of Section 173 (4) are mandatory and its non-compliance leads to failure of justice. In view of the decision of the Supreme Court referred to above this case cannot be taken as laying down good law. A Division Bench of the same Court in Chandu Veeriah's case, AIR 1960 Andh Pra 329 dissented from the view expressed in Thota Ramalingeswara Rao's case, AIR 1958 Andh Pra 568, and held that there is no express prohibition in Section 173 (4) or Section 251-A against the use by the prosecution ofdocuments copies of which have not been furnished.

These provisions do not, by implication, deny the prosecution using a document at the enquiry or trial, a copy of which does not happen to have been furnished to the accused. In re Rangaswami Goundan, (S) AIR 1957 Mad 508 though it was held that provisions of Section 173 (4) are mandatory yet it was held that the report of the chemical examiner which is usually not received by the time the enquiry commences can be admitted in evidence during the course of the enquiry, even though its copy had not been supplied to the accused.

There is ample authority in support of the view that if in the course of trial the prosecution thinks it necessary to file additional documents or statements of witnesses on whom they propose to rely Section 173 (4) does not prevent them from filing them. See Public Prosecutor v. C. S. Pachippa Mudaliar, AIR 1958 Mad 295, State v. Jagdish Pandey,, AIR 1958 Cal 311, In re Shantilal, AIR 1959 Madh Pra 290 and State v. Baikunthanath Mohanta, AIR 1960 Orissa 150. In my view the learned City Magistrate was in error in rejecting the request of the prosecution to prove the entries in the log book by the evidence of Munir Khan. In order to safeguard the interests of the accused he should have directed the prosecution to supply copies of the entries of the log book to the accused in advance. It has not been urged before me that the entries of the log book are not relevant in this case.

4. The revision is allowed and the order ofthe learned City Magistrate dated 23rd October,1961 is set aside and he is directed to proceed inthe light of the above observations.