

Om Prakash and ors. Vs. State

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Court : Rajasthan

Decided On : Mar-10-1964

Reported in : AIR1964Raj230; 1964CriLJ579

Judge : D.M. Bhandari and; B.P. Beri, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 503

Appeal No. : Criminal Ref. Nos. 124 and 222 of 1963

Appellant : Om Prakash and ors.

Respondent : State

Advocate for Def. : S.N. Gurtu, Dy. Govt. Adv.

Advocate for Pet/Ap. : S.K. Jindal, Adv. for Petitioner in Cri. Ref. No. 124 of 1963

Judgement :

Bhandari, J.

1. In both these References, the question is 'Whether purdanashin ladies in Rajasthan should be compelled to appear as witnesses in the Court, or may be examined on commission under Section 503, Cri. P. C. ?

2. In S. B. ,Cr. Reference No. 124 of 1963 Mst. Saraswati wife of Hanuman Suthar was challaned by the Police under Section 420, I. P. C. on the First Information

Report lodged by Rupshanker that Mst. Saraswati had taken some ornaments from his son Promode Shanker in the presence of Premwati wife of Rupshanker. At, the trial of Mst. Saraswati, Rupshanker filed an application before the trial Court that Mst. Premwati be examined on commission as she was a pardanashin lady. The magistrate refused to examine her on commission but observed in his order that due regard- to the dignity and observance of pardah shall be made at the time of her examination in the Court. Rupshanker then filed a revision application, before the District Magistrate, Bikaner and the said magistrate has referred this case to this Court. The learned magistrate has not made any recommendation but has prayed that the divergence of judicial opinion on this score should be finally settled. This case came up for hearing before Chhangani, J. The learned Judge referred to the two judgments of this Court -- Jaigovind v. Lalchand, 1951 Raj LW 172 and Mst. Man Kanwer v. Salehraj, ILR (1958) 8 Raj 267: (AIR 1058 Raj 137) and pointed out that there was a divergence of judicial opinion on this point in this Court. He referred the matter to a larger Bench, and in this way this case has come before us.

3. Let us take notice of the two decisions of this Court. In 1951 Raj LW 172 Ranawat, J. observed, as follows:

'In Rajasthan appearance in Courts by purdanashin ladies is considered to cause (to) their social degradation and it is looked down upon by the public generally; it is, therefore, not advisable to enforce personal attendance of purdanashin ladies as witnesses in criminal cases so as to expose them to social degradation, unless there are good grounds for the Court to compel their appearance in Court, in which case it would be advisable to make suitable arrangements for excluding the members of the public being present in the Court at the time when such statement is recorded.'

and ordered that commission be issued for the examination of the lady witness.

4. Dave, J., as he then was, in Man Kanwer's case, ILR (1958) 8 Raj 267: (AIR 1958 Raj 137) took the view that:

'.....the notion that an attendance of a person in a Court of law as a witness is in any way derogatory to one's dignity is very wrong and the sooner it is dispelled, the better.'

He disallowed the issuing of a commission for the examination of a lady witness in that case.

5. We may now state our views on the subject. It is a cardinal principle of the criminal trial that the trial should take place and the witnesses examined in open Court. Witnesses are thus brought to realize the majesty of law. The presiding officer also gets an opportunity to watch the demeanour of ' a witness to correctly appraise the evidence given by a witness. As observed by their Lordships of the Supreme Court in *Dharamanand Pant v. State of U.P.*, (S) AIR 1957 SC 594 at p. 598:

'As a general rule it may be said that the important witnesses on whose testimony the case against the accused person has to be established, must be examined in Court and usually the issuing of a commission should be restricted to formal witnesses or such witnesses who could not be produced without an amount of delay or inconvenience unreasonable in the circumstances of the case.'

We may point out that the inconvenience to be considered by the Court is not only the incom-venience to the parties but also the inconvenienc of a witness who is to be examined. The word 'inconvenience' which occurs in Section 503 is very wide in its import as what is not convenient is inconvenient.

6. Coming to the inconvenience often experieac-ed by lady witnesses, we may start by saying that in examining lady witnesses, whether pardana shin or not proper courtesy at the hands of all the parties and especially of the presiding officer of the Court is expected. One of the reasons why ladies in India are reluctant to appear in a Court' of law is that they have traditional aversion to be dragged in a Court of law. Added to this is their anxiety that they will not get the treatment appropriate to their sex and will be unduly harassed. It is, therefore, the bounden duty of the Court to see that lady witnesses are not allowed to ba unfairly treated when appearing as witnesses in the Court. Indeed it is the duty of the

Court of law to protect a witness from being unfairly dealt with by the parties or their counsel in cross-examination or otherwise. The lady witnesses stand, in a greater need of such protection. The traditional shyness of lady witnesses to appear in the Court of law will disappear in course of time if the Courts of law are vigilant to protect them and see that they are not unnecessarily harassed.

7. No hard and fast rule can be laid down as to when a pardanashin lady should be examined on commission and we are reluctant to lay down' any special rule for Rajasthan. It is of course implicit in what we have said that if such a lady, is examined in the Court, suitable arrangements for examination ' shall have to be made by the Court either by excluding persons from the Court room or examining her in chambers. In certain cases a Court may deem it proper that she may be examined on commission as it will be inconvenient to her to appear in the Court. If the offence for which the accused is charged is not of a serious character and the evidence of the witness is also not very important, the presiding officer may, looking to the inconvenience of the lady witness, order her examination on commission. It is, however, desirable that in Sessions trials commission should not generally be issued even for examination of a pardanashin lady except when the evidence of a lady witness is not (sic) very important. The guiding consideration should be to, avoid undue inconvenience and harassment to a lady witness. It is not uncommon to find cases in which a party summoning a lady witness only does so for the purpose that she may be unnecessarily harassed by being dragged to a Court of law. Such tactics on the part of any party in a Court of law should be discouraged. Cases have come before this Court in which ladies are made accused only for the purpose that they and their relatives will be degraded in the eyes of others and this Court has often exempted a lady accused from personal attendance in case involving minor offences. Similar considerations may guide a Court in issuing commissions for the examination of the lady witnesses. It is of course in the discretion of the Court looking to all the circumstances of the case to pass such order as it thinks fit.

8. In Cr. Reference No. 124 of 1963, the learned District Magistrate is satisfied that Mst. Premwati was a purdahnashin lady and in the circumstances of the case we think it proper that she should be examined on commission,

9. Cr. Reference No. 124 of 1962 -- Roop-shanker v. Mst. Saraswati and State: is accepted. We set aside the order of the First Class Magistrate dated 3rd of November 1962 and we directed that Mst, Premawati be examined on commission.

10. In Cr. Reference No. 222 of 1963, the Sessions Judge has made the recommendation that the two ladies Mst. Basanti Devi and Mst. Shakuntala Devi be ordered to be examined on commission. We do not find any reason to take a different view.

11. Cr. Reference No. 222 of 1963 -- OmPrakash v. State : is also accepted and the order of the Additional Munsif Magistrate, Bayana dated 16th of May 1963 is set aside and we order that the two ladies -- Mst. Basanti Devi and Mst. Shakuntala Devi be examined on commission.

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