

Balu Ram Vs. the State

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Court : Rajasthan

Decided On : Apr-17-1950

Reported in : 1950CriLJ1512

Judge : Oak, J.C.

Appellant : Balu Ram

Respondent : The State

Judgement :

ORDER

Oak, J.C.

1. This revision petition raises a question whether the prosecution should be allowed to examine a certain witness at a certain stage of the trial. Two persons are being prosecuted Under Section 7, Essential Supplies Act. The prosecution submitted a list of prosecution witnesses on 21st August 1949. Five witnesses named in the list were examined by the prosecution; and prosecution evidence was closed on 23rd September 1949. The accused were examined on 31st October 1949, and a charge was framed by the Court.

2. On 21st October 1949, an application was made by the prosecution to the effect that, it was proposed to examine one more witness Sri Kishen. On 8th December 1949, the Court heard arguments for the parties as to whether the prosecution should be allowed to examine Sri Kishen as an additional witness. The Court

decided that Sri Kishen should be examined before the Court, Against this order dated 30th December 1949, a revision application was made by the accused persons to the learned Sessions Judge. The learned Sessions Judge dismissed the revision petition subject to the observation that the trial Court should examine the witness Under Section 640, Criminal P C, The accused persons have filed this revision petition against the order of the learned Sessions Judge dated 28th January 1950.

3. The learned Magistrate in his order dated 30th December 1949 made no reference to Section 640, Criminal P.C. Nevertheless the learned Sessions Judge in his order dated 28th January 1960 observed thus : 'The learned Magistrate would therefore, treat his order as one Under Section 510, of the Code.' The learned Sessions Judge had no power to give such a direction to a Magistrate in a pending case. If the learned Sessions Judge thought that such a direction should be given to the trial Court, the learned Judge should have made a reference on the point to this Court. This part of the learned Sessions Judge's order dated 18th January 1960 is set aside.

4. It is to be noted that the application containing Sri Eishen's name was given by the prosecution on 31st October 1949, and the same day a charge was framed by the Court. The order sheefc dated 31st october 1919 contains no reference to this application dated 31st October 1919. But undoubtedly the application was presented on 31Bt october 1949. For, the application bears an order of the Court dated Slat October 1949. In para, 3 of that application it was stated ;

It is necessary in the interest of Justice to call and examine Sri Kiehen as a prosecution witness now or ae SI Cr.L.J. 190 & 191 a remaining witness Under Section 256, Criminal P.C. or ai a Court witness Under Section 540, Criminal P.C.

In the last paragraph of the application it was stated:

It is, therefore, prayed that....Sri Kishen be examined now or after cross-examination Under Section 256, Criminal P.C.

In his order passed on 30th December 1949 the learned Magistrate remarked:.. I feel that the name of this witness Sri Kisben was disclosed before charge though on the same day when charge was framed....

The language employed in para. 3 and the last paragraph of the application dated 31st October 1949 supports the observation of the learned Magistrate in his order dated 30th December 1949. We may, therefore, assume that the application dated 31st October 1949 was presented by the prosecution just before the accused were examined and the charge was framed.

5. Section 256, Criminal P.C. deals with evidence for prosecution. Section 252 (a) states:

The Magistrate shall ascertain from the complainant or otherwise the names of any persons likely to be acquainted with the facts of the case,

Charge is framed Under Section 254, Criminal P.C. Remaining witnesses for the prosecution are examined Under Section 25(5), Criminal P.C. Upon a perusal of these sections contained in Chap. XXI of the Code, it appears that the prosecution is expected to give a list of its witnesses before the Court frames a charge against the accused persons.

6. In *Heman Bam v. Emperor* A.I.R. (88) 1945 Lah. 201 : 47 Cr. L. J. 143 F.B., it was held by a Full Bench of the Lahore High Court that the provisions of Section 252 (2), Criminal P.C. are mandatory, and a Magistrate must ascertain names of all the persons who may be able to give evidence for the prosecution, and this duty must be performed before the charge is framed. When before the charge is framed, the list of persons who may be able to give evidence for the prosecution has been ascertained Under Section 252(9), no fresh witnesses can be examined by the prosecution Under Section 256 after the charge is framed.

7. In the present case, we have found as a matter of fact that the application containing Sri Kiahen's name was presented by the prosecution just before the accused were examined and a charge was framed. The prosecution suggested to the Court that this man might be examined at that stage. The application was

moved under Section 252 and 540, Criminal P.C. There should, therefore, be no difficulty in treating the application dated 31st October 1949 as an application Under Section 362 (2). It is true that the Code expects the prosecution to furnish such a list at an early stage of the trial. But there is nothing in Chap. XXI of the Code to prevent the prosecution from filing a supplementary list before the accused are examined and the charge is framed. The name of the witness was before the Court on 1st October 1949. The witness was not examined at least up to 30th December 1949. The defence had ample time to find out about the status and character of the man. If the prosecution called the witness at a late stage in the trial, this will be a circumstance against the veracity of the witness. That point has no bearing on the admissibility of the evidence. In my opinion the prosecution is entitled to examine Sri Kishen Under Section 256, Criminal P.C. The revision petition is, therefore, dismissed.

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