

Arun Kumar and ors. Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Nov-12-1971

Reported in : 1972CriLJ991; 1971(4)WLN679

Judge : L.S. Mehta, J.

Appellant : Arun Kumar and ors.

Respondent : State of Rajasthan

Judgement :

ORDER

L.S. Mehta, J.

1. An inquiry was in progress under Section 386, I. P.C. in the Court of Munsiff-Magistrate, Pali, in case No. 107 of 1970 against Ganpat Singh. Arun Kumar. Jagdish Lal and Bhawani Singh, February 16, 1971, was posted for cross-examining the prosecution witness' Mst. Anusua. The witness went to Pali from Jaipur for appearing into the witness-box. That day accused Ganpat Singh due to illness could not put in appearance, nor did his Advocate attend the Court. The Munsiff-Magistrate, therefore, forfeited the bail bonds of Ganpat Singh and ordered for the issuance of a non-bailable warrant against him. On the verbal request of the counsel for the accused, who were present before the Court the Magistrate gave one more chance to get the witness cross-examined, provided they paid Rs. 40/- on account of her diet money and travelling allowance.

2. A revision application was taken against that order to the court of learned Sessions Judge. Pali. The said Judge observed in his order, dated May 25. 1971 that the dilatory tactics were being adopted on behalf of the accused with the intention of prolonging the proceedings and, therefore, the Magistrate was well within his right in saddling the accused persons, who were present before the Court, with the expenses of the above named witness.

3. Dissatisfied by the above order. Arun Kumar, Jagdish Lal, Bhawani Singh and Ganpat Singh have preferred this revision petition. The contention of learned Counsel for the applicants is that there is no provision in the Code of Criminal Procedure for award of costs from the accused. If Ganpat Singh was not present, the only step which the Court could have taken was to forfeit his bail bonds and recover penalty. In the absence of Ganpat Singh adjournment was mandatory and when that was the position, the accused, who were present before the Court, could not have been compelled to pay the witness expenses. The order of learned Magistrate, therefore, was without jurisdiction. Learned counsel for the State also supported this view.

4. Section 344. Cr. P.C. empowers the Court to adjourn inquiry or trial if from the absence of a witness or any other reasonable cause it becomes necessary to do so. That Section does not empower the Court to impose costs on one side or the other, though in particular cases the Court does occasionally order for the award of costs of the opposite party to be paid. Moreover, in a warrant case inquiry or trial is conducted in the interest of the State and Section 544. Cr. P.C. provides for payment of reasonable expenses of the complainant or the witnesses. This provision of course is subject to the rules made by the State Government. Rajasthan Rules for payment to witnesses in Criminal cases. 1951. simply speak in what cases Government has to pay the expenses to the witnesses and to what extent. They nowhere provide that the accused can be saddled with costs in a matter like this.

5. That apart, it is ridiculous that costs were saddled on those accused persons who were present before the court, without any fault on their part. If any of the accused could not attend the Court, there was no other alternative but to adjourn

the case. In that circumstance, it was highly improper that the accused in attendance should be compelled to pay to the prosecution witness her expense.

6. In support of what has been said above reference is made to *Gulab Singh v. Inder Singh* AIR 1934 Lah 441 - In that case Addison, J., observed that if any one of the accused was absent, order for adjournment costs at the instance of the other accused is unjustified. Similarly in *Mohanlal v. Mohini Mohan*. AIR 1948 Cal. 194 a Division Bench of the Calcutta High Court held that when an accused is absent on the date of hearing, the Court is bound to give an adjournment and has no power to award adjournment costs against him. as there is no provisions in the Code of Criminal procedure for compelling the accused to give the complainant adjournment costs although adjournment costs can be given to an accused under Section 334 of the Code. Henderson J., also took the view in *Ichab Sheikh v. Khirode Kumar* AIR 1949 Cal 254 that a Court has no power to make an order for costs when the accused at whose instance the adjournment has been granted is not present, so that the Court is bound to adjourn the case.

A Division Bench of the Punjab Chief Court in *Browne v. Chanda Singh* (1906) 4 Cri LJ 78 made the following observations:

The Court could not proceed with the trial or record evidence in the absence of the accused. It was. therefore, necessary to adjourn the case under any circumstances, and we think it would be entirely opposed to the Spirit of Section 344 that the Magistrate could, under such circumstances, pass orders awarding costs in addition to the order of arrest of accused by warrant.

Similar view was expressed by the Allahabad High Court in *Deedha v. Emperor* AIR 1922 All 184 (1) as also by the Nagpur High Court in *State v. Laxminarayan* AIR 1952 Nag 1.

7. The above authorities are directly in point and I respectfully agree with them. It appears to me that the Magistrate in the instant case made the impugned order not to compensate the prosecution for the costs incurred by it, but to coerce the petitioners and ensure their further attendance. All I need say is that the inquiry court adopted an improper method with a view to attain its object.

8. In the result. I accept this revision application and set aside the order of learned Munsiff-Magistrate, Pali, dated February 16, 1971, as also that of the learned Sessions Judge, Pali, dated May 25. 1971 and direct that the costs should be refunded to the accused.

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