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Court : Rajasthan

Decided On : Oct-15-1954

Reported in : 1955CriLJ619

Judge : Nigam, J.C.

Appellant : Dindayal and anr.

Respondent : Basudeo

Judgement :
ORDER

Nigam, J.C.

1. In Criminal Case No. 56 of 1951 filed by complainant Basudeo against Dindayal and Heeralal Under Sections 323, 325 and 109, IPC arguments were heard by the learned trial Honorary Magistrate on 29-6-1954 and 14-7-1954 was fixed for delivery of judgment. On that day, the Presiding Officer did not attend the court and 19-7-1954 was fixed for delivery of Judgment. But the delivery of judgment was postponed to 28-7-1954. On that day again no judgment was delivered and the learned trial Honorary Magistrate summoned the injury register maintained by the Victoria Hospital in respect of out-door patients for May 1951. On 5-8-1954, the accused presented an application that further evidence could not be recorded. On this application, arguments were heard on 9-8-1954 and by his order dated 23-8-1954. the learned Magistrate held that he had authority to summon any witness

at any stage before judgment was delivered. Against that order, a revision application was preferred before the learned Sessions Judge, who has now recommended that the order of the trial court dated 28-7-1954 be set aside. In this revision application, I have heard the learned Counsel for Dindayal and Heeralal accused, the learned Public Prosecutor and the learned Counsel for Basudeo complainant.

2. The contention of the learned Counsel for the accused is that the powers Under Section 540, Criminal P. C, cannot be exercised after the conclusion of the arguments as the trial ends with the conclusion of the arguments. In support of his contention, the learned Counsel has referred me to - 'Natabar Ghose v. Adya Nath Biswas' AIR 1923 Cal 690 (A) and - 'Bakshi Ram v. Emperor' AIR 1938 All 102 (B). Reference has also been made by the learned Sessions Judge to - 'Public Prosecutor, Madras v. Chocka-lingam Ambalam' AIR 1929 Mad 201 (C) and - 'Visvanatham Krishtiah v. Y. Pedda Venkata' AIR 1936 Mad 136 (D). But these were cases under Sections 526 and 528, Criminal P.C. The learned Public Prosecutor has referred me to - 'Channu Lai v. Rex' AIR 1949 All 692 (E); - .Inayat v. Rex' : AIR1950 All369 ; - 'In re, P. C. Perumal' AIR 1924 Mad 587 (2) (G); - 'Mangat Rai v. Emperor' AIR 1928 Lah 647 (H); - 'Beni Madho v. Emperor' AIR 1941 Oudh 20 (I) and - 'Mahomed Akbar v. Emperor' AIR 1948 Nag 209 (J).

3. The learned Counsel for the accused has urged that the word 'trial' has been used in Sections 268, 309, 366 and 497, Criminal P. C, in a manner to exclude the judgment in the case and should be similarly construed in Section 540, Cr.PC This question was considered in detail in AIR 1950 All 369 (F) and their Lordships held:

It seems to us that the word 'trial' has not been used throughout the Code in the same sense. This conclusion is further fortified by a reference to the history of the law relating to criminal procedure.

4. I need not refer to the reasons stated therein. It is sufficient to say that I, if I may say so, respectfully agree with those reasons. In - 'Basil Rengar Lawrence v. The King' AIR 1933 PC 218 (K) also it was held that

It is an essential principle of criminal law that the trial of an indictable offence has to be conducted in the presence of the accused; and for this purpose trial means the whole of the proceedings, including sentence....

5. It, therefore, appears to me that unless the context otherwise indicates, the word 'trial' is to include all proceedings in a criminal trial upto and including the judgment in the case.

6. I may also refer to the provisions of Section 540 of the Code. This lays down:

Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it essential to the just decision of the case.

7. It is clear that the first part of the Section empowers the court to summon and examine any witness and the second part casts a duty on the court to summon and examine any witness whose evidence appears to it essential to the just decision of the case. It appears to me that there may be occasions when in the discharge of this duty, it is necessary, even after the stage of arguments, to examine evidence in the case. It would, therefore, not be proper to interpret the provisions of this Section so as to limit the powers of the court to examine witnesses only before the conclusion of the arguments when quite often the attention of the court may be drawn to the deficiency and the 'requirements of a just decision of the case' only when it considers the case on merits after the conclusion of the arguments.

8. In that view, I am of opinion that the learned Magistrate was within his rights, if the interest of the case so demanded and not for purposes of filling up gaps of the prosecution, to summon and examine evidence even after the conclusion of the arguments. I have no doubt that the learned Magistrate will give a fresh opportunity to the accused to explain the evidence now brought on the record and to give such further defence as they think necessary.

9. Accordingly, I reject this reference.