Rewa Chand Vs. the State

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SooperKanoon Citation : sooperkanoon.com/755909

Court : Rajasthan

Decided On : Feb-22-1954

Reported in : AIR1955Raj113; 1955CriLJ1106

Judge : Bapna and; Sharma, JJ.

Appellant : Rewa Chand

Respondent : The State

Judgement :

Bapna, J.

1. This is a revision by the accused against an order of the Special Judge, Jaipur City, dated 7-8-1953.

2. The petitioner was a Field Inspector in the Department of the Deputy Custodian, Jaipur. He is being prosecuted for an offence Under Section 161, Penal Code read with Section 4, Prevention of Corruption Act in the Court of the Special Judge (Sessions Judge), Jaipur. The challan mentioned eight witnesses to be examined in support of the prosecution, and after examining certain witnesses, a charge was framed against the accused on 10-12-1952. The prosecution witnesses were then cross-examined, and the Public Prosecutor made an application on 23-7-1953, that Shri Trilochan Datt, who, as Deputy Custodian, had sanctioned the prosecution of the accused may be summoned as a witness for the prosecution.

The learned Special Judge accepted the. prayer, and directed summons to be issued.

3. In this revision it is contended that a new witness not mentioned in the challan cannot be allowed to be produced according to the language of Section 256, Criminal P. C. This was the view taken by a Single Judge of this Court in - 'Premraj v. The State' , and the case was, therefore, referred to a Division Bench.

4. Section 256, Criminal P. C. is as follows:

1. If the accused refuses to plead, or does not plead, or claims to be tried, he shall be required to state, at the commencement of the next hearing of the case or, if the Magistrate for reasons to be recorded in writing so thinks fit, forthwith, whether he wishes to cross-examine any, and, if so, which, of the witnesses for the prosecution whose evidence has been taken. If he says he does so wish, the witnesses named by him shall be recalled and, after cross-examination and re-examination (if any), they shall be discharged. The evidence of any remaining witnesses for the prosecution shall next be taken, and after cross-examination and re-examination (if any) they also shall be discharged. The accused shall then be called upon to enter upon his defence and produce his evidence.(2) ** **

5. There is a conflict of opinion in the interpretation of, the words 'the evidence of any re- maining witnesses for the prosecution shall be taken'. The view taken in 'Premraj's case (A)' finds support in - 'Raghubir Sahai v. Wali Husain I Khan' AIR 1937 All 189 (B) and - 'Heman Ram ,-v. Emperor' AIR 1945 Lah 201 (FB) (C). In 1'Raghubir Sahai's case (B)', Bennet J. observed as follows;

It appears to me that Under Section 252(2) the complainant is required to give in a list of prosecution witnesses. Under Section 254 the Magistrate may examine all those witnesses and then frame a charge-sheet or he may frame a charge-sheet before he has examined all those witnesses. If he adopts the latter course and certain witnesses remain from the list who have not been examined then those witnesses ere the remaining witnesses Under Section 256(1) and the complainant has a right to produce them after the cross-examination of those witnesses who have been previously examined, But if the Magistrate has examined all the

witnesses for the prosecution in the list Under Section 252(2) and has then framed a charge-sheet, in my opinion there are no witnesses remaining who could come under the description in Section 256 (1).

The reason adopted in this case was augmented in 'Heman Ram's case (C)' by referring to the legislative history of the section, and it was observed that the Magistrate had the duty to ascertain the names of all persons, who might be able to give evidence for the prosecution, and if the charge was framed before examining all those witnesses, the witnesses named as above but remaining unextrained were 'the remaining witnesses' mentioned in the section. It was observed that these words were inserted in the Code of 1898 by which the Magistrate was given a discretion lo frame a charge without examining all the witnesses named for the prosecution, and as a consequence thereof the present words were inserted for the purpose of giving power to the Magistrate to examine the witnesses not examined previously.

6. The other view is to be found in - 'Emperor v. Percy Henry Burn', 4 IInd Case 268 (Bom) (D), where Chandavarkar J. held:

The words 'any remaining witnesses for the prosecution' in Section 256, Criminal P. C, do not necessarily refer only to those witnesses who, as required by Clause 2 of Section 252, have been named, by the complainant and summoned by the Magistrate before the charge has been framed and the accused has pleaded not guilty. The words are wide enough to include any witness, who, a& cording to the prosecution, is able to support its case, though he has not been summoned, pn vided that he is not sprung upon the defence all of a sudden and sufficient opportunity is given to the latter to prepare for the cross-examination 'any remaining witnesses.

This case was relied upon in - 'Emperor v. Nagiudas Narottamdas' AIR 1942 Bom 214 (E); - 'Crown Prosecutor, Madras v. Ramanujulu Naidu' AIR 1944 Mad 169 (F) and - 'Hadi-bandhu Misra v. King' AIR 1950 Orissa 243 (G). It was pointed out in 'Hadibandhu Misra's case (G)' that the law previous to the insertion of the words was not different, and if it was Intended to limit the witnesses to only those who had remained out of the list, the proper expression would have been to use 'the

remaining witnesses' instead of 'any remaining witnesses'.

7. Now, it may sometimes happen that the Investigating Officer, who puts up the challan, considers that a certain witness is not necessary to be mentioned in the list, but the Public Prosecutor may think it extremely necessary that the witness should be summoned and produced. To take a a common example, a Magistrate, who had recorded a confession of the accused may have been omitted by the Investigating Officer in his list of witnesses produced with the challan. But the Public Prosecutor may consider that it is necessary to prove that the accused in the dock is the same person who gave the statement, and that the said statement was a voluntary statement.

To take another instance, the accused in his statement may disclose a story by way of defence, of which the prosecution had no knowledge previous to that date, and it may be necessary for the prosecution to eliminate the plea by producing necessary evidence. In such cases it would be too much to expect that the Investigating Officer may keep in his mind all the possible pleas in defence, and put up a list of the prosecution witnesses to eliminate all those pleas.

If the safeguards pointed out by Chandavarkar J. 'are adopted, namely, that the witness is not sprung upon the defence all of a sudden, and the defence they be given full opportunity for cross-examination, of there is no reason why the prosecution should not :be permitted to complete its case, and it would be contrary to all notions of criminal justice, if a prosecution case is to be stifled because of the ignorance of the Investigating Officer as to the kind of evidence that has to be produced in order to completely bring home the guilt of the accused, although such evidence may be unimpeachable and valuable to the prosecution. We, therefore, agree with the view taken in - 'Emperor v. Percy Henry Burn CD)' and are of opinion that the lower Court was right in summoning Shri Trilochan Datt for the purpose of moving the sanction granted for the prosecution of the accused.

8. The revision is accordingly dismissed.