

Begum Fejun Vs. the State

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Court : Rajasthan

Decided On : Apr-22-1954

Reported in : 1955CriLJ1392

Judge : Dave, J.

Appellant : Begum Fejun

Respondent : The State

Judgement :

ORDER

Dave, J.

1. This case comes on a reference made-by the Sessions Judge, Jodhpur, by his report dated 22-4-1954.

2. The facts giving rise to it are that on 28-6-1953 one Govind Narain made a report to the Sub- Inspector Police, Division B Jodhpur that he had advanced a loan of Rs. 9001 to Sahebjada Fejmohamad of Jodhpur and Faijmohamad had therefore mortgaged his house with him for the said amount. He had also executed a rentnote in favour of the complainant. On 13-1-40 the complainant got decree for possession of the house and also for arrears of rent. On 17-4-53 he was put in possession of the house through the bailiff of the Court. It was alleged by him that one Mt. Begum Fezun widow of Taj Moharhed Khan and Noor Mohamad Khan

made a criminal trespass into his house and took possession of certain portion thereof and therefore, it was prayed that they should be dealt with for committing offences Under Sections 447, 448 and 379, IPC The police investigated into the matter and challaned Mst. Begum Fezun Bibi and Noor Mohamad Under Section 448, IPC

3. Before the commencement of enquiry an application was presented by Mt. Begum Fejun to dispense with her personal attendance in the Court Under Section 205, Criminal P. C. on the ground that she was old and also a pardanashin lady. On 20-7-1953 that application was granted and she was allowed to appear by a pleader. Thereafter the prosecution evidence was recorded. The Court wanted to examine the accused Under Section 342, Criminal P. C. On 26-2-1954 her advocate was therefore ordered to produce her in the Court on the next date of hearing. Against this order the accused presented an application in revision in the Court of the Sessions Judge, Jodhpur. It was urged there that the case against the accused was a very petty one, that it was in the nature of a civil suit and a criminal case was started just to dispossess her from the property. It was also urged that she was continuing in possession of that property for a number of years and she was never dispossessed by the Court bailiff. It was further contended that in a case like this her advocate could be examined on her behalf Under Section 342, Criminal P. C. and that a charge could also be framed in the same manner. It was prayed that in such a case even if the accused was convicted there could only be a punishment of fine and therefore, she should be exempted Under Section 205, Criminal P. C. right upto the conclusion of the trial. These arguments have found favour with the learned Sessions Judge and therefore, he has reported the case with the recommendation that the accused Mt. Begum Fejun should be allowed to appear by her pleader right upto the conclusion of the trial.

4. Learned advocate for the accused has supported the reference while learned Government Advocate contests it.

5. It is urged by the learned Government Advocate that the learned Sessions Judge ought not to have made any remark on the facts of the case because it is likely to prejudice the trial Court. It is also requested that this Court also should not

go into the facts of the case. This argument is quite correct and I would not express any opinion about the strength or the weakness of the prosecution case at this stage.

6. The only point to be considered is whether the attendance of the accused Mst. Bcsgum Fezun in the trial Court may be dispensed with right upto the conclusion of the trial. Learned Government Advocate has urged that the advocate of the accused cannot be examined by the Court Under Section 342, Cr.PC and that the accused must therefore personally appear in the Court so that she may be examined, according to the provisions of the said section. In support of his argument he has referred to the case of 'Ishwardas v. Bhagwandas' AIR 1934 All 693 (2) (A). In that case it was observed that

Section 342 does not purport to be only in the interest of accused persons. On the contrary it is laid down that the purpose is to enable the accused to explain any circumstances appearing in the evidence against him. The accused may or may not be able to explain those circumstances, and if the accused is not able to explain the circumstances then the Court may draw a presumption against the accused. The intention of the provision in my opinion is for the furtherance of justice and to enable the Court to decide the issue in a criminal case, which is always : 'Did the accused commit the offence charged

It was further observed that a statement Under Section 342, Cr.PC should be a personal statement by the accused and not a statement made on his behalf by an advocate. I respectfully agree with the view so far as it says that Section 342 contemplates that ordinarily the accused himself should be examined by the Court in order to enable him to explain the circumstances appearing in the evidence against him. Such examination may be made at any stage of the enquiry or trial without previously warning the accused and therefore the intention of this provision is certainly for the furtherance of justice, but the question arises whether this section would be governed by Section 205, Cr.PC when the accused is permitted by the Court to appear by a pleader.

7. In an earlier case of 'Mst. Tirbeni v. Mst. Bhagwati' AIR 1927 All 149 (B) another learned Judge of the same High Court had set aside the order of a Magistrate who

had refused to excuse the personal attendance of a pardanashin lady and directed him to dispense with the attendance of the accused until such time as there was sufficient evidence on record to give him reason to suppose that she was guilty of the offence of which she was charged,

8. Learned Government Advocate has next referred to the case of 'Hirasingh v. State' : AIR1954 All231 . In that case it was observed that

the mere fact that an accused is a 'pardanashin' lady does not entitle her to remain exempted from-appearance all the time even if her presence is required for a proper conduct if the case.

In that case the question whether a pleader of the accused exempted Under Section 205, Cr.PC could be examined Under Section 342, Cr.PC did not come for discussion. It is true that a person who is exempted from personal attendance Under Section 205 cannot claim as a right that he cannot be ordered to appear personally in the Court at a later stage. Sub-section (2) of Section 205 clearly lays down that the Magistrate enquiring into or trying the case may at any stage of the proceedings direct the personal attendance of the accused even though his personal attendance may have been dispensed with earlier under Sub-section (1). In the present case it is not a point in dispute that the Magistrate could not in any circumstance direct the personal attendance of the accused, but the question involved is whether the Magistrate can examine the pleader of an accused Under Section 342, Cr.PC if the personal attendance of the accused himself is dispensed with. In my opinion the Court may examine the pleader in such a case if the pleader is willing to-give a statement on behalf of the accused for whom he appears. In the case of 'Rajrajeshwari Debi v. Emperor', 15 Cri L J 281 (2) (Cal) (D), the accused who were respectable pardahnashin ladies were charged with offences Under Sections 307, 308, 325 and 326, I. P. C. The learned Judges allowed them to-appear 'both at the inquiry and at the trial by their pleaders, subject to their having to appear before the Court to hear the sentence passed, should the case be proved against them and the trial ended in ;a conviction. It was further ordered that if the accused be committed to the Court of Session, the personal attendance of the ladies may be dispensed with till the Sessions Judge

passed his order.

9. In another case viz. 'Harinarayan Chandra v. Emperor' AIR 1928 Cal 27 (E), the learned Judges of the same High Court observed as follows :

In Section 205 the word 'appear' seems to convey a double meaning, seemingly connoting not merely authority to act and plead, but also authority to personate the accused; but there is nothing to show that double meaning was intended by the Legislature, It is necessary that someone should be present at the trial to look after the interests of the accused; and all that Section 205 provides is that, when the Magistrate sees fit, a person against whom a summons has issued may be exempted from personal appearance, provided he engages a pleader to attend and see that the proceedings are properly and legally conducted.

10. Similarly, in the case of 'Emperor v. Jamal Khatuu', 14 Cri L J 272 (Sind) (F), it was observed that :

Section 205, Cr.PC allows the accused to appear by a pleader and such appearance involves the performance of all acts which devolve upon the accused in the course of the trial, such as answering the examination by the Court Under Section 342, or pleading, or refusing to plead to the charge Under Section 255.

A support to this view was taken from the terms of Section 366 (2) by saying that :

The said section contemplates the absence of the accused upto the stage of judgment and even after that stage where the judgment is one of acquittal or one awarding a sentence of fine.

A further support was given by the form of summons to an accused in Sch. v. Cr.PC whereby the accused is 'required to appear in person or by pleader'. It was observed that ' this implies that the pleader who appears represents the accused for the purpose of answering to the charge and this would include answering questions put by the Magistrate on the case made out by the prosecution.

11. Similarly in the case of 'Kandamanidevi v. Emperor' AIR 1922 Mad 79 (1) (G), it was held that not only a Magistrate but even the Sessions Judge has power to

dispense with the personal attendance of the accused and permit him to appear by pleader during the Sessions trial. In that case the trial Court was directed that the accused who were pardahna-shin ladies should not be compelled to appear in public at least until they were convicted.

12. The learned Judges of the Bombay High Court have also taken similar view in the case of 'Emperor v. Jaffar Cassum Moosa' AIR 1934 Bom 212 (H).

In that case it was observed that :

Where the Magistrate exercises the power given to him by Section 205 of dispensing with the personal attendance of the accused and permits him to appear by his pleader, the Magistrate is not bound to question the accused personally. Section 342 must be read subject to the provisions of Section 205.

13. Thus a review of the above cases makes it quite clear that Section 342 is subject to the provisions of Section 205, Cr.PC that the appearance of a pleader Under Section 205, Cr.PC involves the performance of all acts which devolve upon the accused in the course of the trial and therefore he can be examined Under Section 342, Cr.PC by the Court, in place of the accused for whom he appears. Section 366, Cr.PC further makes it clear that the personal attendance of the accused during the trial may be dispensed with by the Court even till the delivery of the judgment and his conviction if the sentence is one of fine only. I-do not therefore agree with the contention raised by learned Government Advocate that a pleader of an accused cannot be examined Under Section 342 in a case where personal attendance of the accused is dispensed with Under Section 205, Cr.PC

14. In the present case it is clear that the offence Under Section 448, IPC alleged against the accused is not a crime of a serious nature. It is also not in dispute that the accused is an old pardahna-shin lady of about 70 years of age. Therefore the learned Magistrate who dispensed with her personal attendance should not have compelled her to appear simply for her statement Under Section 342, Cr.PC The learned Magistrate does not say that her own statement is absolutely essential for certain reasons. Perhaps he was under the impression that her pleader could not be examined in her stead and therefore he directed her personal attendance. In

such a case the Court may dispense with the attendance of the accused even till the delivery of judgment if only a sentence of fine is imposed. The reference made by the learned Sessions Judge is, therefore, accepted and the Magistrate is directed that he should dispense with the personal attendance of the accused until he thinks that she is liable to conviction and the sentence of fine is not adequate.

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