

**State Vs. Sukhlal**

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**Court :** Rajasthan

**Decided On :** Feb-15-1954

**Reported in :** AIR1955Raj178; 1955CriLJ1395

**Judge :** Sharma, J.

**Appellant :** State

**Respondent :** Sukhlal

**Judgement :**

ORDER

**Sharma, J.**

1. This is a reference by the learned Additional Sessions Judge, Gangapur and arises under the following circumstances.

2. When the first prosecution witness was being examined before the learned Additional Sessions Judge, one of the assessors namely Shri Faqir Chand presented an application before him that he was interested in the accused Ram Narain as this accused was his debtor, and ho was unable to give any opinion in this case and that he would not sit as an assessor during the course of the trial of the case against Ram Narain. Ram Narain accused also admitted that Shri Faqir Chand was his creditor for the last two or three years and that he was having very good relations with the assessor.

The learned Additional Sessions Judge, Gangapur thinks that under the circumstances, Shri Faqir' Chand was not a proper person to act as an assessor in the case and has therefore, made a reference to this Court recommending that the order of appointment of Shri Faqir Chand as assessor and all subsequent proceedings after his appointment be set aside and another person be allowed to be chosen in place of Shri Faqir Chand.

3. I have considered the reference and have also heard Shri C. B. Bhargava on behalf of the State. There is no particular provision in the Criminal Procedure Code as to what should be done in such circumstances. However, there are two rulings one of Lahore High Court and another of Madras High Court bearing on the point. The earliest ruling is that of Madras High Court in the case of Sessions Judge of Tanjor v. Thiagaraja Thevan, 13 Cri L J 473 (Mad) (A). In that case, after the trial had begun and the first prosecution witness was still under examination, it was brought to the notice of the Sessions Judge by one of the pleaders of the accused that one of the assessors was not a disinterested person as he was the son-in-law of the same village Munsif in connection with whose murder the accused was being arrested when he is said to have made the attempt to murder a Police Officer for which he was on his trial.

The Sessions Judge made a report and a Division Bench of Madras High Court held that the assessor was not a proper person to sit in the case and, therefore, the Sessions Judge was directed to dispense with his attendance, choose another assessor in his place and try the case de novo.

This ruling was followed in the case of Emperor v. Lai Singh, A I R 1933 Lah 926 (B). In that case one of the assessors expressed during the course of the trial that he was determined to help the accused. Under these circumstances, Jai Lai J., held that the assessor was not a proper person to act as an assessor and the High Court had a power Under Section 581A to order a new trial with the help of new assessors and order was made accordingly.

The latest case brought to my notice is the case of Emperor v. Pahlu AIR 1939 Lah 475 (C). In that case one of the assessors while giving his opinion towards the conclusion of the trial added that he had personal knowledge of the matter while

the case was under investigation. The Sessions Judge made a reference to the High Court, but in the special circumstances, it was held by a Division Bench that the opinion of the assessor which had already been taken down might be ignored and the case be decided. It was observed that there was nothing illegal in a Judge acting in that manner. The circumstances of that case were however special.

In the present case, the trial had only begun inasmuch as the first witness was being examined when the assessor made an application in question to the learned Additional Sessions Judge. He has unequivocally stated in his application that he had money dealings with Ram Narain and was therefore, unable to give any opinion and, there fore, desired that the case be not tried with him a an assessor. Under the circumstances, it would not be proper for this assessor to sit at the trial.

4. The reference is accepted and the order appointing Shri Faqir Chand as assessor in this case is set aside and the learned Additional Sessions Judge is directed to hold de novo trial with a fresh set of assessors among whom Shri Faqir Chand shall not be included. The two other assessors who are sitting at this trial might be included among the assessors who might be chosen by the Additional Sessions Judge to carry on the de novo trial.

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