

Suresh Kumar and ors. Vs. Ramchandra and ors.

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Court : Rajasthan

Decided On : Apr-13-1976

Reported in : 1976WLN123

Judge : C.M. Lodha, J.

Appeal No. : S.B. Civil Revision No. 164 of 1976

Appellant : Suresh Kumar and ors.

Respondent : Ramchandra and ors.

Disposition : Application dismissed

Judgement :

C.M. Lodha, J.

1. The only point urged in support of this revision application is that the Magistrate had no jurisdiction to permit the non-petitioners to cross-examine the dipnoans of the affidavits produced by the petitioners in the proceedings under Section 145 Cr.P.C. before the Magistrate. The only ruling relied upon by the learned Counsel in support of this contention is Janga Rdddy v. Hafezunnisa : AIR 1965 AP17 wherein the learned Single Judge observed that since a reference under Section 141 Cr.P.C. the provisions of that section are not attracted to such reference. He further held that in this view of the matter, an application under Order 19 Rule 2 for

cross-examination of the deponents *Agarwal v. The State of U.P. and Anr.* : 1966 CriLJ1514 their Lordships of the Supreme Court were pleased to hold that the provisions of the Civil Procedure Code would apply generally to a proceeding before a Civil Procedure Code would apply generally to a proceeding before a Civil Procedure Code would apply generally to a proceeding before a Civil Procedure Code would apply generally to a Magistrate in the present case had no jurisdiction to permit cross-examination of the deponents of the affidavits produced by the petitioner. Learned Counsel submits that Order 19 Rule 2 CPC applies only to an interlocutory application but does not apply to applications of substantive nature. In support of this contention he has relied upon *Federal India Assurance Co. Ltd. v. Anandrao Pandurangrao Dixit* AIR 1944 Nagpur 161. He has further argued that since the application under Order 19 Rule 2 was made by the no-petitioners after great delay, the Magistrate was not justified in granting permission.

2. It may be pointed out that reference under Section 146(1) Cr.P.C. is neither an application of inter (sic) nature not an application of substantive character, but it is only an enquiry as provided in Section 146(12) Cr.P.C. of the Code of Criminal Procedure 1973. The Nagpur authority has, therefore, no application to the present case. Apart from that by reading the provision is that by reading the provisions of Order Rules 1 and 2 CPC together, the (sic) conclusion is that the court has power in such an enquiry where affidavits are admissible as a piece of evidence, to permit cross-examination of the deponents of such affidavits at the request of the opposite party.

3. As regards the delay, it is a matter within the discretion of the (sic) and taking this fact into consideration, the court has awarded Rs. 50/- as costs to the petitioners. In the circumstances, it cannot be said that the court below had exercised its jurisdiction illegally or with material irregularity.

4. The revision application is, there fore, dismissed summarily.