

Dineshwarlal Vs. the State of Rajasthan

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Court : Rajasthan

Decided On : Aug-24-1977

Reported in : 1977WLN412

Judge : K.D. Sharma, J.

Appeal No. : S.B. Criminal Misc. Application No. 60 of 1977

Appellant : Dineshwarlal

Respondent : The State of Rajasthan

Judgement :

K.D. Sharma, J.

1. Dineshwar Lal has invoked inherent jurisdiction of this Court by way of an application under Section 482, Cr. Pc. for quashing an order of the Additional Sessions Judge No. 2, Jodhpur, dated 30th April, 1977 by which his defence evidence in Sessions Case No. 8 of 1976 was closed.

2. The applicant is being prosecuted for an offence punishable under Section 409, I.P.C. in the court of the Additional Sessions Judge No. 2, Jodhpur The applicant entered upon his defence in this case on 26-2-1977. He expressed his desire before the Court to adduce evidence in his defence. Hence, the case was fixed for recording defence evidence on 28th March, 1977 and it was further directed that if

the applicant wanted the assistance of the Court in compelling the attendance of his witnesses, he would file process-fees within three days. On 28th March, 1977, the Additional Sessions Judge directed the applicant to deposit a sum of Rs. 200/-, as travelling expenses and allowance payable to his witness Shri D.C. Gupta, Accounts Officer. Summons were ordered to be issued to his other witness Narain Singh also. The case was fixed for recording evidence of the applicant on 20th April, 1977. Evidence could not be recorded on the said date, because the applicant's witnesses Shri D.C. Gupta and Shri Narayan Singh were not present in the court. The summons issued to Shri D.C. Gupta was not returned served or unserved and the summons issued to Shri Narayan Singh was returned with an endorsement that no such person was available at the given address. The applicant informed the court that the name of his witness was Narendra Singh and not Narayan Singh and that Narendra Singh should be summoned to give evidence in this case. The Additional Sessions Judge issued fresh summons to the witness and gave them Dasti to the applicant for service. The case was fixed on 27th April, 1977. On 27th April, 1977, one witness of the applicant was examined. Shri D.C. Gupta did not appear in the court for the simple reason that audit report was not with him. The Additional Sessions Judge, therefore, called for the audit-report from the University of Jodhpur and the case was fixed for hearing on 29th April, 1977. On 29th April, 1977, the Additional Public Prosecutor intimated to the court that a copy of the audit-report was filed along with the police challan and that it was a true copy of the report. The Additional Sessions Judge adjourned the case to the next day for hearing the applicant regarding summoning of the audit-report. On 30th April, 1977, the Additional Sessions Judge heard the applicant and closed his evidence on the ground that the true copy of the audit-report was filed by the police along with the police challan and, therefore, it was not necessary to prove that report. Aggrieved by this order, the applicant has filed this application under Section 482, Cr. P.C. as stated above.

3. I have heard Mr. Bhim Raj Purohit for the applicant and Mr. K.C. Bhandari, Public Prosecutor, for the State and perused the record of the trial court. At the outset I may observe that every opportunity should be given to the accused to adduce evidence in his defence. It is not open for the Judge to say that examination of any witness sought to be produced by the accused is necessary for

the defence. It is for the accused to say what amount of evidence he thinks it proper to place on the record in his defence. It is not a case where the applicant has asked for process at a late stage. As soon as he entered upon his defence, on February 26, 1977, he expressed his desire to adduce evidence in his defence. The Additional Sessions Judge passed an order that if the accused wanted to get his witnesses summoned he should file process-fees for this purpose within three days. In pursuance of this order the applicant applied to the court for issue of process to his witnesses, namely, Shri D.C. Gupta and Shri Narendra. Singh Summons were served on Shri D.C. Gupta but he did not appear in the court for the simple reason that the audit-report was not with him. The Additional Sessions Judge, therefore ordered that the audit-report needed no proof as its copy had already been filed by the police along with the charge-sheet. It is possible that the accused, if given an opportunity to examine Shri D.C. Gupta, might have succeeded in eliciting some such answers to his questions from the witness as may be helpful in establishing his innocence. Refusal by the Additional Sessions Judge to summon the applicant's witnesses has resulted in failure of justice justifying interference by this Court in the exercise of its inherent jurisdiction.

4. Consequently, the application under Section 482, Cr. P.C. filed by Dinesh war Lal applicant is accepted and the impugned order dated 30th April, 1977, is set aside and the learned Additional Sessions Judge No. 2, Jodhpur is directed to allow every opportunity to the applicant to adduce such evidence as he chooses, either oral or documentary.

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