

Chatra Vs. the State of Rajasthan

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Court : Rajasthan

Decided On : Jun-03-1999

Reported in : 1999(3)WLC642; 1999(1)WLN653

Judge : A.K. Singh, J.

Appeal No. : S.B. CrI. Misc. Petition No. 407 of 1999

Appellant : Chatra

Respondent : The State of Rajasthan

Disposition : Petition allowed

Judgement :

A.K. Singh, J.

1. Admit.

2. Issue notice to the non-petitioner. The learned Public Prosecutor is directed to accept the notice. He accepted the notice and the copy of the petition is supplied to him.

3. Heard the learned Counsel for the petitioner and the learned Public Prosecutor.

4. It is submitted by the counsel for the petitioner that this case is squarely covered by the decision given by this court in the case of Bhika Ram v. State of Rajasthan

reported in RLW 1998 (1) 448. In the case of Bhika Ram v. State of Raj. (supra) the petition under Section 482, Cr.P.C. is filed against the order dated 5.10.1993 passed by the Additional Sessions judge, Phalodi whereby he rejected the application dated 21.9.1993 submitted by the accused petitioner under Section 91 of the Criminal Procedure Code. The accused petitioner in that case moved an application before the learned Additional Sessions Judge praying that the statements of 32 witnesses who were examined by the Investigating Officer during the investigation be directed to be produced in the court as the same have not been submitted with the report filed under Section 173 Cr.P.C.

5. It was contended by the learned Public Prosecutor before the learned Additional Sessions Judge that all the statements, recorded by the Investigating Officer had been filed in the court. The learned Additional Sessions Judge rejected the application of the accused person at page 449. It was observed by this court -

It appears that the petitioners wanted the production of two kinds of statements of persons examined under Section 161, Cr.P.C. - (a) persons who were cited as prosecution-witnesses in the report submitted by the police after investigation, and (b) persons who have not been cited as prosecution-witnesses in the report submitted under Section 173 Cr.P.C. prosecution.

So far as the statements of persons belonging to category (a) are concerned, the accused persons are entitled to the copies of such persons if they were examined under Section 161 Cr.P.C. during the investigation. Clause (b) of Sub-section (5) of Section 173 Cr.P.C. provides that the statements recorded under Section 161 of all the persons whom the prosecution proposes to examine as its witnesses shall be forwarded to the Magistrate along with the report under Section 173 Cr.P.C, subject of course to the provisions of Sub-section (6) of Section 173 Cr.P.C. If any such person (who is proposed to be examined as prosecution witness) was examined more than once during investigation (including re-investigation and further investigation) the copies of all such statements are required to be supplied to the accused-persons. The object of supplying the copies of statements recorded under Section 161 Cr.P.C. is to enable the accused to defend himself properly against the charge for which process was issued against him by the Court. In Dalla

v. State of Rajasthan (1) a Division Bench of this Court observed as under -

The position which, thus emerges out is that the investigating agency is bound to produce the statements recorded under Section 161 Cr.P.C. along with its report and the accused is entitled to get copies of such statements in order to confront the witnesses. When more than one statement of a witness has been recorded, the accused is entitled to get copies of all such statements. This right cannot be whittled down merely by supplying the copy of only one statement. When the copies of the statements of witnesses recorded more than once are withheld and not supplied to the accused, it cannot be said to be a proper compliance of the provisions of Section 173(5)(b) of Section 162 Cr.P.C. The right to cross-examine and confront a witness with reference to his statement recorded under Section 161 Cr.P.C. is an undefeasible right and cannot be circumvented in any manner. No doubt, Section 162, Cr.P.C. by inserting the words 'may be used by the accused' gives a choice to the accused to contradict or confront witnesses by their earlier statements in the manner provided by Section 145 of the Evidence Act. It is for the accused to make the choice or not. But once he has made the choice, his choice remains unfettered and cannot be restricted by the trial court. The provisions of Section 162 Cr.P.C. cannot be defeated merely by supplying the copy of only one statement of a witness when in fact his statement has been recorded more than once during investigation. The prosecution must supply him the copy of all such statements of a witness, and failure to do so on the part of the prosecution invariably results in a material prejudice to the accused failure to supply copies of the statements recorded under Section 161 is bound to entail in prejudice to the accused and the extent of that prejudice cannot be properly imagined or measure or gauged. The right guaranteed to an accused under Section 162 Cr.P.C. is total and absolute. No exception can be taken to it by the prosecution. I am, therefore, of the opinion that if a person who is cited as a prosecution-witness in the report submitted by the police under Section 173 Cr.P.C. was examined more than once during the investigation, (which term includes re-investigation and further investigation) the copies of all the statements of such persons should be supplied to the accused persons in accordance with clause (b) of Sub-section (5) of Section 173 Cr.P.C.

6. In view of the law declared by this Court in the above mentioned case the impugned order dated 22.5.1999 passed by the Additional Sessions Judge, Bali cannot be said to be in conformity with the law. The petitioner had prayed before the learned Additional Sessions Judge that the witnesses Smt. Savi, Bhopa and Dhanna had been examined by the Dy. Superintendent of Police, Bali and the copies of the supplementary statements had not been supplied to the accused persons. The supplementary statements, of which copies were demanded by the accused persons were not filed with the challan. The learned Additional Sessions Judge has taken the view that since the supplementary statements recorded by the police were not filed, the copies thereof could not be given to the accused. The view taken by the learned Additional Sessions Judge is erroneous and contrary to law declared by this court.

7. Consequently, this petition is allowed. The impugned order dated 22.5.1999 is set aside. The learned Additional Sessions Judge is directed to dispose of the application filed by the petitioner in accordance with the law declared by this Court.

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