

In Re: N. Krishnaswamy and ors.

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Court : Chennai

Decided On : Feb-24-1956

Reported in : (1956)2MLJ2

Appellant : In Re: N. Krishnaswamy and ors.

Judgement :

ORDER

Somasundram, J.

1. This is a revision against an order of the Vth Presidency Magistrate, Egmore, directing the issue of summons to four persons by name Sri Rose, Krishna moorthy, Seetharaman and Rangaswami. In the charge-sheet filed by the police against the accused these witnesses were not mentioned. It is also conceded that these witnesses were not examined by the police till after the charge was framed which was on 19th December 1955. The charge-sheet was filed on 25th November 1955 and after the examination of some witnesses the charge was framed, 19th December, 1955 and it is posted for further cross-examination. These nesses were examined for the first time by the police only on 29th December roll and, at the instance of the prosecution, the Magistrate has directed summons to issue to them to be examined as witnesses for the prosecution. It is doubtful whether after the filing of the final charge-sheet there can be any further investigation into the case by the police. If there can be no further investigation into the case certainly no witnesses can be examined by the police and they

cannot be put forward as witnesses of the prosecution. There is conflict of opinion on this question as to whether there can be a subsequent investigation after the filing of the final charge-sheet under Section 173, Criminal Procedure Code. In Cr.R.C. No. 993, of 1955 that question arises in another way and I intended to refer that matter to a Bench, but on subsequent reconsideration I think it is not necessary to refer that matter to a Bench, as after 1st January, 1956, the procedure is different and that such an occasion may not arise at all in future, and if it arises it would be faced with different problems. I am of the view that after the filing of the charge-sheet under Section 73, Criminal Procedure Code, there can be neither investigation into the case by the police and, therefore, any persons examined by them cannot be put forward before the Court as witnesses for the prosecution in support of their case. In this view the prosecution cannot ask the above-mentioned four persons to be examined as witnesses for the prosecution. The issue of summons to them is therefore quashed.

2. But the Court certainly has got certain powers under Section 540, Criminal Procedure Code, to examine any person as a witness, if the evidence of such person appears to it essential to the just decision of the case. But then the discretion given to the Court under Section 540 Criminal Procedure Code, is a judicial discretion and I have pointed out in *K.V R.S. Mani, In re* (1951) 1 M.L.J. 184 , the extent to which discretion can go. In the words of Tindal, C.J. in *Reg v. Frost* (1839) 9 C. & P. 129 : 173 E.R. 771.

If any matter arises ex improvis, which no human ingenuity can foresee on the part of a defendant in a civil suit, or a prisoner in a criminal case, there seems to me no reason why that matter which so arose ex improviso may not be answered by the Crown and on behalf of the Crown, but we think that the rule applies only to a witness called by the Crown and on behalf of the Crown, but we think that the rule should also apply to a case where a witness is called in a criminal trial by the Judge after the case for the defence is closed, and that the practice should be limited to a case where a matter arises ex improviso, which no human ingenuity can foresee, on the part of a prisoner,-otherwise injustice would ensue.

If in this case the Court is of opinion that any matter has arisen ex improviso, which could not have been contemplated by the prosecution, then certainly the Court is entitled to examine these witnesses as Court witnesses. In any event, even if all these witnesses are examined by the Court, their evidence cannot be used to fill up the gaps in the prosecution. Otherwise these witnesses, if they fall within the scope of the observations mentioned by Tindal, C.J., may be examined. With these observations, the petition is allowed and the issue of summons to examine them as prosecution witnesses is quashed.

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