

In Re: Palayan

In Re: Palayan

SooperKanoon Citation : sooperkanoon.com/783960

Court : Chennai

Decided On : Aug-08-1941

Reported in : AIR1941Mad825; (1941)2MLJ401

Appellant : In Re: Palayan

Judgement :

ORDER

Horwill, J.

1. The petitioner was an accused in C.C. No. 926 of 1941 on the file of the Chief Presidency Magistrate, Egmore. Upon a transfer of the Magistrate, the petitioner invoked the provisions of proviso (a) to Section 350 of the Criminal Procedure Code and asked the Magistrate to recall the prosecution witnesses for fresh examination. The learned Counsel for the petitioner found, after cross-examining certain prosecution witnesses, that they were saying more than they had before, and he thought that it was not in the interests of his client to examine any more prosecution witnesses. He therefore asked the Magistrate not to examine the remaining witnesses. The Magistrate insisted and said:

It is not open to the accused to say after some of the witnesses were examined, that the other witnesses need not be examined. Even if he does not want the other witnesses to be examined the Court can in the interests of proper appreciation of evidence and in the interests of justice examine all the witnesses again. I therefore

decide that all the witnesses will be summoned and heard again.

2. It is argued on behalf of the petitioner that both the reasons given by the learned Magistrate are not valid.

3. Two decisions of this Court, *In re Vudigalapudi Gadu* (1924) 20 L.W. 916 and *Veerappa v. Emperor* 1935 M.W.N. 179 make it clear that even though in the first instance the accused may demand a re-examination of witnesses, he can change his mind and say that he wishes only-certain witnesses to be examined.

4. The other question is whether, after the accused has said that he does not wish to examine all the witnesses, it is open to the Magistrate to examine them. The argument of the learned Counsel for the petitioner is that once proviso (a) to Section 350 (1) of the Criminal Procedure Code has been invoked, the Magistrate has lost his power to summon witnesses under Section 350 (1). I should be reluctant to hold so unless the wording of Section 350 of the Criminal Procedure Code itself made that clear. Although a Magistrate might be content to decide the whole of the case on the record, yet there are obvious disadvantages in deciding the case partly on the record and partly on the witnesses heard by him; and a Magistrate might well be desirous, for a proper appreciation of the case by himself, to hear all the witnesses again if he is obliged to examine some of them. I do not find anything in Section 350 of the Criminal Procedure Code which prohibits him from exercising his discretion of examining all the witnesses again merely because the accused has exercised his right under proviso (a) to Section 350. The judgment of Burn, J., in *Veerappa v. Emperor* 1935 M.W.N. 179 has been quoted in support of this contention; but I do not think that Burn, J., was of that opinion. The purport of his judgment is that the accused has a right to say that no more witnesses should be examined; but that his right to stop a further examination of witnesses is subject to a limitation, that limitation being the privilege of the Magistrate under Section 350 (1) of the Criminal Procedure Code, to examine all. In the particular case before him, there was nothing on the record to show whether the Magistrate had invoked his privileges under Section 350 (1) or not; and so the learned Judge dismissed the revision case on the ground that it was not 'certain that the learned Magistrate committed any error when he re-heard two prosecution

witnesses whom the accused did not want him to rehear.'

5. The petition is, therefore, dismissed. I would like to add that the Magistrate before examining the other witnesses in the case against the wishes of the accused should consider whether he himself feels the need to examine them. Only if he does, should he re-summon and re-hear them.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com