

In Re: T.S. Swaminathan

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Court : Chennai

Decided On : Mar-10-1944

Reported in : AIR1944Mad419

Appellant : In Re: T.S. Swaminathan

Judgement :

ORDER

Kuppuswami Ayyar, J.

1. This is a petition by accused 1 in P.R.C. No. 1 of 1944 on the file of the Special First Class Magistrate of Rajahmundry to revise the order of that Magistrate dismissing his petition to inspect (a) the entire case record files of the 33 Criminal and other cases mentioned in para. (2) of the charge sheet as having been disposed of by accused 1, (b) the several Court records (which have not been specified) mentioned in para. 3 of the charge sheet as having been scrutinised by two Sub-divisional Magistrates who were successors in office to accused 1 as the result of which scrutiny first information was laid to the police in about 23 Crime numbers, (c) the many Court records, namely, chalans, fines registers, monthly statements of fines, entries of adjournments in cases, property registers, contingent registers, etc., referred to (but not specified) in para. 6 of the charge sheet, (d) the entire case record files of about 32 cases mentioned in para. 9 of the charge sheet as those in respect of which fine amounts etc., are alleged to have been misappropriated by the accused, and (e) all the other records mentioned in

the charge sheet. In short, the inspection sought was a roving one in respect of every available paper that could be found in the archives of the Magistrate's record room.

2. The application was opposed by the Public Prosecutor and the Magistrate after observing that most of the records concerned were seized by the police and had been sent to the Court for the purpose of the relevant parts of the records being let in evidence in the preliminary inquiry and that they were not records of the Special Courts yet, held that the petitioner was not entitled to have an inspection of them. He further observed that the right to inspect would arise in respect of each document, or file or record or register or chalan, etc., as and when some fact connected with such document is let in evidence by the prosecution and added:

As the inquiry proceeds and evidence is let in by the prosecution, the documents, registers, records, etc., which have any particular connection with such pieces of evidence, may, if the accused so desires, be made available for his (or his pleader's) inspection, at the discretion of the Court with due regard to the ends of justice.

3. It is urged before me that all the documents referred to are public documents and as such the accused as a person who is interested in getting information about their contents is entitled to inspect them. Reliance is placed upon Section 76, Evidence Act. Under that section, any person who has a right to inspect a public document will be entitled to receive a copy of it on payment of the legal fees therefor; but then, in the explanation to that section, it is stated that it is only an officer who, by the ordinary course of official duty, is authorised to deliver such copies, shall be deemed to have the custody of such documents. The registers and the case records are all of the Joint Magistrate's Court at Rajahmundry and it is the Joint Magistrate of Rajahmundry who can be said to be the officer having custody of those records and therefore it is to him that the accused must apply for copies of the documents. Section 76, Evidence Act, cannot hence afford a basis for a claim of the kind which the accused has set up in this petition.

4. There is no provision either in the Code of Criminal Procedure or in the rules made by this High Court as regards the right of inspection by an accused of the

records in the custody of the Court in which he is being tried. The documents which the accused has asked for inspection of maybe divided into two classes, (1) those which are in the custody of the Court and have been summoned by the accused and (2) those which are in the custody of the Court having been either received by the Court on a summons taken out by the prosecution or filed into Court by the prosecution. The accused could have a necessity to look into the documents filed by the prosecution only as and when they are tendered to the Court by the prosecution at the trial of the case, for until then, the accused is not bound to answer them, and if they are not tendered, there could be no necessity for him to look into them.

5. If there are any documents which are relied upon by the accused either for dislodging the prosecution case or for building up his own case, he will have to take out a summons for them. If the object of the inspection is merely to fish for information, it is not a thing that could be permitted. There may be documents in the custody of private individuals which may furnish necessary information for an accused but then he can claim no right to look into them unless he takes out a summons for them and gets them into Court. If they are not produced, the proper course for him would be to move the Court to issue a search warrant under Section 96, Criminal P. C, after satisfying the Court, they are necessary. Merely because the documents are in the custody of the Court, that will not give him a right which he would not have, if the documents were in private custody.

6. If the petitioner wants to prove with the help of any documents that any of the statement made by the prosecution witness is false or incorrect or if he wants to build up his case, as is generally done, even when the prosecution witnesses are being examined, it would be open to him to summon those documents beforehand. Such documents, it is not disputed by the learned Public Prosecutor, he will be entitled to inspect after they are received in Court or if they are in Court.

7. I have no definite information as to whether any of these documents which he wants to inspect have been summoned for or not. If they have been summoned for, he will be entitled to obtain the permission of the Court to examine them. In respect of the documents not summoned, he will not be entitled to inspect them till

they are tendered in evidence or sought to be used during the course of the trial by the prosecution.

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