

Rajlakshmi Devi Vs. the State

Rajlakshmi Devi Vs. the State

SooperKanoon Citation : sooperkanoon.com/857279

Court : Kolkata

Decided On : Jul-24-1951

Reported in : AIR1953Cal154,56CWN221

Judge : R.P. Mookerjee and ;Lahiri, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Section 205 and 205(2)

Appeal No. : Revn. No. 227 of 1951

Appellant : Rajlakshmi Devi

Respondent : The State

Advocate for Def. : Nirmal Kumar Sen, Deputy Legal Remembrancer and ;Bibhuti Bhusan Das Gupta, Adv.

Advocate for Pet/Ap. : Abinash Chandra Majumdar, ;Barindra Kumar Ghosh and ;Aditya Kumar Roy, Adv.

Judgement :

R.P. Mookerjee, J.

1. The only question for decision in this case is whether there are sufficient grounds to dispense with the personal attendance in court of the accused, a purdanashin Hindu lady, and to permit her to appear through a Pleader.

2. There is no doubt that merely because the accused is a purdanashin woman, she is (not?) entitled in a criminal case as a matter of right to be exempted from personal attendance at Court. The screen must not be used to defeat the ends of justice. At the same time the discretion, vested in Court under Section 205, Criminal P. C., where a purdanashin lady is an applicant for dispensing with the personal attendance in Court, must be reasonably exercised. After due consideration of all the attendant circumstances including the social status, custom and practice of the petitioner accused as also the nature of the offence it is to be decided whether personal presence is essential.

3. As for instance if there be a question of identification of any person by the accused it is very essential that the Court should not until there is a very strong case and there are cogent reasons given to exempt even a purdanashin woman from attending the Court --'Aswini Kumar v. Binapani Dasi', Cr. Revn. No. 916 of 1950, D/- 22-3-51 (Cal). It may be noticed that in the case just referred to there was an affidavit in opposition stating that the petitioner was not a purdanashin lady at all and her movements were specifically referred to allegations which were not seriously challenged before this Court.

4. It is now well settled that where summons is issued against a purdanashin lady who is found to be of good social position and who does not appear in public places the Magistrate should ordinarily dispense with her personal attendance and allow her to be represented by a lawyer until such time as the Magistrate has before him clear, direct and reliable prima facie proof that the person exempted has a real charge to answer; the Magistrate may then take such other steps as may appear to him proper and necessary. 'In the matter of Rahim Bibi', 6 All 59, Re :-- 'Kandamani Devi v. Emperor', 45 Mad 359.

5. In -- 'Rajrajeswari Devi v. Emperor', 17 Cal WN 1248 a Division Bench of this Court directed that (?) the accused, who were purdanashin ladies and had been placed on trial under Section 326, Penal Code, them (?) to appear by pleaders before the Magistrate as also in the Court of Sessions in case of committal to that Court subject to the accused being directed to hear the sentence in case of conviction. Similar observations were also made in Re: --Kandamani Devi', supra.

(45 Mad 359). See also -- 'In re Sukhalata Gupta', 21 Cal WN 168n.

6. It is not possible to lay down a very strict test as to when an accused is to be considered to be a purdanashin lady. Merely because a Hindu lady goes from one house to another in a village with the veil on or if she attends religious festivals or goes to a temple or to a river to bathe, these would not be ordinarily considered as sufficient to prove that she is not a purdanashin lady whose application for exemption from appearance in court is to be refused on that ground alone. Even if the accused do not very strictly observe the purda it does not follow that they should on every occasion be dragged into Court of Law. The Court has to remember the habits and customs of the country and the social stigma that attaches to a purdanashin lady appearing in open Court. The observations in another Bench decision of this Court -- 'Anilabala Devi v. Chairman, Kandi Municipality', : AIR1950 Cal350 may in this connection be also referred to.

7. No general rule can be laid down. The allegations and counter allegations, if any, in each particular case must be taken into consideration before the Court disposes of an application by an accused for dispensing with personal attendance in Court upon the allegation that she is a purdanashin lady.

8. In the present case the statement made by the petitioner before the Magistrate remained uncontradicted. An affidavit sworn to in this Court by the husband of the petitioner, who is an Advocate, definitely supports the statement that the petitioner is a respectable purdanashin Hindu lady and both by practice and custom she is unable to appear in Court. There is no affidavit in opposition.

9. There is no suggestion that the presence of the accused is necessary at this stage of the proceedings to have a question of identification settled. It has been overlooked that if her personal attendance is dispensed with the Magistrate has the authority and jurisdiction, at any later stage of the future proceedings to direct under Sub-section 2 of Section 205, Criminal P. C., the personal attendance of the accused. No material has been placed before us justifying an order for the personal presence of the accused in Court at this stage.

10. The result, therefore, is that the order passed by the Sub-Divisional Officer on 28-2-1951 is set aside and it is directed that the accused be allowed to appear through a lawyer until the Court finds it necessary to direct otherwise under Sub-section 2 of Section 205, Criminal P. C.

Lahiri, J.

11. I agree.

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