

Shakuntala Devi Vs. State

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Court : Jammu and Kashmir

Decided On : Jul-30-2003

Reported in : 2003(3)JKJ601

Judge : Y.P. Nargotra, J.

Acts : Jammu and Kashmir Code of Criminal Procedure (CrPC)

Appeal No. : CR. REV. 41/2003

Appellant : Shakuntala Devi

Respondent : State

Advocate for Def. : Aruna Thakur, Adv.

Advocate for Pet/Ap. : K.S. Pathania, Adv.

Disposition : Revision petition allowed

Judgement :

Y.P. Nargotra, J.

1. This revision petition is directed against an order dated 24.4.2003 passed by learned Addl. Sessions Judge Jammu in case titled State v. Rajesh Kumar and Anr. In the above titled session case a witness, namely Shakuntla Devi was produced by the prosecution. Her statement could not be recorded because

counsel for the accused was not present and same was the position on the previous date also. Faced with this situation learned trial court directed the accused to pay an amount of Rs. 500/- as expenses to the witness, Shakuntla Devi on the next date of hearing. It was further directed in the said order by the learned trial court that unless the expenses are paid, statements of the prosecution witnesses shall not be recorded. Accused-petitioners have challenged the legality of the said order in the present revision petition on the ground that they are very poor so cannot afford to pay Rs. 500/- and even otherwise, according to learned counsel for the petitioner, the order impugned is without jurisdiction.

2. I have considered the contention raised by learned counsel for the petitioner and have also heard L.C. for the respondents.

3. There is no provision in law under which an accused can be made to pay the expenses of the witnesses of the prosecution. In the given situation if the accused were not being represented by any counsel, the course open to the court could be to proceed with recording of the evidence of the witnesses and afford opportunity of cross-examination to the accused, and if the accused were disabled in conducting the cross-examination, then services of some lawyer as Amicus-curia could be provided. Be that as it may, the course chosen by the court below cannot be accepted to be as legal mode of compelling the accused to bring their lawyer for cross-examination of the prosecution witnesses.

4. The revision Petition is therefore, allowed, the order impugned passed by the learned trial court is set aside and learned counsel for the accused is directed to produce the accused before the trial court on 18.8.2003, or on the date fixed by the trial court in the case. The expenses of the witnesses thus may be paid by the court below from diet expenses kept at its disposal.