P. Chhaganlal Daga vs M. Sanjay Shaw on 5 October, 2001

Equivalent citations: [2003]114COMPCAS30(SC), (2003)11SCC486, AIRONLINE 2001 SC 778

Bench: K.T. Thomas, S.N. Variava

JUDGMENT

1. Leave granted.

2. It is very unfortunate that the High Court by the impugned judgment has interfered with an order passed by a trial magistrate permitting the complainant to produce a document though at the fag end of the trial.

3. In a prosecution launched by the appellant under Section 138 of the Negotiable Instruments Act, 1881, the appellant completed the evidence including his own examination, cross-examination and re-examination. During such cross-examination the respondent-accused contested the question of service of notice envisaged under Section 138 of the Negotiable Instruments Act. The acknowledgment card produced by the complainant contained a signature which the accused disowned as his. After the arguments concluded and the case was posted for judgment the complainant moved the trial court for reception of additional material (by producing a postal receipt) in exercise of the powers under Section 311 of the Code of Criminal Procedure. The trial court felt that the said material was necessary for the just decision of the case and hence allowed the same to come on record. The said order of the trial magistrate was challenged by the accused before the High Court.

4. In the impugned judgment a learned single judge of the High Court held that production of the postal receipt at the said belated stage was only "to fill up the lacuna" and hence the same is impermissible in law. He, therefore, interfered with the order passed by the trial court and permission to produce the postal receipt was countermanded. The learned single judge has stated the following regarding that aspect :

> "After the trial is over, if the petitioner is permitted to produce the postal receipt, that would only prejudice the right of the accused. Further, the postal receipt is sought to be produced only to fill up the lacuna or letting in corroboration of the evidence, if any available regarding this aspect. I consider that the respondent cannot be allowed to adopt such a course."

5. In Rajendra Prasad v. Narcotic Cell , this court has explained what is meant by lacuna in the prosecution case. The following passage of the said decision will be apposite in this contest (page 113) :

> "It is a common experience in criminal courts that defence counsel would raise objections whenever courts exercise powers under Section 311 of the Code or under Section 165 of the Evidence Act, 1872, by saying that the court could not 'fill the lacuna in the prosecution case'. A lacuna in the prosecution is not to be equated with the fall out of an oversight committed by a public prosecutor during trial, either in producing relevant materials or in eliciting relevant answers from witnesses. The adage 'to err is human' is the recognition of the possibility of making mistakes to which humans are prone.
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> A corollary of any such laches or mistakes during the conducting of a case cannot be understood as a lacuna which a court cannot fill up."

6. In deciding so, this court has taken into account some of the earlier decisions of this court including Mohanlal Shamji Soni v. Union of India [1991] Suppl. 1 SCC 271. In the said decision this court had observed that the power to receive evidence in exercise of Section 311 of the Code could be exercised "even if evidence on both sides is closed" and such jurisdiction of the court is dictated by the exigency of the situation and fair play. The only factor which should govern the court in exercise of powers under Section 311 should be whether such material is essential for the just decision of the case. Even a reading of Section 311 of the Code would show that Parliament has studded the said provision lavishly with the word "any" at different places. This would also indicate the widest range of power conferred on the court in that matter. It is so stated by this court in Ram Chander v. State of Haryana .

7. We are of the opinion that the learned single judge of the High Court has improperly interfered with the order passed by the trial court. It is unfortunate that even after his attention was drawn to the decision of this court in Rajendra Prasad v. Narcotic Cell he has chosen to sideline the dictum contained therein.

8. We, therefore, allow this appeal and set aside the impugned order of the High Court. If the accused is desirous of cross-examining the complainant on the basis of the new material produced, it is open to him to make a motion before the court for that purpose.