Munshi Singh vs The State on 10 September, 1952

Equivalent citations: AIR1953ALL197, AIR 1953 ALLAHABAD 197

Author: Raghubar Dayal

Bench: Raghubar Dayal

ORDER

Raghubar Dayal, J.

1. A preliminary inquiry is in progress in the Court of a Magistrate, First Class, Shahjahanpur against a number of accused. When the first prosecution witness, the complainant, had been examined in chief, the learned counsel for the accused presented an application to the Court requesting for the production of the various post mortem reports, the injury reports, the site plan and the recovery lists by the prosecution so that he be in a position to cross-examine the witnesses effectively. The prosecuting inspector was asked to report on the application. He filed the post mortem and the injury reports and stated that the other documents would be filed at the time of the examination of the witnesses proving those documents. The learned Magistrate then ordered that application to be filed. Against that order the applicant, one of the accused, went in revision to the Sessions Judge of Shahjahanpur. He was of opinion that the accused had a right to have all the exhibits put in for the purpose of enabling them to cross-examine the prosecution witnesses and that the accused would be otherwise prejudiced, particularly in this case where, according to the prosecution, there were three places of occurrence. He, therefore, made a reference to this Court for the setting aside of the order of the learned Magistrate and for ordering the prosecution to file the papers required by the accused.

2. I have heard the learned counsel for the applicant and for the State and am of opinion that the reference should be rejected.

3. There is no provision of any law which makes it incumbent on the prosecution to produce the documents on which it relies at the first hearing of the case or to produce them when the other party, that is the accused, desires them to be produced. The prosecution can produce its witnesses in any order it likes, and similarly can produce the documents at any stage of the case it likes. In fact, documents cannot come on the record as mere papers. They come on the record after they are duly proved and a document will be duly proved either when under the provision of law it requires no formal proof or when the witness proving the documents is examined and proves that document. When the prosecution is its own judge of the order in which witnesses are to be produced, it follows that documents which require to be proved can lawfully come on the record only when the witnesses who prove those documents are examined and that therefore the stage for the coming on the record

of the provable documents will be in the discretion of the prosecution, and the accused cannot force the prosecution to produce any documents at any stage. In fact, even if a certain document which requires to be proved happens to be among the papers which are before the Court, it would, in my opinion, be the bounden duty of the Court not to refer to that document until it has been duly proved and marked as an exhibit. It is a different matter that such paper on the file, though not proved, might be seen by the accused or his counsel and he may then use the information so obtained for any purpose to which he can put it lawfully. I, therefore, see nothing wrong in the conduct of the prosecuting inspector in not producing the documents or in the order of the learned Magistrate to file the application presented on behalf of the accused.

4. The learned counsel for the applicant referred to Section 208(3), Cr. P. C. for the proposition that the accused can demand the production of any document whenever he feels the necessity of referring to it. I do not interpret this provision of law in that manner. It is conceded that the accused cannot compel the production of a witness at any stage he desires and that with regard to the production of a witness the provisions of Section 208(3) cannot be so interpreted. I see no reason why they be differently interpreted with reference to the production of documentary evidence. Section 208(1) provides for the Magistrate's hearing such evidence as be produced by the prosecution or by the accused or be called by the Magistrate. This supposes that the parties bring their own witnesses to the Court and then examine them. Sub-section (2) simply provides for the cross-examination of prosecution witnesses by the accused and for their re-examination by the prosecutor. Sub-section (3) empowers the Magistrate to issue process to compel the attendance of any witness or the production of any document or evidence on the application of the complainant or officer conducting the prosecution or the accused, unless he deems it unnecessary to do so. To my mind, this empowers the Magistrate to compel the summoning of such witnesses and the production of such documents which the prosecutor or the accused wants to produce before the court in support of its case. These provisions cannot be taken to give a right to either of the parties to compel the other to produce any witness or document on the mere request of the other party.

(4a) Apart from this legal position, I am not satisfied that any question of the interests of justice arises in the request for the accused which had been turned down. It may be that in this case or in certain cases it might be necessary to cross-examine a witness with respect to certain matters which could not have been known or foreseen by the cross-examiner and which came to his notice on the production of certain documents or the examination of certain witnesses subsequent to the cross-examination of a particular witness. The cross-examiner is not absolutely at a loss to have an opportunity to cross-examine that particular witness with respect to such matters. He has simply to satisfy the Court that it is necessary to put further questions to certain witnesses and the court will be free to recall those witnesses and to have them cross-examined with respect to those questions. In the present case the Magistrate is simply conducting a preliminary inquiry. The trial of the accused will be in the Sessions Court and by the time of the actual trial all the papers which go to support the prosecution case are bound to be on the record and the accused would have ample opportunity to cross-examine witnesses with respect to those documents. I am really surprised that the turning down of the request which, if granted, might not have affected the prosecution adversely but which appears to have been rejected possibly on the question of principle, should have led to these proceedings which did mean the stay of the preliminary inquiry and consequent delay in the

hearing of this case.

5. In view of the above, I reject the reference.