

State vs Banarsidas And Ors. on 29 July, 1952

Equivalent citations: AIR1953ALL58, AIR 1953 ALLAHABAD 58

ORDER

Desai, J.

1. The question for decision in this case is whether it was open to the Magistrate Shri N. C. Jain, who is now trying the case, to resume proceedings from the stage at which they were left by the Magistrate Shri N. B. Singh. The case was first heard by Shri N. B. Singh who recorded all the evidence and was transferred before he could hear the argument. The case then went to the Court of Shri G. S. Seth who decided to resubmit the witnesses and recommence the trial. He issued summonses against the prosecution witnesses but before he could examine any evidence, the case was transferred from his Court and went to the Court of Shri N. C. Jain.

Shri N. C. Jain has decided to resume proceedings from the stage at which they were left by Shri N. B. Singh, hear the argument and pass judgment. The learned Sessions Judge, at the instance of the prosecution, has made this reference recommending that Shri N. C. Jain be directed to resubmit the witnesses and recommence the trial as decided by his immediate predecessor Shri G. S. Seth. The reference is opposed by the accused. Mr. Bhatt appearing for the State does not support it.

2. Under Section 350 it was at the discretion of Shri N. C. Jain either to act on the evidence recorded by his predecessors or to resubmit the witnesses and recommence the trial. He was not bound by the mere election of his immediate predecessor Shri G. S. Seth. Shri G. S. Seth had only elected to resubmit the witnesses and recommence the trial; he had not examined any evidence afresh and so his election did not bind Shri N. C. Jain who had to exercise his own discretion when the case went to him on transfer. Had he recommenced the trial and examined even one witness for the prosecution afresh, it might not have been possible for Shri N. C. Jain to quash the proceedings held by him and to act upon the evidence recorded by Shri N. B. Singh.

As it is, even Shri G. S. Seth could have decided on the date fixed for the examination of the prosecution witnesses, not to examine them and not to recommence the trial but to act on the evidence recorded by Shri N. B. Singh. When the matter was still open to him it cannot be doubted that it was open to Shri N. C. Jain also. The learned Sessions Judge has relied upon *State v. Bansu*, 1950 ALL. l. J. 599, to which I was a party, but that case is to be distinguished from the present case. There the second Magistrate had actually recommenced the trial and dismissed the complaint on account of the complainant's absence. The first Magistrate had framed a charge against the accused but the charge was held to have been wiped off when the second Magistrate had decided to recommence the trial. The second Magistrate had not merely decided to recommence the trial; he had also held proceedings in the retrial and dismissed the complaint on the ground of the complainant's absence.

Consequently, when the complainant filed a second complaint it was not open to the accused to urge that they had already been charged before the first Magistrate and should be deemed to have been acquitted by the second Magistrate and that the second complaint was barred by the provisions of Section 403, Criminal P. C. I hold that the proceedings held before Shri N. B. Singh were not wiped off merely by the intention of Shri G. S. Seth to resummon the prosecution witnesses and recommence the trial, and that as he had not actually recommenced the trial, it was still open to Shri N. C. Jain to continue the proceedings from the stage at which they were left by Shri N. B. Singh.

3. As the accused themselves do not want a de novo trial and the learned Magistrate has decided to act upon the evidence recorded by his predecessor, it will not be proper for this Court to interfere with the discretion of Shri N. C. Jain and direct him to recommence the trial. Section 350, Criminal P. C., gives certain right to the accused but not to the complainant or the State when it is prosecuting the case. Therefore the State has no locus standi to urge that Shri N. C. Jain should not act upon the evidence recorded by Shri N. B. Singh.

4. The reference is rejected. Return the record to the Magistrate at once so that he may dispose of the case without any further delay.