

ANDHRA PRADESH HIGH COURT

Chandu Satyanarayana

Vs.

State (Andhra Pradesh)

Criminal Revn. Case No. 424 of 1958 (Criminal Revn. Petn. No. 358 of 1958)

(Sanjeeva Row Nayudu, J.)

18.02.1959

ORDER

Sanjeeva Row Nayudu, J.

1. This is an application to revise the order of the Judicial Second Class Magistrate, Tenali, dated 6-8-1958, made in M. P. No. 46 of 1958 in P. R. C. No. 1 of 1958, rejecting the petition of the petitioner requesting to record the evidence of P.Ws. 5, 7 and others, who speak to the alleged offence of conspiracy under Section 120-B, Indian Penal Code, which is one of the offences included in the charge-sheet against him, as, according to the petitioner, these witnesses were eye-witnesses or witnesses to the actual commission of the offence of conspiracy. The learned Magistrate rejected this petition on the ground that the materials so far placed before him and the records available with him were sufficient to make out a case and that an earlier petition by the same petitioner, viz., the 8th accused, had been rejected. The learned Magistrate also pointed out that the matter was only at the stage of preliminary enquiry and all that had to be considered was whether a prima facie case had been made out.

2. The question for decision in this Revision Petition depends on the interpretation of Section 207-A, clause (4), which is as follows :

"207-A. x x x x x

(4) The Magistrate shall then proceed to take the evidence of such persons, if any, as may be produced by the prosecution as witnesses to the actual commission of the offence alleged; and if the Magistrate is of opinion that it is necessary in the interests of justice to take the evidence of any one or more of the other witnesses for the prosecution, he may take such evidence also."

3. As is clear from the plain wording of the clause, the witnesses whom the Magistrate could

examine during the preliminary enquiry are of two categories: The first category consists of the 'witnesses to the actual commission of the offence alleged', and the second category consists of 'one or more of the other witnesses for the prosecution' other than witnesses to the actual commission of (the offence). In the case of the former, the Section makes it imperative on the Magistrate to examine those witnesses and in the case of latter a discretion is given, in that the Magistrate need examine only such of those witnesses as he considered necessary to be examined in the interests of justice.

4. The prayer of the petitioner in the petition before the Magistrate related to witnesses, who, the petitioner claimed, were witnesses to the actual commission of the conspiracy according to the prosecution. In disposing of such a petition, the Magistrate had to consider, firstly, whether those witnesses, whom the petitioner desired to be examined, were witnesses to the actual commission of the offence. If he came to that conclusion, he was bound in law to record their evidence. If on the other hand, he considered that those witnesses were not witnesses to the actual commission of the offence, then he should have applied his mind and decided whether in the interests of justice those witnesses should be examined. It is clear from the order of the Magistrate that he did not apply his mind to either of these considerations. He did not scrutinize whether they were witnesses to the actual commission of the offence nor did he apply his mind to the question whether the examination of the witnesses was necessary in the interests of justice. The order of the Magistrate is, therefore, on the face of it, unsustainable and must be set aside.

5. The learned Public Prosecutor contends that the first part of Section 207-A(4) applies only to cases where the witnesses were bodily produced by the prosecution before the Court for purposes of examination, and that if no such witness is so produced, the Magistrate is powerless. This is an extraordinary argument which can be rejected in limine. The fact that the section clearly gives a discretion to the Magistrate in the matter of examining witnesses who are not witnesses to the actual commission of the offence, implies that the decision of the Magistrate does not depend upon the will of the prosecution to produce or not to produce witnesses.

The expression 'produced' cannot in law be equated to bodily producing before the Magistrate. What the Section obviously intends is that the witnesses must have been put forward by the prosecution as their witnesses in proof of certain facts. Once their names are included in the charge-sheet, it is the bounden duty of the Magistrate to secure the presence of those witnesses before him in order that he may exercise his powers under Section 207-A(4). If what the learned Public Prosecutor contends for could be accepted as correct, it would lead as to the ridiculous situation that the Legislature contemplated the vesting of the power of nullifying the operation of Section 207-A(4), Cri. P.C. in the hands of prosecution, a situation which could never have been in the contemplation of the Parliament when they amended the Code of Criminal Procedure for the sole and exclusive purposes of expediting judicial procedure without infringing the normal rights of the accused.

6. The petition is therefore allowed. The judicial Second Class Magistrate, Tenali, is directed to

take the evidence of P.W. 5, who ostensibly is a witness to the actual offence of conspiracy relied on by the prosecution, and he should apply his mind as provided in the latter portion of Sub-Section (4) of Section 207-A whether the other witnesses, whom the petitioner wishes to be examined, should be examined in the interests of justice. If he takes the view that their examination is called for, in the interest of justice it is certainly open to him to record their evidence also.

Petition allowed.