

PATNA HIGH COURT

Jibachh Shah

Vs

State (Patna)

Criminal Revn. No. 1532 of 1961

(Ramratna Singh and S.P. Singh, JJ.)

10.07.1964

JUDGMENT

S.P. Singh, J.

1. The petitioner, Jibachh Shah, of village Deorh, police station Phulparas, district Darbhanga, has come up in revision against the order dated the 30th September, 1961, passed by the Additional Sessions Judge of Darbhanga, dismissing the appeal of the petitioner against his conviction and sentence under Section 178, I.P.C. passed by the Munsif Magistrate, First Class. Madhubani

2. It appears that the petitioner was an accused in a case under Section 323, I.P.C. pending in the Court of the Munsif Magistrate, Madhubani. After the close of the prosecution case and his examination under Section 342, Criminal Procedure Code, he filed a petition in writing on 11-01-61 before the Magistrate for his examination as a defence witness in order to prove certain facts and documents. His prayer was allowed and he was examined in chief on that date. On the following day, i.e., on 12-01-61 he refused to come to the witness box and take oath and offer himself for cross examination. He disobeyed the order of the Court in this regard and in consequence thereof the learned Magistrate proceeded against him for the commission of an offence under Section 178, I.P.C. He convicted and sentenced him to pay a fine of Rs. 100 and in default to undergo simple imprisonment for a period of ten days. His appeal against the order of his conviction and sentence was dismissed by the Additional Sessions Judge, as stated above.

3. Mr. J.N. Verma, appearing for the petitioner has urged in this Court that the learned Magistrate; was. not justified in convicting the petitioner under Section 178, I.P.C. inasmuch as he himself had committed certain errors in recording the deposition of the petitioner on 11-01-61 and he refused to correct the same in spite of the petitioner's request. That being so, the petitioner was justified in not going to the witness box on the following day for his cross examination. Mr.

Verma's further argument is that the petitioner being an accused in the, case it was open to him to withdraw from the witness box at any time during the course of his examination as a defense witness and the trial Court could not insist on petitioner's cross examination or his taking oath. On behalf of the State it has been contended that under the new provision of Section 342A, Criminal Procedure Code no doubt an accused cannot be called as a witness except on his own request in writing, but if he has made a request for his examination and his request has been accepted by the Court, he cannot withdraw from the witness box at his sweet will after his examination in part. Learned counsel for the State has, therefore, urged that the refusal of the petitioner in Ms case to take oath and offer himself for cross examination in spite of the direction of the Court clearly amounted to an offence under Section 178, I.P.C. and is such the procedure followed by the learned Magistrate in convicting and sentencing the petitioner under Section 480, Criminal Procedure Code read with S. 178, I.P.C. cannot be said to be illegal.

4. Section 342A, Criminal Procedure Code reads as follows :

"Any person accused of an offence before a Criminal Court shall be a competent witness for the defense and may give evidence on oath in disproof of the charges made against him or any person charged together with him at the same trial.

Provided that -

- (a) he shall not be called as a witness except on his own request in writing; or
- (b) his failure to give evidence shall not be made the subject of any comment by any of the parties or the Court or give rise to any presumption against himself or any person charged together with him at the same trial".

The aforesaid provision clearly indicates that an accused becomes a competent witness as soon as his request for his examination as a defense witness is accepted by the Court and after that he is in the same position as any other witness, When he exercises his option to depose as a witness, he waives his right as an accused and subjects himself to the same rides applicable to other witnesses and he cannot be excused from being cross-examined or from answering any question on any relevant matter on the ground that the answer may incriminate him. It is wrong to suppose that he can step out of the witness box whenever he likes. If this position is accepted, it would mean that an accused may choose to examine himself in chief and refuse to be cross-examined or that he can refuse to answer any question on any relevant matter if he thinks that the answer is likely to be prejudicial to his case. This is obviously not the intention of the Legislature. It is no doubt open to the Court to expunge the testimony of the accused if he has been examined in part only and refused to be examined further, but it cannot be said that that is the only course left to the Court concerned. As already indicated above, an accused having exercised his option to depose as a witness for the defence, cannot leave the witness box after his examination in part only without the leave of the Court and if he does so, he incurs the liability provided under the law. In the present case, it was necessary for the petitioner to offer himself for cross-examination after he examined himself in chief on his own request and as such his refusal to take oath and to

come to the witness box for his cross-examination evidently amounted to an offence under Section 178 I.P.C. The learned Munsif Magistrate, therefore, was justified in proceeding against the petitioner under Section 178, I.P.C. read with S. 480, Criminal Procedure Code for the disobedience of the Court's order. The conviction and the sentence passed against the petitioner are, therefore, fully justified.

5. The plea of the petitioner that his statements-in-chief had been wrongly recorded by the Magistrate cannot be a valid ground for his refusal to take oath for his cross-examination inasmuch as this plea has no bearing on the point in issue.

6. The application in revision, therefore, is dismissed.

Ramratna Singh, J.

7. I agree.

Application dismissed.