

Jagdish Chander Vs State of Haryana

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Nov. 22, 1982

Hon'ble Judges: B.S.Yadav, J

Advocate: Anil Kumar Ahluwalia, N.K. Kapur, Advocates for appearing Parties

Judgement

B.S. Yadav, J.

1. The facts leading to this petition are that the petitioner was proceeded against under the Prevention of Food Adulteration Act, 1954, on a

complaint filed by the Government Food Inspector. After the close of the complainant's evidence, the case was adjourned for the examination of

the accused under section 313 of the Code of Criminal Procedure. The complainant filed an application of 27th October, 1980, for seeking

permission of the Court to examine Shri Parshotam Lal Singla, Clerk to Local Health Authority, Sirsa, on the ground that the statement of the said

witness was essential and he had not been examined. The learned Additional Chief Judicial Magistrate, Sirsa, in whose Court the said case is

pending, allowed that application. The Government Food Inspector examined the said witness to prove compliance of section 13(2) of the Food

Adulteration Act. Thereafter the case was fixed for the statement of the accused, defence evidence and arguments on 4th November, 1981. On

4th November, 1981, the statement of the accused was recorded and arguments were heard & the case was adjourned to 7th November, 1981,

for orders. However, on 4th November, 1981, the Government Food Inspector filed an application to produce certain judgments this Court in

support of his contentions. The case was adjourned for this purpose to 14th November, 1981, 12th December, 1981, 11th February, 1982. On

17th February, 1982, the Government Food Inspector filed another application for recalling & reexamining Parshotam Lal Singla alongwith the

forwarding letter & receipt of the registered letter, purporting to have been sent to the accused. After hearing the parties the learned Additional

Chief Judicial Magistrate allowed that application vide impugned order dated 23rd March, 1982.

2. The present revision petition has been filed against the above order dated 23rd March, 1982, on the ground that though section 311 of the

Code of Criminal Procedure gives discretion to the Court to summon any person as a witness or to recall and reexamine any person already

examined but such power is not intended to fill up the lacuna in the prosecution case.

3. After hearing the learned counsel for the parties, I am of the opinion that the impugned order cannot be sustained. In the present case the

evidence of the parties had been closed and arguments had been heard and the case was adjourned for orders. It was at this stage that the

Government Food Inspector filed the application for recalling Parshotam Lal Singla. The petitioner has filed copy of that application as Annexure

P. 1 to the present revision petition. It is stated in that application that Parshotam Lal Singla in his statement had stated that the copy of the result

and the forwarding letter were sent to the accused under registered cover A.D. and for the ends of justice the said witness be resummoned for the

production of the forwarding letter and the receipt of the registered letter in the case. When the witness had been earlier summoned after close of

the prosecution evidence it was in the mind of Government Food Inspector that what evidence he was required to lead. He had examined

Parshotam Lal Singla to prove compliance of section 13(2) of the Food Adulteration Act. It appears that the accused in his statement recorded

under section 313 of the Code of Criminal Procedure denied the receipt of that letter and thereupon this fresh application was filed for recalling

Parshotam Lal Singla. If there is any lacuna in the prosecution case, the prosecution cannot be allowed to fill it up at this stage.

4. In the above opinion of mine I am supported by Narain Singh and another v. The State, 1982(1) C.L.R. 547. In that case the Public Prosecutor

moved an application in the Appellate Court under section 391 read with section 311 of the Code of Criminal Procedure for summoning one

witness named Mange Ram, Moharrir Head Constable on the ground that when the statement of the said witness was recorded by the Magistrate,

he had not brought the relevant records at that time and the evidence was mainly based on records and he had to depose as to when the sample

was received by him and when it was sent by him to the Chemical Examiner and, therefore, the examination of that witness was in the interest of

justice. The lower Appellate Court allowed that application. Petition was filed in this Court for quashing that order. It was remarked :

I have given any thoughtful consideration to the rival contentions of the learned counsel. I find merit in the argument of Mr. Liberhan. The State

was represented through a competent Public Prosecutor, who was supposed to know his case. The police file was with him. It is well known that

in a case of recovery of contraband the link evidence has to be established by the prosecution. The witness appeared in Court. He was not

examined on the point as to when the sample was received by him and for how long it remained with him and through whom he delivered the

sample to the Chemical Examiner. Thereafter the defence had been closed and the arguments were going to be addressed when an application was

made to the learned Magistrate for summoning the witness. The Magistrate rightly declined this application because the resummoning of this

witness would have amounted to filling in the lacuna in the case. Undoubtedly the courts at the trial stage, the appellate stage, revisional stage have

wide powers to examine additional evidence if the interest of justice so requires. However, there is an equally fundamental concept of Criminal

Jurisprudence that the prosecution cannot be permitted to fill in the lacuna in its evidence by trying to examine the evidence at the close of the

defence. That can generally cause prejudice to the accused. In Daulat Ram's case (supra), their Lordships of the Supreme Court, when dealing

with a similar situation, have observed :

.....

It is obvious that the onus is on the prosecution to prove the entire case at the trial and the prosecution could not be allowed to fill up the gaps or

lacuna left at the trial, at the appellate or revisional stage. In the circumstances, we do not find any error of law in the view taken by the High Court.

We find no merit in this appeal which is accordingly dismissed.

In this case the prosecution had failed to examine the witness to establish the evidence linking the sample of the contraband to the report of the

Chemical Examiner. The prosecution realizing its mistake at the fagend of the trial made an application to examine witness in whose possession the

sample was handed over. This application was rejected by the learned trial Magistrate. It is in this context that the above observations were made

by their Lordships. This view has been consistently taken by this Court in such cases.

In that case the impugned order was set aside.

5. The learned counsel for the petitioner has also cited Sukhdev Singh v. The State of Punjab, 1982(2) C.L.R. 318 wherein it was remarked :

The question, therefore, whether or not after the entire evidence of the prosecution or the defence is over, the Court should permit further

evidence to be allowed, will depend upon the facts of each case. It cannot be laid down as a general rule that in no case additional witnesses be

called by the Judge at the suggestion of the prosecution, before the close of the trial of the case, where the defence has been closed or the

arguments have been heard. Trial comes to an end with the pronouncement of the judgment, though judgment itself may not be part of the trial. In

Jamatraj Kewalji Govani's case it was observed :

Section 540 is intended to be wide as the repeated use of the word "any" throughout its length indicates. The very fact that the section is couched

in wide terms requires a Judge or exercise caution in using his power under section 311 of the Code. It is, therefore, imperative that before using

his powers the Judge has to take into account the circumstances of the case of examining witnesses after the entire case is closed and that should

not cause injustice to the accused. It should not operate to demolish the case set up by the accused if he has done so in his defence. We do not

think that the mere fact that evidence is permitted to be taken after the entire prosecution case is over is in itself in excess of the powers of the

Court. No hard and fast rules can be prescribed as to when and at what stage this discretion should be exercised. The anxiety for justice is

paramount and should be kept in view. The Court should be unmindful of the fact of the use of the discretion in favour or against any party. The

principle that such evidence should not demolish the case set up by the accused in his defence, if he has done so, should be present to the mind of

the Judge at the time when he takes a decision. The powers of the Court under section 311, which are very wide, cannot be limited, as the

judgments in Bhag Singh and Santokh Singh's cases and other cases following those cases, tend to do. The Court under this section is to help

neither the prosecution nor the accused. The discretion has to be exercised during the trial, which only terminates with the pronouncement of the

judgment. Bhag Singh's case Santokh Singh's case and other Single Bench judgments of this Court, expressing similar view, so far as they lay

down that this discretion is limited and cannot be exercised at a late stage of the case after the defence is closed or the arguments are heard, do not

lay down a correct law and being contrary to the principles in Jamatraj Kewalji Govani's case (supra) and two Division Bench judgments of this

Court, are overruled. The discretion can be exercised by the court at any stage of the case, but no justifiable grounds.

From this ruling it is clear that the discretion vested in the court under section 311 of the Code of Criminal Procedure should be exercised only on

justifiable grounds and it should be present in the mind of the Court that the case set up by the accused in his defence is not demolished. In the

present case, as mentioned above, the Government Food Inspector had not given any valid reasons why he could not examine Parshotam Lal

Singla on the points now sought to be examined when he was summoned earlier after the close of the prosecution evidence and was examined

about the compliance of section 13(2) of the said Act. In the application for recalling the witness it is also not stated as to what necessity the

Government Food Inspector has now felt to reexamine that witness.

6. The learned counsel appearing for the State has cited Jamatraj Kewalji Govani v. State of Maharashtra, A.I.R. 1968 Supreme Court 178. That

ruling is under section 540 of the Criminal Procedure Code and the provision corresponds to section 311 of the new Code. Section 311 reads as

follows :

Any Court may, at any stage of any inquiry, trial or other proceedings under this Code, summon any person as a witness, or examine any person

in attendance, though not summoned as a witness, or recall and reexamine any person already examined; and the Court shall summon and examine

or recall and reexamine any such person if his evidence appears to it to be essential to the just decision of the case.

From the above it is clear that section 311 consists of two parts. The first part is regarding discretion of the Courts to summon any person as a

witness or recall or re examine any person already examined. The second part casts an obligation upon the Court to summon and examine or recall

and reexamine any person if his evidence appears to it to be essential for the just decision of the case. In the above cited Supreme Court case the

Magistrate had exercised the powers under the second part and had held that the evidence of the witness summoned and examined by him was

necessary for the just decision of the case. In the present case the Additional Chief Judicial Magistrate had not formed any conclusion that the

evidence of Parshotam Lal Singla was essential for just decision of the case. He has exercised his jurisdiction under first part of that section. As

discussed above, that discretion can be exercised on justifiable grounds. In the present case no such ground exists.

7. For the foregoing reasons, I accept the present revision petition and set aside the impugned order of recalling Parshotam Lal Singla.