

(1957) 06 MP CK 0007
In the Madhya Pradesh High Court
Case No : Criminal Rev. No. 3 of 1957

Bhopal Sugar Industries Ltd.

APPELLANT

Vs

Balramdas

RESPONDENT

Date of Decision : 12-06-1957

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 252, 252(2)
Penal Code, 1860 (IPC) — Section 114, 420, 420, 468

Citation : (1957) JLJ 889

Hon'ble Judges : Samvatsar, J

Bench : Single Bench

Advocate : Oza, for the Appellant; Trivedi, for the Respondent

Final Decision : Allowed

Judgement

Samvatsar, J.—The petitioner Bhopal Sugar Industries Ltd., is a public limited company having its registered office at Sehore. It filed a complaint against four of its employees described as non-applicants in this case in the Court of Sub-Divisional Magistrate Sehore, complaining that in collaboration with each other these employees forged certain vouchers, made fictitious entries in the account, books and misappropriated the funds of the company. It was alleged that by these acts they have committed offences punishable under Sections 420, 468, 405, 403 and 420/114 I.P.C. The Magistrate took cognizance of the offence and issued process for the attendance of the accused. After the accused had put in appearance, the complainant by its application dated 2-3 1954, requested the Court to direct the accused persons to furnish specimen writings to enable the hand-writing expert to compare them and to prove that the vouchers In dispute were forged by them.

2. The application was opposed by the accused and they refused to give their specimen writings. They went up in revision against the order of the Magistrate directing them to furnish specimen of their handwriting but failed to get success as the Judicial Commissioner by his order dated 30-10-1954 upheld the order

passed by the trial Magistrate.

3. After the record of the case was received back from the Judicial Commissioner's Court the trial Magistrate directed the accused to comply with the order and fixed the hearing of the case on 17-6-1955. It seems that during the Interval the accused had expressed their unwillingness to comply with the order of the Judicial Commissioner and had refused to furnish the specimen of their handwriting. Upto that date the prosecution had examined all its witnesses excepting the handwriting expert and the case was being put off because his report had not been received.

4. At this stage the prosecution applied for being permitted to put in certain documents which according to it were in the handwriting of the accused persons and requested the Court to recall three of the witnesses and to examine one more witness to prove them. The application was opposed and was rejected by the Magistrate. The complainant preferred a revision-application to the Sessions Judge Bhopal, The learned Sessions Judge has made this reference as he is of opinion that the order of the Magistrate is wrong and deserves to be set aside.

5. Mr. Trivedi, learned Counsel for the accused-opponents opposed the reference on two grounds. He submitted (i) that the prosecution was aware of the fact that the accused were denying their handwriting and were unwilling to comply with the order of the Court and it should therefore have produced all the documents in its possession along with the complaint; (ii) that the production of the document was delayed and if the prayer of the complainant was granted, the accused will be seriously prejudiced.

6. Section 252 (1) Criminal Procedure Code provides that when the accused appears or is brought before the Magistrate, such Magistrate will proceed to hear the complainant (if any) and take all such evidence as may be produced by the prosecution, Clause (2) which is mandatory, further requires the Magistrate to ascertain from the complainant or otherwise, the names of the witnesses and to summon such of them as he thinks necessary. The power conferred upon the Magistrate by Section 252 (2) can be exercised by him from time to time as occasion requires and it is not correct to state that the Magistrate has a duty to summon witnesses according to the prosecution list once only and has no power to do so again. (See AIR 1940 390 (Nagpur))

7. In the present case all the prosecution witnesses were not examined and the prosecution had not closed its case. It was therefore open to the learned Magistrate to consider the application of the complainant u/s 252 Criminal Procedure Code. (See Abdul Razak vs. Haji Hussain, AIR 1945 Nag 286).

8. As regards the delay on the part of the prosecution in producing these documents, it must be borne in mind that the prosecution had all along pressed the Court to compel the accused persons to furnish specimen of their handwriting. It was a few days before this application was filed that the accused refused to comply with the order of the Judicial Commissioner and it became

necessary for the prosecution to produce further material to prove their case. Under the circumstances of the case I do not think that the prosecution had unnecessarily delayed the production of the documents. As observed by Gruer J. in AIR 1940 390 (Nagpur) the duty of the prosecution is certainly to make a complete and prompt investigation and to name all necessary witnesses in the list attached to the Challan. But that is a counsel of perfection and it may happen that one or two gaps may be detected afterwards, especially in cases of some complexity. In such cases the Court is not powerless and can allow additional witnesses to be examined in exercise of its powers u/s 252 (2) Criminal Procedure Code,

9. As regards the prejudice, it was contended by Mr. Trivedi that the prosecution would be enabled to fill in gaps in case additional documents were allowed to be produced. This is true in a limited sense. The prosecution has not closed its case and it is clear from the very beginning that it is seeking to establish that the documents in dispute are forged by the accused. Merely because one or two gaps are likely to be filled up by the additional evidence, it cannot be said that the accused are going to be seriously prejudiced particularly as the documents are being produced during the stage of the inquiry.

10. It is not suggested that the new evidence which the prosecution is seeking to produce is not relevant. I am therefore of opinion that the order of the learned Magistrate should be set aside; that the application filed by the prosecution on 17-6-1955 be allowed and the prosecution should be given an opportunity to prove these documents by examining the witnesses mentioned in the application. Order accordingly.