

(1954) 08 KAR CK 0009

In the Karnataka High Court

Case No : Criminal Revision Petition No"s. 106 and 107 of 1954

Kursedji Wookerji Bananji

APPELLANT

Vs

State of Mysore

RESPONDENT

Date of Decision : 13-08-1954

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 204, 205

Citation : AIR 1954 Kar 181 : (1954) ILR (Kar) 374

Hon'ble Judges : Venkataramaiya, J;Balakrishnaiya, J

Bench : Division Bench

Advocate : V.K. Govindarajulu, for the Appellant; A.G., for the Respondent

Judgement

Venkataramaiya, J.—The petitioner in these two cases is an accused in two cases on the file of the Court of the City Magistrate, Mysore, which arose from police charge sheets alleging commission of offence of cheating. The petitioner who is said to be a resident in Bombay applied for exemption from appearance in Court at the hearing but permission was refused on the ground that warrant and not summons was issued to him for his appearance. A decision of this Court in 3 Mys LJ 66 (N) (A) is referred to in support of the refusal. In that case summons was issued at first to the accused" and later on a warrant. But before the warrant was executed the accused applied for and obtained exemption. This was considered by Doraswamy Iyer J. to have the effect of the cancellations of the warrant and not as such to offend the provisions of Section 205, Criminal P.C. which states :

"Whenever a magistrate issues a summons he may, if he sees reason to do so, dispense with the personal attendance of the accused and permit him to appear by his pleader."

The learned Judge seems to have taken the view that if summons is not issued to the accused for his appearance he cannot seek exemption and for this -- "Abdul Hamid v. Emperor" AIR 1924 Pat 46 (B) is cited. That was a case in which warrant was issued to accused in the first instance and the question was not that

of granting exemption but of the effect of recording evidence in the absence of an accused due to his exemption. Both cases deal with the provisions of only Section 205 and 11 of any other.

2. There are several reasons to hold that Section 205 is not exhaustive of the conditions under which exemption can be granted to an accused from appearance in court and also to consider that absence of summons in the first instance is not impediment to exemption being allowed. The section is found in Chapter XVII the heading of which is "Of the commencement of proceedings before Magistrates". Section 204 relates to the issue of process to secure the presence of the accused and the form of the summons as given in Schedule V enables the accused to appear either in person or by pleader before the Magistrate. This would suggest that what is provided for in Section 205 is exemption at the initial stage of the proceedings as the heading to the chapter denotes and not exemption at later stages of the case. Power is given to a Magistrate under the section and not to any Judge to allow an accused to be absent. It looks anomalous if Sessions Judges cannot exercise powers similar to those of magistrates in regard to accused tried by them. There is ample authority to show that apart from Section 205 the Court has an implied power to exempt an accused from being present u/s 353, which is as follows:

"Except as otherwise expressly provided all evidence taken under Chapters shall be taken in the presence of the accused or when his personal attendance is dispensed with in presence of his pleader."

"Emperor v. King" 14 Bom LR 236 (C); -- "Raj Rajeshwari Debi v. Emperor" 17 CWN 1248 (D) and -- In Re: Ummal Hasanath, are cases in which it is held that existence of power is implied under the section in courts presided by Magistrates or others; and to the same effect is the decision in -- Aditya Pd. Bagchi Vs. Jogendra Nath Maitra, . The Nagpur High Court has not accepted this construction but relied on Section 561A to grant exemption in -- AIR 1949 334 (Nagpur) can be availed of by the High Court and not by other Courts. Section 540A too limits the exercise of discretion to cases in which the accused are more than one, and the accused is or are being incapable of remaining in Court.

3. There may be cases in which the accused voluntarily appears without either a summons or a warrant and applies for exemption. It would be unreasonable to reject such applications only because the summons was not issued to the accused, and in -- Jagdish Narain Bajpai Vs. Emperor through Ram Gopal and Others, it was held that such an application is entitled to consideration. These aspects of the matter have not been noticed and discussed in 3 Mys LJ 66 (N) (A) or in the two later cases in 7 Mys LJ 429 (I) and 38 Mys HCR 92 (J). In the latter case warrant was served on the accused and yet exemption was granted. The reason given in the other case for making a similar order is that the accused is a practising advocate.

In all the cases Section 205 is construed liberally, so as to indicate that the court

has a larger latitude than what is expressed in the section to grant exemption. Without attempting to enlarge the scope of the section or the extent of its application, it is possible to rely on Section 353 and exercise the power implied by it to dispense with the attendances of an accused in the light of the large volume of authority in support of the existence of such a power. The orders of the lower Court are set aside. The lower Court will pass appropriate orders afresh on a consideration of the grounds on which exemption is sought, bearing in mind that the issue of summons or warrant to the accused in the first instance is not the criterion for disposal of the applications.

4. Revision allowed.