
(1961) 02 GUJ CK 0023
In the Gujarat High Court

Mochi Motilal Jagjivandas

APPELLANT

Vs

The State and Others

RESPONDENT

Date of Decision : 24-02-1961

Acts Referred:

Penal Code, 1860 (IPC) — Section 504, 506

Citation : (1961) CriLJ 474 : (1961) GLR 436

Hon'ble Judges : V.B. Raju, J

Bench : Single Bench

Judgement

V.B. Raju, J.—This is a reference by the Sessions Judge, Mehsana, arising out of an application (Ex. 15) made by the original complainant in a case before the J.M.F.C. Kadi, under Sections 504 and 506(1), Indian Penal Code, praying that two witnesses not named in the original complaint should be summoned and examined as witnesses for the complainant in place of two persons named in the original complaint. This application was rejected by the learned Magistrate, who thought that as the complainant had mentioned the names of only two witnesses in his complaint as having been present at the time of the alleged offence, he should not be allowed to examine two different persons not named in the original complaint as eye-witnesses. On this ground, he dismissed the application. The learned Sessions Judge, however, feels that the Magistrate erred in doing so. The learned Sessions Judge is of the view that witnesses not named in the original complaint can be summoned and examined in the interest of justice, although the names had not been mentioned by the complainant in the list submitted by him u/s 204(1-A), Cr. P.C. For taking this view, he relied on Nizam Ali Vs. Wazir and Others, . It is a decision of a Single Judge of the Allahabad High Court. In that case it was held:

If the name of any material witness was not entered in the list of witnesses submitted u/s 204(1-A) and the Magistrate is satisfied that the examination of that person is necessary in the interest of justice that witness can be summoned and examined, though, of course, the complainant should ordinarily give out the

names of his witnesses before his evidence or that of his witnesses is recorded.

The Magistrates have to exercise their discretion cautiously. If they find that the summoning of a witness beyond the list was with some ulterior motive, they can decline to summon such witness and if present may refuse to record his statement. But where a request is made for the summoning of a public servant, like a Kanungo, it cannot be considered to be of a frivolous nature. The Magistrate is in the wrong in refusing to record the evidence of the Kanungo.

The learned Sessions Judge also relied on K. Somasundaram Vs. Gopal and Another, The relevant question has also been discussed by me in State of Bombay Vs. Janardhan and Others, . The learned Government Pleader, the learned counsel for the complainant and learned counsel for the accused have stated that they have nothing to urge, against the view taken by me in this case. The view taken by the Madras High Court is also substantially the same. The names of prosecution witnesses must be mentioned in the list referred to in Section 204(1-A), Cri. P. C but it is open to the complainant to make an application to the Court to add additional names to the list given u/s 204(1-A), and the Court should exercise its discretion when deciding such an application. If after exercising the discretion, the Court allows new names to be added in the list u/s 204(1-A), the complainant is entitled to ask the Court to summon the additional witnesses. If "a complainant wishes to examine witnesses not [named in the list mentioned in Section 204(1-A), Cri. P.C. he should first give an application for permission to add new names to the list given under that section and if his application is granted he should " apply to the Court to summon such of them that are "necessary. If an application is given by the complainant to add names to the list u/s 204(1-A), Cri. P.C. the Magistrate should pass orders according to his discretion and in the interests of justice. In this view, it is not necessary to pass any orders on the reference.