
(1995) 09 MP CK 0023

In the Madhya Pradesh High Court

Case No : Criminal Revision No. 86 of 1995

Prithvi Singh Yadav and Others

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 18-09-1995

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173, 173(8), 465

Citation : (1996) JLJ 274 : (1996) 41 MPLJ 172 : (1996) MPLJ 172

Hon'ble Judges : Shacheendra Dwivedi, J

Bench : Single Bench

Advocate : Nizam Uddin, for the Appellant; B.D. Jain, for the Respondent

Final Decision : Dismissed

Judgement

Shacheendra Dwivedi, J.

This revision is preferred by accused persons against the order of the learned trial Court thereby it has allowed the application filed by the prosecution on 5-4-1995, seeking leave of the Court for accepting a document, i.e., an inland letter as an additional evidence and for exhibiting the same, through witness Padam Singh P.W. 6. The document was filed in the committal Court, on the next day of filing of the challan. The document (inland letter) is stated to have been written by the deceased lady Smt. Rekha to her father, witness Padam Singh.

The facts may be briefly summarised.

The petitioners are facing a trial for the offences under Sections 498A, 304B and 306 read with Section 34 of Indian Penal Code.

At the trial, the complainant Padam Singh, the father of the deceased-lady appeared as P.W. 6. During his examination-in-chief, the learned Prosecutor wanted to get the above document (inland letter written by deceased) exhibited and proved, but the same was objected by the accused persons on the grounds; firstly, that no additional document could be received by the Court after the

challan was submitted in Court and the copies thereof, were supplied to the accused persons u/s 173, Criminal Procedure Code. Secondly, the document was also not admissible in evidence as it was a fictitious and a forged document and was not seized by the police during investigation nor any reference about the document was made either in the F.I.R. or in the statements of the witnesses recorded by police during investigation.

On the same day, the prosecution had also filed an application for taking on record the voter-list of the year 1993, in the additional evidence. The learned trial Court rejected the application of the prosecution filed u/s 294, Criminal Procedure Code, for allowing the voter-list to be tendered in evidence, but the learned Court allowed the application and prayer of the prosecution for taking document (which is an inland letter dated 3-1-1993) on record as additional evidence and permitted the same to be exhibited and proved through complainant, Padam Singh (P.W. 6).

It is very forcibly contended by Shri Nizamuddin, counsel for the petitioners, that after the completion of the investigation and submission of the charge-sheet, with copies to the accused, no additional document can be allowed to be taken on record. The investigation is complete when the charge-sheet is filed in Court and additional evidence thereafter can be brought on record only by further investigation if permitted by the Court. It is also contended that the stated document was neither seized by the Investigating Officer during investigation nor was filed with the charge-sheet. There has been no mention of the document (the inland letter) either in the F.I.R. or in the statements of witnesses and, therefore, all the circumstances indicated that the document was fictitious and forged. It is also contended that such course adopted by the prosecution and also the leave granted by the trial Court was not legally permissible, as no further investigation was made by the police. It was lastly submitted that the act of taking document on record is highly prejudicial to the interest of the accused-petitioners and, therefore, the order of the trial Court deserves to be quashed being illegal, arbitrary and against the provisions of Section 173(8), Criminal Procedure Code.

The above contentions may appear to be attractive but are devoid of substance. Firstly, I proceed to examine the facts of the case. The document sought to be tendered in evidence is an inland letter written by the deceased to her father, complainant Padam Singh (P.W. 6) on 3-1-1993. It bears the postal seal of the place of posting, i.e., Morena and the date 4-1-1993 as also the seal of the post-office of destination, i.e., Etawah and the date 9-1-1993. It attracts the presumption of genuineness. According to the prosecution allegations in the case, it was for the non-compliance of the demand of dowry, that the deceased was set ablaze on 6-1-1993 and due to the burn injuries, she had ultimately died on 15-1-1993 at J. A. Group of Hospitals, Gwalior. The alleged document was filed in the committal Court on 17-3-1993 by the prosecution stating that the photo copy thereof was presented by complainant before the Superintendent of

Police, Morena, and was received from him by the Prosecutor for being filed in Court. When it was filed, the learned Magistrate had endorsed on the application "file Sd- Magistrate 17-3-1993."

Now, the question is whether the document which was not filed with the papers of challan could be taken as additional evidence later. The challan was filed by the prosecution in the case on 16-3-1993, just a day before to 17-3-1993, when the document was submitted in the committal Court. Although the document was not seized by the police during investigation, but it is stated to have been presented before the Supdt. of Police, who had directed the Prosecutor to file it in the Court. The circumstances of the case do indicate that there was no substantial delay in the filing of document in Court. The reasons for not supplying the document to the Investigating Officer during investigation can be sought from the complainant, as the accused-petitioners shall have opportunity to cross-examine him on that point.

The document cannot be refused to be taken on record as additional evidence merely for the reason that it was not seized during investigation by the Investigating Officer. The defence has admitted to have earlier received the copy of the document. As such, there has also been no prejudice to the accused/petitioners from the passing of the impugned order. Section 173 of Criminal Procedure Code does not preclude the filing of a document at a later stage after the challan was filed. During the course of the trial if the prosecution thinks it necessary to file additional documents or the statements of the witnesses, which may be material and, therefore, seek to rely, the sub-section (8) of this section does not prevent the prosecution from filing such documents, but it certainly casts an obligation on it, that when such documents are sought to be filed, the copies thereof must be supplied to the accused in advance so that the defence may not be taken by surprise and may be prepared to contradict or to make use of the same. An omission to file documents with the charge-sheet is a mere irregularity curable u/s 465, Criminal Procedure Code. In the celebrated case of Pulukuri Kottaya v. Emperor, AIR 1947 PC 67 the prejudice to the accused was taken to be of prime importance where the question of any irregularity in the Court proceedings was posed for consideration. This aspect, with reference to Sections 173(4), 207A(3) and 537 of the Code of Criminal Procedure, 1872, was considered by Supreme Court in Narayan Rao Vs. The State of Andhra Pradesh, and it was observed that the provisions were to "safeguard" the interests of the accused persons by enjoining upon police officers concerned and Magistrates before whom such proceedings are brought to see that all the documents necessary to give to the accused person all the necessary information for the proper conduct of their defence are furnished. The provisions were found to be directory, not mandatory.

There is nothing in Section 173 which may prevent the prosecution from filing such documents at the trial, which were not made available or were not available and as such the copies thereof were not supplied when copies of challan were

made available to the accused persons. Section 173 is only directory and it does not show that no documents or the witnesses can be produced once challan is filed, unless it is by way of supplementary challan. The only requirement is that copies of the additional documents should be given in advance to the accused. Hence when prosecution wants to file additional documents after challaning the accused, it cannot be objected to as there is no disabling provision which may prevent such a course.

I am fortified in my view by the observations of this Court made in In Re: Shantilal and Others, that -

"(5) xx xx xx xx xx we cannot read any disabling provision so that the Court becomes powerless to allow the prosecution to file fresh documents. In the present case, the first document above-named came to the investigation officer after he had submitted the challan to the Court and the second document is patently one which could not be filed with the challan because that judgment was pronounced subsequent to the institution of the police report in court. That apart, the magistrate in the discharge of his judicial functions must always be left free to exercise his discretion in the matter of production of evidence by the parties, within the limits prescribed by the law, and if there is no express provision debarring evidence to be produced at a certain stage, the procedure should be construed in such a manner as not to deprive the Court of that discretion. In Section 173, nor in any other provision of the Code of Criminal Procedure, do I find any such disabling provision; I do not find in the Code any provision" which prevents the prosecution from filing additional documents or statements of witnesses on whom they propose to rely."

Though it is incumbent on the prosecution to produce all the relevant documents with the charge-sheet, but if any document was left out and was filed soon after the challan was filed, the same cannot be refused on the reasoning that no additional document could be submitted after the charge-sheet was filed. Section 173 of the Criminal Procedure Code nowhere prohibits the filing of an additional document after the charge-sheet is filed.

Before parting with the order, it appears necessary to sound a caution. The prosecution should not consider that the liberty is allowed to it to commit irregularity of not filing the documents with the challan in the hope that the permission would be allowed by the Court and the irregularity will be condoned. It is only in appropriate cases that the Court may consider such prayer of the prosecution permitting it to produce documents. The documents are invariably to be filed in the Court with the report after the completion of the investigation. Even the Court after allowing the documents produced at a later stage, depending upon the circumstances of the individual case, would examine the value to be attached to such documents. However, it is to be held that the Court has the power to permit the production of additional evidence and to admit the same, if the circumstances of the case so require.

On the foregoing discussion, I have found no substance in this revision. It is, therefore, dismissed.