

(1967) 01 KAR CK 0005

In the Karnataka High Court

Case No : Criminal Revision Petition No. 298 of 1966

Vijay Rao and Others

APPELLANT

Vs

Laxman Rao and Another

RESPONDENT

Date of Decision : 25-01-1967

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 145, 145 (4), 145 (9)

Citation : AIR 1968 Kar 16 : (1968) CriLJ 71 : (1967) 1 MysLJ 256

Hon'ble Judges : B.M. Kalagate, J

Bench : Single Bench

Judgement

(1) In this petition, the complaint made against the order of the First Class Magistrate, Koppal, u/s 145 of the Code of Criminal Procedure, is that it suffers, among others, from the following infirmities:

1) That exhibits P-2 to P-16, which are the affidavits filed on behalf of the second party, have not been considered by the Magistrate;

2) that there is no finding that there was a dispute likely to cause a breach of the peace and public tranquillity;

3) that the Magistrate refused to summon some of the witnesses whom both party No. 1 and part No. 2 wanted to examine or cross-examine;

and since the order suffers from these infirmities, it is urged that it is liable to be set aside.

(2) Mr. Muralidhara Rao, appearing for the respondents (members of the first party), submits that the order made by the Magistrate is an elaborate order in which he has considered the documentary evidence produced by both the parties, and that though there is some infirmity in the order, if it does not lead to a failure of justice, then this Court should not interfere with it in revision.

(3) No doubt, the learned Magistrate has considered the documentary evidence led by the parties to the dispute and has discarded the documentary evidence

produced on behalf of the second party and stated that what remained to be considered was the oral evidence contained in the several affidavits filled on its behalf. He believed the documentary evidence produced by the first party. But the error which he committed was that having stated that there were several affidavits remained to be considered, and having believed the documentary evidence of the First party, he observed that that having disbelieved the documentary evidence produced by the second party, he was not inclined to accept the oral evidence produced on its behalf by filing affidavits.

In my view, this is thoroughly wrong. Though a Court may not believe the documentary evidence, that does not mean that the affidavits produced on behalf of a party whose documentary evidence has been disbelieved, do not require any consideration. This summary way of rejecting the evidence produced in the form of affidavits on behalf of the second party is a serious mistake which affects the merit of the order.

(4) Then, as to the second objection that there is no finding that, on account of the dispute, there was a likelihood of a breach of the public peace, it appears to me that there is a reference that such a dispute would have led to a breach of the public-peace.

(5) The third complaint made is also a serious complaint It would be seen from the order sheet that on December 20, 1965, party No. 1 and party No.2 filed applications requesting the Court to summon some of the witnesses, whose affidavits were produced, as also the Sub-Inspector of Police and the Head constable. The learned Magistrate adjourned the case to January 5 1966 and on January 5, 1966 he made an order rejecting the applications stating that there is no provision for summoning deponents for examination or cross-examination.

If the Magistrate had only looked to the provisions of section 145 (4) and (9) of the Code of Criminal procedure, he would not have made the mistake which he has made. It is better that judicial officers look into the relevant provisions of law on the subject before they make an order. There is a clear provision in sub-sections (4) and (9) of section 145 enabling the Court to summon any of the witnesses if it thinks necessary. No doubt, it is a matter within the discretion of the Court either to summon or not to summon a witness. But that is not the same thing to say that there is no provision in law.

(6) It has been held by this Court in *State of Mysore v. Muddanna* 1964 2 Mys. LJ 297 that the summoning of a witness either under the proviso to sub-section (4) or on an application made under sub-section (9) of section 145 of the Code of Criminal Procedure, is entirely a matter within the discretion of the Court and that neither the proviso to sub-section (4) nor sub-section (9) confer a right on any party to compel the Court to summon a witness.

(7) The effect of rejecting the applications made by both the parties is to shut out the relevant evidence which the parties wanted to produce, and that such a course is not permissible, is what has been stated by this Court in *Amaragowda*

v. Moinuddin Khan 1961 39 Mys. LJ 999 In that case, the evidence of the patwari, which the petitioner wished to produce was not permitted by the Magistrate, and he rejected the application declining to examine the witness in this connection, this is what the Court stated:

"It seems to me that what the Court below did in this case was to shut out the relevant evidence. It is explained to me by Mr. Datar that the evidence of the Sub-Inspector was necessary to prove certain documents on which the petitioner relied, and if that was so it could not be said that the evidence of the Sub-Inspector was irrelevant". Therefore, as I stated, the effect of rejecting the applications made by both the parties for summoning the witnesses was to shut out the evidence. This, in my opinion, must necessarily vitiate the order made by the learned Magistrate on merit.

(8) Mr. Muralidhara Rao, however invites my attention to the explanation to S 537 Cr P. C. which states that:

"It determining whether any error, omission or irregularity in any proceedings under this Code has occasioned a failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings". and urges that the magistrate by his order dated January 5, 1966 rejected the application and no grievance was made before him during the course of arguments that it was wrong on his part to have rejected the application and, therefore, the petitioner cannot make a grievance when the final order is made six months thereafter and complain that the order suffers from any such infirmity.

(9) In my opinion, there is no substance in this contention since it was an interlocutory order which could be complained of in revision filed against the final order. On merit, I have no doubt that the shutting out of the evidence by the court does affect the order made by it.

(10) In the result, I set aside the order made by the learned Magistrate and send the proceedings back to him with the direction that he may consider the request made on behalf of party No.2 for summoning some of the witnesses for cross-examination and examination, and pass an order on merit. He should also consider the entire evidence on record, including the affidavits which he has summarily rejected, and then make the final order.

(11) Petition allowed