

State Vs. Bhimcharan Mandal

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Court : Orissa

Decided On : Jun-29-1961

Reported in : AIR1962Ori139

Judge : G.C. Das, Actg. C.J.

Acts : [Code of Criminal Procedure \(CrPC\), 1898](#) - Sections 251A(7)

Appeal No. : Criminal Ref. No. 13 of 1961

Appellant : State

Respondent : Bhimcharan Mandal

Advocate for Pet/Ap. : Government Adv.

Disposition : Reference accepted

Judgement :

ORDER

G.C. Das, Actg. C.J.

1. This is a reference by the learned Sessions Judge, Mayurbhanj, recommending to set aside the Order of the Magistrate, 1st Class, Rai-rangpur, dated November 30, 1960, in G. R. Case No. 363 of 1959. The facts are tee : The accused persons were charged under Section 420, Indian Penal Code, for the offence of cheating by false impersonation as Government Amin. The charge-sheet shows that he cheated a number of persons. Out of these persons, the prosecution examined a few and wanted to examine the rest. This prayer of the prosecution was rejected by the learned Magistrate. The relevant order is as follows :

'The C. S. I. ought to have moved for examination of these witnesses earlier. The material witnesses have been examined. Those witnesses are to repeat the facts what others have stated on the same line. Hence the prayer of the C. S. I. cannot be entertained.'

2. The ground taken by the learned Magistrate was that the witnesses sought to be examined will repeat the same thing, does not appear to be sound. This is a case in which the accused Bhimcharan Mandal stood charged under Section 420 of the Indian Penal Code for having cheated a number of persons. The persons who were material witnesses ought to have been examined. The offence would be complete even if the Court finds that one of the witnesses mentioned in the charge-sheet was in

fact cheated. Accordingly all the persons who were cheated should have been examined by the learned Magistrate. Section 251- which has been newly introduced by the 1955 amendment leaves no discretion to the Magistrate and he is bound to examine such witnesses as are produced by the prosecution.

Section 251-A lays down a complete procedure to be adopted in cases instituted on police report. Clause (7) lays down the manner in which the prosecution witnesses were to be examined. It states that on the date so fixed, the Magistrate shall proceed to take all such evidence as may be produced in support of the prosecution, provided that the Magistrate may permit the cross-examination of any witness to be deferred until any other witness or witnesses have been examined. Or recall any witness for further cross-examination. This clause seems to be mandatory and the Magistrate is bound to examine all such witnesses as are produced by the prosecution.

I am, therefore, clearly of the opinion that the order of the Magistrate rejecting the application filed on behalf of the prosecution to examine the rest of the witnesses is wrong and cannot be sustained. Accordingly, I would set aside the order of the learned Magistrate and direct him to examine the witnesses as produced by the prosecution.

3. In the result, the Reference is accepted.

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