S. Gyan Singh Vohra, Advocate v. Shri Ram Bheja Lal Malik, Advocate

Bishan Narain, J.

For these reasons, I would answer the question referred to us in the negative and would hold that any libellous and defamatory statement made against a retired Judge relating to his judicial conduct and character cannot amount to contempt of court. In this view of the matter, it is immaterial whether the Judge retired recently or has been on the retirement list since a long time.

A. N. BHANDARI, C. J.—I agree:

B. R. T.

REVISIONAL CRIMINAL

Before D. Falshaw, J.

SADHU RAM,—*Petitioner.*

versus

MST. AMAR KAUR AND OTHERS,—*Respondents.*

Criminal Revision No. 1378 of 1958.

1958

Dec., 24th

Code of Criminal Procedure (Act V of 1898)—Sections 205 and 342—Personal attendance of the accused dispensed with—Such accused whether must attend in person for answering questions under Section 342.

Held, that in the cases where the personal attendance of an accused has been dispensed with under section 205, Criminal Procedure Code, the accused must attend in person after the close of the prosecution evidence for questioning by the Court under section 342, Criminal Procedure Code.

Case reported under section 438 of Criminal Procedure Code by Shri G. S. Bedi, District and Sessions Judge, Gurdaspur, with his letter No. 3528/R.K., dated 28th October, 1958, for revision of the order of Naib-Tehsildar Gurdaspur, dated 4th October, 1958, dismissing the application under section 205 Cr. P. C.

NEMO, for Petitioner.

M. R. PUNJ, for Respondent.

ORDER OF THE HIGH COURT

Falshaw, J.

FALSHAW, J.—The facts in this revision petition which has been referred to this Court by the Sessions Judge at Gurdaspur are that the petitioner instituted a complaint under section 323, Indian Penal Code, against Guranditta Mal, his wife Amar Kaur and his daughters Kailash Kumari and Rama Kanta. The case is being tried by a third class Magistrate who passed an order early in the proceedings under section 205 Criminal Procedure Code, dispensing with the personal attendance of the three female accused who were permitted to appear through a pleader. At the conclusion of prosecution evidence the Court examined the pleader on behalf of these three accused under section 342, Criminal Procedure Code. The complainant then applied that these accused should be called on to appear in person for examination under section 342. The application was dismissed by the learned Magistrate and the complainant approach the Sessions Judge in revision with the result that it has been recommended that the female accused should be examined in person under section 342, Criminal Procedure Code. The provisions of section 205, Criminal Procedure Code, read—

"205(1) Whenever a Magistrate issues a summons, he may, if he sees reason so to do, dispense with the personal attendance of the accused, and permit him to appear by his pleader.

(2) But the Magistrate inquiring into or trying the case may, in his discretion, at any stage of the proceedings, direct the personal attendance of the accused, and, if necessary, enforce such attendance in manner hereinbefore provided."

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The relevant portion of section 342 reads—

> "342(1) For the purpose of enabling the accused to explain any circumstances appearing in the evidence against him, the Court may, at any stage of any inquiry or trial without previously warning the accused, put such questions to him as the Court considers necessary, and shall, for the purpose aforesaid, question him generally on the case after the witnesses for the prosecution have been examined and before he is called on for his defence.
>
> (2) The accused shall not render himself liable to punishment by refusing to answer such questions, or by giving false answers to them * * * * *".

These provisions certainly appear to be intended to apply only to an accused in person and, if so, it is clear that even when the personal attendance of an accused person has been dispensed with generally under section 205, he must at any rate attend in person after the close of the prosecution evidence for the purpose of answering the questions which the Court is bound to put to him at that stage, and on first impression I should have no hestitation in holding that the mandatory provisions of section 342 override the discretionary powers given to a Court under section 205. It appears, however, that there are a number of cases in which a contrary view has been taken. In *Emperor* v. *Jaffar Cassum Moosa* (1), an accused whose personal attendance had been dispensed with under section 205 was convicted of an offence under section 471 of the City

(1) A.I.R. 1934 Bom. 212

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of Bombay Municipal Act and sentenced to a fine of Rs. 50. In his revision petition to the High Court against his conviction the accused took the ground that he ought to have been personally examined under section 342, Criminal Proredure Code, but Beaumont, C. J., and Barelee, J., held that section 342 must be read subject to the provisions of section 205 and where the Magistrate exercises the power given to him by section 205 of dispensing with the personal attendance of the accused and permit him to appear by his pleader, the Magistrate is not bound to question the accused personally. In case In *re C. M. Raghavan and another* (1), a similar view was taken by Chandra Reddy, J., in a case where an accused whose personal attendance had been dispensed with challenged his conviction on the ground that he had not been examined personally under section 342. In *Sm. Champa Devi* v. *Babulal Goenka* (2), K. C. Chunder and Guha JJ., held that section 342 does not govern section 205 Criminal Procedure Code, and that it also does not govern section 540A and in a case in which the accused is represented by a pleader in accordance with the permission granted by the Court, it is not necessary to call upon the accused to be personally present to be examined under section 342. The same view is expressed by Panigarahi C. J., in *Rusi Biswal* v. *Nakhyatramalini Devi and others* (3), and Nevaskar J., in *The State* v. *Tarachand Anand* (4), the latter of which refers to a pending case in which the order of dispensing with the personal attendance of the accused had been obtained from the High Court in revision. Regarding these decisions I cannot help feeling that in the earliest ones,

(1) A.I.R. 1950 Mad. 814
(2) A.I.R. 1950 Cal. 161
(3) A.I.R. 1954 Orissa 65
(4) A.I.R. 1957 M.P. 219

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which have been followed in the others, the views of the learned Judges were somewhat influenced by the point of view from which they were considering the matter. Where an accused person claims and is granted the privilege of not having to appear at the trial in person and in this manner escapes personal examination under Section 342 the appellate or revisional Court will naturally be very reluctant to allow him to take advantage of this fact for the purpose of setting aside his conviction.

Some of these cases appear to have been cited before the learned Sessions Judge who, however, has based his recommendation on a later decision of the Calcutta High Court by J. P. Mitter and Debabrata Mookerjee JJ., in *Dudhnath Shaw and another* v. *The State* (1). In that case the question whether the personal examination under section 342 of an accused, whose personal attendance had been dispensed with under section 540A, Criminal Procedure Code, could also be dispensed with was referred to a Division Bench and the learned Judges, who have written separate Judgments, have held that section 342 Criminal Procedure Code, provides for the personal examination of the accused and not anyone representing him. The provisions are mandatory and the Court has no jurisdiction to dispense with the personal examination of an accused when he has been permitted under section 540A to be represented by a pleader and there is nothing in section 205 or in section 540A of the Code to encourage a contrary view. In the judgment of J. P. Mitter J., some previous decisions of the Calcutta High Court in support of this view are cited, and the case which I have mentioned above was referred to, it being pointed out that a later Division Bench

(1) A.I.R, 1958 Cal, 431

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had dissented from the view expressed therein and had caused a reference to be made to a Full Bench, but the matter was not decided by the Full Bench because it was held that the question did not strictly arise out of the facts of that particular case. In the course of his judgment Debabrata Mookerjee J., has referred to the provisions of section 205 and section 540A, which permits the personal attendance of an accused to be dispensed with at any stage of an inquiry or trial if the Judge or Magistrate is satisfied for reasons to be recorded that the personal attendance of the accused before the Court is not necessary in the interests of justice, and has pointed out that while section 205 occurs in the Chapter relating to the commencement of proceedings before a Magistrate, and section 540A, appears in a Chapter headed "Miscellaneous", section 342 occurs in the Chapter relating to the general provisions as to inquiries and trials. He continues—

> "There can, therefore, be no doubt that the provisions contained in this Chapter were intended to prevail and to govern inquiries and trials generally. As I have said, there is nothing in section 205 or in section 540A of the Code which can encourage the view that the Court can dispense with the attendance of the accused even for purposes of examination under section 342 of the Code. The two sections (sections 205 and 540A) contain express provisions on the contrary for directing whenever necessary the presence, of the accused in the course of the trial. Indeed, it becomes necessary to do so when the time comes to examine the accused. How, in these circumstances, section 205 or section 540A of

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the Code can have any real relevance in deciding the question as to whether personal attendance of the accused under section 342 of the Code can be dispensed with, is indeed difficult to appreciate.

"Turning to section 342 itself, it seems to me clear that the provisions read as a whole cannot lend countenance to the view that examination of an agent of the accused was contemplated and that such examination can serve the purpose which was sought to be achieved by enacting that section. The section imposes a duty on the Court to give the accused an opportunity of explaining the circumstances appearing in the evidence against him and the Court may put such questions as it considers necessary without previously warning the accused. I imagine, the legislature would not have used the words 'without previously warning the accused' unless it had clearly in mind that the questions should be put directly to the accused and not to his lawyer or his agent. Nay more, the accused is immune from punishment for refusing to answer or for giving false answers. Will the immunity extend to his agent."

On the whole I am of the opinion that the view expressed in this, the latest decision of Calcutta High Court, is correct. It was argued before me that in certain cases it was not even necessary for an accused person to attend personally on the delivery of judgment as provided in section 366 of the Code, sub-section (2) of which reads—

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"366(2) The accused shall, if in custody, be brought up or, if not in custody, be required by the Court to attend, to hear judgment delivered, except where his personal attendance during the trial has been dispensed with and the sentence is one of fine only or he is acquitted, in either of which cases it may be delivered in the presence of his pleader."

To my mind this does not advance the argument at all, since it merely embodies certain limited exceptions to the general rule that an accused must be present when judgment is delivered. Indeed, the fact that such a provision has been incorporated in the law seems to me rather to strengthen the argument to the contrary. Section 342, apart from giving the Court the power to put any question at any time to the accused, imposes on it a duty to question the accused fully at the close of the prosecution case, and if this had not been intended to apply in the case of an accused whose personal attendance had been dispensed with either under section 205 or section 540A, it is hard to see why the exception was not specifically embodied in the section by way of a proviso. I accordingly hold that even in cases where the personal attendance of an accused has been dispensed with under section 205, Criminal Procedure Code, the accused must attend in person after the close of the prosecution evidence for questioning by the Court under section 342, Criminal Procedure Code. I accordingly accept the recommendation of the learned Sessions Judge and direct the trial Magistrate to call the accused for personal examination under section 342, Criminal Procedure Code. The parties in this case are directed to appear in the trial Court on the 12th of January, 1958.

B.R.T.