

REVISIONAL CRIMINAL

Before Bhopinder Singh Dhillon, J.

BALAK RAM,—Petitioner.

versus

NAND SINGH,—Respondent.

Criminal Revision No. 371 of 1972.

May 22, 1972.

*Code of Criminal Procedure (Act V of 1898)—Section 252—Complainant giving up eye-witnesses mentioned in the complaint—Whether estopped from producing them subsequently before the close of the prosecution case.*

*Held, that there is no rule of estoppel applicable to the trial of the criminal cases as far as the production of evidence is concerned. Before the prosecution closes its case, it is always open to the prosecutor to reconsider and to press for the production of the witnesses who are material for deciding the matter under issue and for doing complete justice between the parties. The mere fact that the complainant makes a statement at an earlier stage giving up some witnesses, he does not lose the right to press for their examination when he finds that they are prepared to narrate the true facts of the incident. Hence a complainant is not estopped from producing the giving up eye-witnesses before the close of the prosecution case.*

(Para 5)

*Petition under Section 439 of Criminal Procedure Code, for revision of the order of Shri J. M. Tandon, Sessions Judge, Ambala, dated 10th April, 1972, affirming the interim order of Shri V. P. Aggarwal, Judicial Magistrate, 1st Class, Ambala City, dated 15th March, 1972, disallowing the application made by the complainant for examining certain witnesses which were earlier given up by him.*

S. L. Ahluwalia, Advocate, for the petitioner.

K. K. Aggarwal, Advocate, for the respondent.

JUDGMENT

DHILLON, J.—Balak Ram petitioner filed a complaint under sections 323/504 of the Indian Penal Code against Nand Singh, respondent for an alleged occurrence having taken place on 23rd March,

1971. The complaint was filed on 24th March, 1971. In the list of witnesses filed along with the complaint, Jagat Singh and Data Ram were mentioned as the alleged two eye-witnesses of the occurrence. Jagat Singh also appeared as a witness for the complainant in proceeding under section 200 of the Code of Criminal Procedure. Nand Singh respondent was summoned as an accused person in the said complaint. During the course of the proceedings the petitioner's counsel Shri Narinder Singh Advocate made a statement on 4th September, 1971, giving up Jagat Singh, P.W. as having been won over. The petitioner also made a statement on the same date giving up Data Ram, another alleged eye-witness of the occurrence on the ground that he had been won over. On the same date, an application was made on behalf of the petitioner before the learned Magistrate that Ram Chander and Jit Singh, who also allegedly witnessed the occurrence, be allowed to be produced as prosecution witnesses in the complaint. It may be mentioned that the names of Ram Chander and Jit Singh were not mentioned in the list of witnesses filed along with the complaint. This prayer was refused by the learned Magistrate,—*vide* his order dated 25th September, 1971 and the revision petition against this order having been dismissed by the learned Sessions Judge,—*vide* his order dated 13th December, 1971, Criminal Revision No. 8 of 1972 was filed in this Court challenging the above-mentioned orders which revision petition was also dismissed by me,—*vide* my order dated 7th February, 1972. Consequently, Ram Chander and Jit Singh were not allowed to be produced in support of the complaint.

(2) When the complaint went to the Magistrate for further proceedings, an application was made by the petitioner on 26th February, 1972, that he be allowed to produce Jagat Singh and Data Ram, the two alleged witnesses of the occurrence whose names had been mentioned in the list of witnesses filed along with the complaint and who were earlier given up by the statement of the counsel for the petitioner and by his own statement dated 4th September, 1971, on the ground that the said two witnesses had assured the petitioner that they would now speak out the true facts before the Court. The learned Magistrate dismissed this application,—*vide* his order dated 15th March, 1972, and the revision petition before the learned Sessions Judge having failed, the petitioner has approached this Court through this revision petition for quashing the said orders and allowing him to produce Jagat Singh and Data Ram in support of his complaint.

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(3) Mr. Sunder Lal Ahluwalia, the learned counsel for the petitioner contends that the principle of estoppel would not apply in a case of criminal trial and that the true import of the provisions of section 252 of the Code of Criminal Procedure would be that the prosecution would be allowed to produce the witnesses relied upon by the prosecution before the prosecution case is closed or before the defence enters upon its evidence. The learned counsel relies on a case reported in *Syed Mohammed v. K. C. Raman and others* (1), in which in similar circumstances it was held by the Kerala High Court that before the prosecution case was closed the prosecution would be at liberty to examine the witnesses relied upon by the prosecution even though the Public Prosecutor had made an earlier statement giving up some of the witnesses. The learned counsel also relied on a case reported in *Crown Prosecutor, Madras v. C. V. Ramanujulu Naidu and others* (2). In this case the Madras High Court was interpreting the provisions of section 256 of the Code of Criminal Procedure and certain observations made in this judgment do support the contention of the learned counsel for the petitioner.

(4) Mr. K. K. Aggarwal, the learned counsel for the respondent, on the other hand, contends that in fact none of the cases relied upon by the learned counsel for the petitioner referred to above, has discussed the true import of the provisions of section 252 of the Code of Criminal Procedure and the principle of estoppel would apply equally to the cases tried under the Code of Criminal Procedure. The learned counsel contends that the complainant having once made a statement before the Court that the witnesses relied upon by him having been won over he had no desire to produce them, cannot subsequently come forward and say that he wants to produce the said witnesses at a later stage.

(5) After hearing the learned counsel for the parties, I am of the opinion that this petition must succeed. No doubt the petitioner made the statement that Jagat Singh and Data Ram be given up as having been won over but at the same time the case of the prosecution was not closed then. Both these witnesses are mentioned as

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(1) 1964 (1) Cr. L.J. 100.

(2) A.I.R. 1944 Mad. 169.

witnesses in the complaint and their names are also included in the list of the witnesses filed along with the complaint. In both the authorities referred to above and relied upon by the learned counsel for the petitioner, the principle of law laid down is that there is no rule of estoppel applicable to the trial of the criminal cases as far as the production of evidence is concerned. Before the prosecution closes its case, it is always open to the prosecutor to reconsider and to press for the production of the witnesses who are material for deciding the matter under issue and for doing complete justice between the parties. The learned counsel for the respondent could not cite any authority to show that merely by making a statement at the earlier stage giving up Jagat Singh and Data Ram, the complainant had no right to press for their examination when he finds that they are prepared to narrate the true facts of the incident. I am in respectful agreement with the view taken in the two authorities referred to above which are relied upon by the learned counsel for the petitioner.

(6) Mr. Ahluwalia, the learned counsel for the petitioner undertakes that he will produce both the witnesses, namely, Jagat Singh and Data Ram, at one hearing of the complaint if he is given Dasti Summons for effecting their service. When the petitioner is allowed to examine Jagat Singh and Data Ram in support of his complaint, it is to be ensured that the complaint is not unnecessarily delayed which may cause harassment to the accused respondent. In view of the undertaking given by Mr. Ahluwalia, the learned counsel for the petitioner, I direct that the parties may appear before the learned Magistrate on 12th June, 1972, when the learned Magistrate will fix a date for recording the evidence of Jagat Singh and Data Ram and the learned Magistrate will give Dasti summons to the petitioner for effecting their service. If the petitioner fails to procure the presence of these witnesses on the said date of hearing, no further adjournment will be given for producing the said witnesses.

(7) Subject to the extent indicated above, this revision petition is accepted, the orders of the Courts below are set aside and the parties are directed through their counsel to appear before the learned Magistrate, 1st Class, Ambala on 12th June, 1972.