

Mohinder Singh Sawhney v. The State of Haryana, etc. (Gopal Singh, J.)

It is another matter if she has become unchaste or has remarried. In that event there is no duty on the husband to maintain her. So far as the present case is concerned it is admitted that the petitioner and the respondent are married and no plea has been raised that the wife has become unchaste. In this situation it cannot be said that the order of the trial Court granting interim maintenance is without jurisdiction.

(2) For the reasons recorded above this petition fails and is dismissed with costs.

N.K.S.

REVISIONAL CRIMINAL

Before Gopal Singh, J.

MOHINDER SINGH SAWHNEY,—Petitioner.

versus

THE STATE OF HARYANA AND OTHERS,—Respondents.

Criminal Revision No. 923 of 1969.

May 27, 1970.

Code of Criminal Procedure (V of 1898)—Section 540—Prosecution in a hurt case on police report—Public Prosecutor conducting the case—Injured complainant—Whether has a locus standi to insist on producing an eye-witness other than those examined by the State.

Held, that where accused persons are being proceeded against as a result of the police report put up on behalf of the State after the case was investigated by the police on the basis of first information report lodged by the injured complainant, and the case on behalf of the State is being conducted by Public Prosecutor, the complainant, although an injured person, cannot assert for and impose on the prosecution a witness of his own choice to appear as an eye-witness in addition to the eye-witnesses examined on behalf of the State. It is in the discretion of the prosecutor in charge of the case of the prosecution while representing the State to summon or not to summon a witness pointed out by an injured person or an aggrieved complainant. The complainant has no locus standi to make an application for a particular person being summoned as a witness.

(Para 5).

Petition under section 439 of the Cr. P. Code for revision of the order of Siri Salig Ram Bakshi, Additipnal Sessions Judge, Ambala, dated 16th

September, 1969, affirming that of Shri J. C. Nagpal, Chief Judicial Magistrate, Ambala, dated 14th March, 1969, rejecting the application of Mohinder Singh for summoning Lt. C. L. Sharma, as Court witness.

MOHINDER SINGH, petitioner (In person).

D. D. JAIN, ADVOCATE, FOR ADVOCATE-GENERAL, HARYANA.

HARBHAGWAN ARYA, RESPONDENT NO. 2 (IN PERSON), for himself and for 7 other respondents Nos. 3 to 9.

JUDGMENT

GOPAL SINGH, J.—This is revision petition by Mohinder Singh against the State of Haryana and Harbhagwan Arya and seven other accused persons from the order of Shri S. R. Bakhshi, Additional Sessions Judge, Ambala, dated September 16, 1969, confirming the order of Shri J. C. Nagpal, Chief Judicial Magistrate, Ambala, dated March 14, 1969, refusing to summon C. L. Sharma as Court witness on the application of the petitioner.

2. Facts giving rise to the present revision petition are as under :—

Harbhagwan and seven other accused persons were challaned by the police for causing injuries to the petitioner and for his wrongful confinement under sections 325 and 342, Indian Penal Code. The challan was presented to the Court on October 4, 1966. The following four eye-witnesses were produced in support of the case of the prosecution :—

- (i) Mohinder Singh injured (petitioner).
- (ii) Smti. Agya Kaur.
- (iii) Bansi Lal.
- (iv) Surjit Singh.

3. The evidence of the eye-witnesses was concluded on December 28, 1968. On February 11, 1969, the petitioner made application to the trial Court for C. L. Sharma being summoned as a Court witness, as according to him he also witnessed the occurrence. His application having been rejected and his revision petition from the

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order of rejection having met the same fate, Mohinder Singh has invoked the revisional jurisdiction of the High Court.

A preliminary objection has been raised by Shri D. D. Jain appearing on behalf of the State that the petitioner, who is merely an eye-witness has no locus standi to file the petition for revision and that in the light of the facts and circumstances of the case, there is no justification for the orders of the two Courts below refusing to summon C. L. Sharma as Court witness being set aside.

5. The accused are being proceeded against as a result of the police report put up on behalf of the State after the case was investigated by the police on the basis of first information report lodged by Mohinder Singh petitioner. The State is prosecuting the case. The case on behalf of the State is being conducted by the Prosecuting Sub-Inspector. Mohinder Singh, although an injured person, cannot assert for and impose on the prosecution a witness of his own choice to appear as an eye-witness in addition to the eye-witnesses examined on behalf of the State. It is in the discretion of the prosecutor in charge of the case of the prosecution while representing the State to summon or not to summon a witness pointed out by an injured person or an aggrieved complainant. The position of complainant in case of a private complaint filed by him is different. The present case is not one of a private complaint. In the presence of the State, the petitioner has no locus standi to make an application for a particular person being summoned as a witness. The petition for revision filed by him impugning the correctness of the order made in that application is not maintainable. The petition has been filed from the order of the Additional Sessions Judge, dated September 16, 1969. In the revision petition, which the petitioner filed with the Additional Sessions Judge giving rise to that order, he did not implead the State as a party. The petitioner having obtained that order in the absence of the State cannot seek to avoid it by impleading the State in the revision petition, which he has now filed in the High Court.

6. Even on merits, there is no jurisdiction for C.L. Sharma being summoned as a Court witness because according to the petitioner, he would be the fifth eye-witness. The petitioner himself lodged first information report about the occurrence. In that report, he does not at all mention C.L. Sharma as one of the eye-witnesses. In the testimony, neither the petitioner himself nor any of the other three

witnesses, who have been examined, namely, Agya Kaur wife of the petitioner, Bansi Lal and Surjit Singh, have named C.L. Sharma as eye-witness. The petitioner has relied upon the evidence of Karam Singh, Inspector of Police, for the justification of C. L. Sharma being summoned as an eye-witness. In his statement, Karam Singh said that he joined C.L. Sharma in the investigation of the case. Karam Singh does not at all state that C. L. Sharma was an eye-witness of the occurrence.

7. A witness may be summoned under section 540, Criminal Procedure Code, as a Court witness by a Court in its discretion. The power conferred upon Court is essentially discretionary and has to be exercised if it appears to the Court that the evidence of the witness sought to be summoned is essential to the just decision of the case. The petitioner himself, as pointed out above, neither in the first information report lodged by him nor in his statement at the trial nor his wife Agya Kaur named C. L. Sharma as an eye-witness. Similarly, the other two eye-witnesses, namely, Bansi Lal and Surjit Singh, who are said to be independent witnesses and have like other two witnesses supported the prosecution version, do not at all refer to C. L. Sharma having witnessed the occurrence. It is not necessary that any and every witness, which the injured complainant wants to be examined, must be examined at the trial. Thus, the application made by the petitioner, who is merely a prosecution witness in the case, deserves to be dismissed.

In the result, the revision petition fails and is disallowed.

B.S.G.

CIVIL MISCELLANEOUS.

Before H. R. Sodhi, J.

KARNAIL SINGH AND OTHERS,—*Petitioners.*

versus.

LACHHMAN DASS GUPTA AND OTHERS,—*Respondents*

Civil Writ No. 2810 of 1969.

July 16, 1970.

Punjab Municipal Act (III of 1911)—Section 22—Meaning and scope of—President and Vice-President of a Municipal Committee tendering resignations to the Deputy Commissioner of the District—Such resignations—Whether valid.