

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL REVISION APPLICATION NO. 8 OF 2015

Sangappa Tenginakai (major)
son of Virappa Tenginakai,
r/o. Camarcazana, House No. 8,
Mapusa, Goa.

... Applicant.

Versus

The State
Through the Public Prosecutor of
the High Court at Panaji,
at High Court Building, Panaji-Goa.

... Respondent.

Applicant in person.

Mr. S. R. Rivankar, Public Prosecutor for the respondent.

Coram :- U. V. Bakre, J.

Pronounced on : - 29th January, 2015.

P.C.

Heard the applicant in person and Mr. Rivankar, learned Public Prosecutor for the respondent.

2. By this petition, the petitioner has prayed for setting aside the order dated 09/12/2014 passed by the learned J.M.F.C., Mapusa in Criminal Case No.168/P/2013/C, whereby the petitioner has been directed to pay Bhatta charges of ₹ 500/- each to issue summons to the witnesses named by the complainant.

3. The applicant in person submits that his case is cognizable case

and in terms of Section 244(2) of the Code of Criminal Procedure, 1973 (Cr. P. C., for short), the Magistrate is bound to issue summons to the witnesses at the cost of the State and there is no provision for directing the complainant to pay Bhatta charges for issuance of summons. The applicant has relied upon the Judgment of the Allahabad High Court in the case of “*Mahe Aalam vs. State of Uttar Pradesh*”, reported in 2005 CRI. L. J. 4554. He, therefore, submits that the impugned order be quashed and set aside and the learned Magistrate be directed to issue summons to the witnesses as prayed for by the complainant.

4. On the other hand, the learned Public Prosecutor submits that the Judgment of the Allahabad High Court is not applicable to the present case since it pertains to the witnesses of the accused person, in a Sessions Case. He further submitted that the provision of Section 244(2) of the Code of Criminal Procedure only gives discretion to the Magistrate to issue summons to the witnesses of the complainant and that otherwise in terms of Section 244(1), it is the complainant himself who has to produce all the witnesses.

5. I have gone through the material on record and considered the arguments advanced by the parties and the Judgment cited by the applicant.

6. The Criminal Case No. 168/P/2013, filed by the applicant is a Private Complaint and is not a State Case. The said complaint is filed for offences under Sections 212, 167, 168, 466, 467, 109, etc. of I.P.C. The accused persons have not appeared before the learned J.M.F.C. nor have been brought before the Court. Section 244 of Code of Criminal Procedure provides as under :

“Evidence for prosecution –

(1) When, in any warrant-case instituted otherwise than on a police report, the accused appears or is brought before a Magistrate, the Magistrate shall proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution.

(2) The magistrate may, on the application of the prosecution, issue a summons to any of its witnesses directing him to attend or to produce any document or other thing.

7. From the above it can be understood that the Magistrate is bound to hear the prosecution and take all evidence produced in support of the prosecution in terms of Sub-section 1 of Section 244 of Cr.P.C. and may issue summons to the witnesses of the prosecution, directing to attend or to produce documents or other thing, in terms of Sub-section (2) Of Section 244, only after the process is issued under

Section 204 of Cr.P.C. and the accused persons appear or are brought before the J.M.F.C. In the present case, no process has yet been issued against the accused persons and the accused have not appeared before the learned J.M.F.C. Therefore, Section 244 of Cr.P.C. is not applicable at this stage.

8. The case of “*Mahe Aalam*” (supra) pertains to trial before the Sessions Court. The witnesses were to be summoned on behalf of the accused for defence evidence and in the said circumstances, the High Court held that Court cannot direct or require the accused to pay expenses to witnesses sought to be examined by him in his defence. The above case is not applicable to the facts and circumstances of the present case. In the present case, a private complainant wants the learned J.M.F.C. to issue summons to certain witnesses, before issuance of process.

9. In my considered view, there is no merit in the application and the order of the learned J.M.F.C directing the complainant to pay Bhatta charges of ₹ 500/- each is neither arbitrary nor unreasonable.

10. Hence the revision application is rejected.

U. V. BAKRE, J.