

Raju Vs. the State

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Court : Delhi

Decided On : Dec-21-2001

Reported in : 96(2002)DLT223; 2002(62)DRJ98

Judge : S.K. Agarwal, J.

Acts : [Constitution of India](#) - Article 226; [Code of Criminal Procedure \(CrPC\)](#) , 1973 - Sections 164, 228 and 482; [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 342, 363 and 376

Appeal No. : Crl. M.(M) No. 4525/2001

Appellant : Raju

Respondent : The State

Advocate for Def. : Pawan Sharma and ; Richa Kapoor, Adv.

Advocate for Pet/Ap. : Dhiraj Yadav, Adv

Disposition : Petition disposed of

Judgement :

S.K. Agarwal, J.

1. This is a petition under Section 226 of the [Constitution of India](#) read with Section 482 Cr.P.C. for quashing of the proceeding pending in the Court of Ms. Poonam

Choudhary, M.M., New Delhi in the case FIRNo. 605/94, under Section 363/376/34 IPC, P.S. AmbedkarNagar.

2. Learned counsel for the petitioner argued that on 7.2.97, Sh. Sunil Gaur, ASJ, New Delhi, sent back the file of sessions trial to the court of Metropolitan Magistrate and passed the following order:

'7.2.97

Accused on bail with counsel.

S.I. Rajesh Kumar (I.O.) is present.

I.O. States that Raju accused is evading arrest and therefore, challan against him not been filed. Sh. Dhiraj Yadav, counsel for accused said accused undertakes to produce his brother Raju before the committal court to produce in accordance with Law. The file be sent back to Ld. committal court.

sd/-

ASJ, N. Delhi'

3. I have heard learned counsel for the petitioner, learned APP for the State and have been taken through the record. At the outset learned counsel for the petitioner argued that there is no provision in Code except Section 228 Cr.P.C. for remanding back the case to the committal court, for the purpose of securing presence of co-accused, against whom there is same material on record. Learned APP for the State on the other hand argued that as per the material is on record, cognizance could validly be taken by Metropolitan Magistrate and even by ASJ, therefore, the petitioner be directed to appear before the court of sessions, so that the trial can proceed in accordance with law. In support of his submissions he placed reliance on State f M.P. v. Bhorji, 2001 (4) Cri 1990 and Rajinder v. Bashir, 2001 III AD Cri. SC. 384.

4. I have considered the rival contentions. Admittedly the petitioner was named in the FIR, although, the prosecutrix in her statement recorded under Section 164 Cr.P.C. stated that petitioner did not committed rape upon her. After investigations,

investigating agency found that the case under Section 363/343 IPC is made out against the petitioner-Raju. Learned Additional Sessions Judge ought to have either taken cognizance or could have sent reference to this court seeking direction to the M.M. for committal of the case to the Session's court. However, the case could not be sent back to the Committal court either for cognizance or for securing presence of the accused. There is no provision in Cr.P.C. warranting such an order. In view of the same, impugned order dated 7.2.1997 is set aside. However, as noticed above, there is enough material against the petitioner to put him on trial Along with the main accused. therefore, the Metropolitan Magistrate is directed to commit the case for trial including petitioner-Raju. Petitioner is directed to appear before the court of Metropolitan Magistrate on the next date fixed.

5. In the facts and circumstances of this case, taking into consideration the nature of allegations, petitioner is ordered to be released on bail on his furnishing personal bond in the sum of Rs. 10,000/- with one surety in the like amount to the satisfaction of the concerned Metropolitan Magistrate.

6. File of the case be sent back.

7. Petition stand disposed of.

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