

Ram Chander Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Feb-21-2003

Reported in : 2003CriLJ2485; RLW2003(2)Raj881; 2003(2)WLC414

Judge : A.C. Goyal, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 311; Evidence Act - Sections 25 and 26

Appeal No. : S.B. Criminal Misc. Petition No. 180 of 2003

Appellant : Ram Chander

Respondent : State of Rajasthan

Advocate for Def. : P.S. Chaudhary, Public Prosecutor

Advocate for Pet/Ap. : V.R. Bajwa, Adv.

Disposition : Petition allowed

Judgement :

Goyal, J.

1. Vide this petition under Section 182 Cr.P.C. the accused petitioner has challenged the order dated 4.2.2003 whereby the learned Additional Sessions Judge (Fast Track), Sikar ordered to summon three witnesses in exercise of

powers under Section 311 Cr.P.C. In Sessions Case No. 83/2002.

2. The relevant facts in very brief are that the accused petitioner Sh. Ram Chander is facing trial for an offence under Section 302 I.P.C. for causing murder of five persons including his own wife, daughters and sons.

3. The prosecution examined as many as 19 witnesses. The prosecution closed down its evidence on 8.1.2003 and the case was fixed for further proceedings as provided under Section 313 Cr.P.C. but vide impugned order dated 4.2.2003 the learned Judge ordered to summon three press reporters namely Ramesh Sharma, Devendra Shastri and Abdul Razak on the ground that the confessional statement of the accused petitioner was published in the newspapers, hence these three witnesses should be examined on the point as to when and in what circumstances the statement of the accused petitioner came to be published in these newspapers.

Section 311 Cr.P.C. is as under:-

Power to summon material witness, or examine person present- Any court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine, any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.

4. Thus the Court at any stage of trial may summon any person as a witness or recall or re-examine any person already examined and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case. The learned Trial Judge summoned these three witnesses in view of the second part of Section 311 Cr.P.C. wherein it is provided that the Court shall summon such person if his evidence appears to be essential for the just decision of the case.

5. Learned counsel for the accused petitioner referred the statement of the Investigation Officer P.W. 19 Sh. Tara Chand recorded by the Trial Court on

8.1.2003. Sh. Tara Chand stated before the Trial Court that the accused was interviewed by the press reporters at police station after obtaining his permission. According to learned counsel, since such statement made by the accused to press reporters, if any, is not admissible in evidence as it was given while he was in police custody at police station in view of the provisions of Sections 25 and 26 of Indian Evidence Act. Section 25 makes a provision that no confession made to a police officer shall be proved as against a person accused of any offence. Section 26 provides that no confession made by any person whilst he is in the custody of a police officer, unless it be made in the immediate presence of a Magistrate shall be proved as against him. Learned Public Prosecutor contended that this is not a case where an accused made confession before the police officer.

6. I have considered the said submissions. The Investigation Officer Tara Chand specifically stated before the trial court that the accused petitioner was interviewed at police station while he was in police custody and the accused petitioner was interviewed with his permission. On perusal of the statement of Tara Chand, it is clear that he was also present at the time when the press reporters interviewed the accused petitioner. He further admitted that although he did not make any entry to this effect in Rojnamcha. Learned counsel referred two paper cuttings of the newspapers Aass-Pass and Dainik Bhaskar wherein there is no report that accused petitioner confessed his crime in presence of the press reporters. Thus keeping in view the statement of the Investigation Officer Sh. Tara Chand any confession of the accused petitioner if any made before the press reporters at police station while he was in police custody and that too in presence of the Investigation Officer, such confession cannot be proved against the accused in view of the provisions of Section 26 of the Indian Evidence Act.

7. Consequently, this petition is allowed and the impugned order dated 4.2.2003 is quashed.