

Mohan Singh Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Jan-30-2006

Reported in : RLW2006(2)Raj1100

Judge : R.S. Chauhan, J.

Acts : Code of Criminal Procedure (CrPC) - Sections 91 and 408; Indian Penal Code (IPC) - Sections 34, 304, 304B, 306 and 498A

Appeal No. : S.B. Criminal Revision No. 72 of 2006

Appellant : Mohan Singh

Respondent : State of Rajasthan

Advocate for Def. : Arun Sharma, Public Prosecutor

Advocate for Pet/Ap. : T.S. Chaudhary, Adv.

Judgement :

R.S. Chauhan, J.

1. The Petitioner has challenged the Order dated 6.1.06 whereby the Sessions Judge Bharatpur, has rejected his application under Section 408 of the Criminal Procedure Code, (henceforth to be referred to as the Code) for transferring his case from the Court of Additional Sessions Judge (Fast Track) No. 2, Bharatpur to

any other Court in his Division.

2. The brief facts of the case are that one Hanumant Singh lodged a report at Police Station Nadabi, District Bharatpur on 31.3.2005 at 9.25 A.M. about an incident that had taken place on 30.3.2005 at his daughter-in-law's house. In the said report he had alleged that his daughter, Asha, was married to Jitendra Singh on 31.5.2001. He further claimed that although he had given sufficient dowry in accordance with his means, but but his daughter was constantly tortured by her husband and by her in-laws for lack of the dowry. They would demand that not only Rs. 1 lac should be paid to them, but also a Maruti Car should be given to them. He further claimed that they threatened to kill his daughter. They carried out their threat on 31.3.2005 when they killed his daughter. On the basis of said report, a former FIR, FIR No. 129/2005, was registered for offence under Sections 304 & 34 IPC and the investigation commenced. After a thorough investigation, the police filed a charge sheet for offences under Sections 498A, 304B, 306 and 34 IPC against the husband, the mother-in-law and the father-in-law. During the course of the trial, which is pending before the Additional Sessions Judge (Fast Track) No. 2, Bharatpur, the accused persons would be brought to the Court in handcuffs. The accused persons had moved an application requesting that they should not be brought by the police in handcuffs as it adversely affects their social standing. The learned Additional Sessions Judge had warned the Guard In-charge not to do so. Even after the warning given by the learned Court, the police continued to bring the accused persons in handcuffs. But despite their protest, the learned Court did not pay any heed to their protest. Subsequently, the accused persons also moved an application under Section 91 of the Criminal Procedure Code (henceforth to be referred to as 'the Code'). But the said application was dismissed by the learned Additional Sessions Judge. Subsequently, the petitioner and the other co-accused moved an application for transfer of the case on the ground that the learned Court was biased against them. However, the said application was dismissed by the impugned order. Hence, this petition before us.

3. Mr. T.S. Choudhary, the learned Counsel for the petitioner, has argued that since the application under Section 91 of the Code had been dismissed by the learned Court and the fact that the learned Court was not paying any attention to

the handcuffing of the accused persons, clearly shows the biased mind of the learned Court. Therefor, the case should be transferred from the said Court to any other Court within the Bharatpur Division.

4. On the other hand, learned Public Public Prosecutor, Mr. Arun Sharma, has contended that substantial and cogent reasons should exist for transferring a case from one Court to another. No such cogent reason has been shown by the petitioner. Hence, the impugned order is legal and proper.

5. We have heard both the learned Counsels for the parties and perused the impugned order.

6. Merely because the learned Court has rejected the application under Section 91 of the Code would not imply that the Court is biased against the petitioner. However, the Court should be sensitive to the fact that repeatedly the Hon'ble Supreme Court has held that unless the accused person is extremely dangerous or there is a likelihood of his escaping from the police custody, the accused persons ordinarily should not be handcuffed when they are brought to the Court. Such a view has been held in *Prem Shanker Shukla v. Delhi Administration* : 1980 CriLJ930 . In the said case, the Hon'ble Supreme Court has observed as under:

Handcuffing is prima facie inhuman and, therefore, unreasonable, is over-harsh and at the first flush, arbitrary. Absent fair procedure and objective monitoring, the inflict 'irons' is to resort to zoological strategies repugnant to Article 21. Thus, we must critically examine the justification offered by the State for the mode of restraint. Surely, the competing claims of securing the prisoner from fleeing and protecting his personality from barbarity have to be harmonized. The prevent the escape of an under-trial is in public interest, reasonable, just and cannot, by itself, be castigated. But to bind a man hand-and-foot fetter his limbs with hoops of steel, shuffle him along in the streets and stand him for hours in the Courts is to torture him, defile his dignity, vulgarize society and foul the soul of our constitutional culture.

7. It has further observed as under:

Even in cases where, in extreme circumstances, handcuffs have to be put on the prisoner, the escorting authority must record contemporaneously the reasons for doing so. Otherwise under Article 21 the procedure will be unfair and bad in law. Nor will mere recording the reasons do, as that can be a mechanical process mindlessly made. The escorting officer, whenever he handcuffs a prisoner produced in Court, must show the reasons so recorded to the Presiding Judge and get his approval. Otherwise, there is no control over possible arbitrariness in applying handcuffs and fetters. The minions of the police establishment must make good their security recipes by getting judicial approval. And, once the Court directs that handcuffs shall be off no escorting authority can over-rule judicial direction. This is implicit in Article 21 which insists upon fairness, reasonableness and justice in the very procedure which authorizes stringent deprivation of life and liberty.

8. In the case of *Khadat Mazdoor Chetna Sangarh v. State of M.P.* 1995 Cri.L.J. 508, the Hon'ble Supreme Court while referring to a case of *Prem Shankar Shukla* (supra) and to the case of *Sunil Gupta v. State of M.P.* : [1990]2SCR871 , observed as under:

These two pronouncements constitute the law of the land. The plea of ignorance of the law only is stated to be rejected. What is worse in this case is the Magistrate behaving in this way. We are of the view that Magistracy requires to be sensitized to the values of human dignity and to the restrained on power. When it allows an inhuman conduct on the part of the police, it exhibits both the indifference and insensitiveness to human dignity and the constitutional rights of the citizens. There could be no worse lapse on the apart of the judiciary which is the sentinel of these great liberties. As Jeseoph Addison said:

Better to die ten thousand deaths than wound my honour.

9. In an era of Human Rights, we certainly expect the Subordinate Judiciary to be sensitive to the rights of the prisoners and to be alive to the Constitutional Mandate of 'Life' and 'Personal Liberty'. Hence, in the instant case, we direct the Additional Sessions Judge (Fast Track) No. 2, Bharatpur to ensure that the petitioner and the other co-accused persons are not brought to the Court In

handcuffs. The Principles laid down by the Hon'ble Supreme Court in the above mentioned cases should be adhered to both in letter and spirit by the Judiciary.

10. We direct the Deputy Registrar (Judicial) to ensure that a copy of this Order is sent to all the District Judges, who are directed to bring this Order to the notice of all the Judicial Officers working in their Division.

11. With these observations, this petition is disposed of.

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