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Ram Deo Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Mar-09-1978

Reported in : 1978WLN(UC)92

Judge : P.D. Kundal, J.

Appeal No. : S.B. Cr. Bail Application No. 106 of 1978

Appellant : Ram Deo

Respondent : State of Rajasthan

Judgement :

P.D. Kundal, J.

1. This is an application under, Section 438 Cr.P.C for issue of a direction that in the event of arrest, the accused-applicant Ram Deo may be enlarged on bail, against whom a case under, Section 450/467 IPC is under investigation.

2. It has been contended on behalf of the accused-applicant that on 15-1-1977, a sale deed for a sura of Rs. 1,500/- was executed by Ramdhan in favour of the applicant with respect to Khasra No. 276/2, measuring 2 Bighas situate in village Naya Gaon, tehsil Gangapur City. It was further contended that on 16-6-1977, Ramdhan moved an application before the Tefrsildar, Gangapur, that he had paid Rs. 500/- to the accused Ramdeo add has got the tend bearing Khasra No. 276/-

retransferred his name and also got a separate deed executed in his favour. Ramdhan ten filed a civil suit against the petitioner applicant Ramdev in the court of Munsif, Gangapur on 2-11-1977 and prayed that the sale-deed alleged to have been effected in his favour. Ramdhan them filed a civil suit against the petitioner applicant Ramdev in the Court of Munsif, Gangapur on 2-11-1977 and prayed that the sale-deed alleged to have been executed in his favour, the of Ramdev be cancelled and if any mutation has been effected in his favour, the same may be declared inoperative and ineffective. An application under Order 39 Rules 1 and 2 the Code of Civil Procedure was also moved along with the plaint. The court issued notices to the other side for 3-11-1977 As the defendant had put in appearance, the application was adjourned for consideration on 28-2-1978. In the meantime on 16-11-1977, Ramdhan filed the present complaint, which was registered under Section 420 and 467 IPC. It has been stated in the First Information Report that Ramdev has committed impersonation and forgeries and that case should be investigated against him and the registered sale-deed, which is a alleged to be in possession of Ramdev, should be recovered.

3. An application under Section 438 Cr.P.C. was filed before the learned Sessions Judge, Sawai Madhopur, who rejected the same on February 1, 1978.

4. It has been contented on behalf of the accused-applicant that as the complainant failed to secure an injunction order on the application under Order 39 Rules 1 and 2 IPC, either on 2-11-1977 or on 3-11-1977, he has filed this complaint simply to bring pressure on the applicant. It was further contended that in view of the application dated 16-6-1977 before the Tehsildar, Gangapur, the complaint filed by him is false and voxatious and has been filed only with a view to humiliate and harass him. It was therefore, contended that this is a fit case in which a direction' under Section 438 Cr.P.C. may be issued.

5. Shri Khan, learned Public Prosecutor, was heard on behalf of the State. It has been contended by him that if a direction under Section 438 Cr.P.C. is issued, then the recover of the sale-deed, which is alleged to be in possession of the accused applicant, would be frustrated and the investigation of the case would be adversely effected. It was also centered that the accused applicant is charged with

a serious offence of not only impersonating and creating false evidence by forging false document, but also by-making false representations before the court of law. It was therefore urged that this is not a fit case in which a direction under Section 438 Cr.P.C. may be issued.

6. Respective contentions of the learned Counsel for the parties have been considered and the record of the case carefully perused, ft appears that the learned Sessions Judge, While disposing of the application under Section 438 Cr.P.C. on February 1978, totally lost the grip of case. Instead of Khasra No. 276/2 he has mentioned the suit land to be bearing Khasra No. 280. Apart from this instead of Ramdhan he has mentioned that the owner of the land is one Khyali and that the registered document was got executed by putting up some person other than Khyali before the Sub Registrar. The learned Sessions Judge has further observed that Khyali learnt about this forged registered document in the month of May 1977; The learned Public Prosecutor has basically opposed the issue of the direction on the ground that the recovery of the registered sale-deed' which is said to be in the possession of the accused-applicant, would be defeated, if such a direction is issued. At this stage, it is difficult to express any opinion regarding the merits and demerits of the case, but only for the limited purpose of Section 438 Cr PC the document does not appear to be in the possession of the applicant, as per the application of Ramdhan dated 16-6-1977. It cannot also be ruled out at the moment that a serious dispute has arisen between the parties which is already sub judice before a competent civil court. Looking to these facts and circumstances of the case, it does not appear unreasonable to issue a direction that in the event of arrest, the accused-applicant Ramdeo may be enlarged on bail if he furnishes a personal bond of Rs. 10,000/- with ore surety on the like amount to the satisfaction of the Station House Officer, Gangapur City; provided further that the accused-applicant shall appear before the investigating agency when ever allied upon to do so and shall not, in any way, try to tamper with the prosecution evidence and shall not go outside India without the written permission of the Chief Judicial Magistrate, Sawai Madhopur.

7. Before parting with this order, it must be made clear that any observation made in this order for issue of a direction under Section 438 Cr.P.C. should not any way

be construed to hamper the investigation, which is being conducted by the investigating agency. The observations are only for the limited purposes of issuance of the direction and should not, in any was, be construed to have any bearing what so ever on the merit of the criminal case.

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