

State of Rajasthan Vs. Hanuman

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Court : Rajasthan

Decided On : Aug-01-1983

Reported in : 1983WLN(UC)172

Judge : S.C. Agrawal, J.

Appeal No. : S.B. Criminal Appeal No. 397/1977

Appellant : State of Rajasthan

Respondent : Hanuman

Disposition : Appeal dismissed

Judgement :

S.C. Agarwal, J.

1. This appeal has been filed by the State after obtaining leave to appeal Under Section 378(3) Cr. P.C. It is directed against the judgment dated 15th February, 1977 passed by the Munsif Magistrate, Deedwana in criminal case No. 56/1975. In the criminal case aforesaid, the respondent Hanuman was being prosecuted for the offence Under Section 182 IPC for having lodged a false report with the police. The Judicial Magistrate, Deedwana by his order dated 15th February, 1977 held that the APP was not present and the clerk of the APP had expressed his ignorance about the absence of the APP and further that on the previous dates the

APP had sought opportunity to examine witnesses but did not produce any witness and no witness was present on that day also. The Judicial Magistrate further held that since the complainant as well as the APP were both absent the complaint was being dismissed on account of the absence of the complainant and the accused was acquitted. Being aggrieved by the aforesaid order the State has filed this appeal.

2. I have heard Shri MC Bhati, the learned Public Prosecutor for the State and Shri P.C. Mathur, the learned counsel for the accused respondent. I have also perused the record of the court of Judicial Magistrate. A perusal of the record of the court of the Judicial Magistrate shows that Shri Fateh Singh SHO police station, Ladnu had filed a complaint in respect of offence Under Section 182 Cr. PC in the court of Munsif and Judicial Magistrate, Didwana. The said complaint bears the signatures of the complainant Fateh Singh and bears the date 1st December, 1974. It was submitted in the court by the APP Grade II on 4th December, 1974, It further appears that an application was submitted on behalf of the complainant wherein it was stated that since the complainant has to remain out, in connection with official work he would not-be able to present in the court on each date of hearing and, therefore, his person 1 presence may be exempted. The complaint as well as the application for exempt on from personal appearance filed by the complainant were put up for orders before the Judicial Magistrate on 25th January, 1975 and on that date the Judicial Magistrate passed an order directing that the complaint be registered and the accused be summoned. By the order aforesaid the Judicial Magistrate also exempted the personal appearance of the complainant. The order sheet further shows that the accused respondent appeared on 9th December, 1975 and thereafter on 26th May, 1976 the charge was read over to the accused respondent who pleaded not guilty. On 26th May, 76 the Judicial Magistrate also passed an order that the witnesses of the prosecution be summoned and that the summons be given 'dasti' to the A.P.P. for service. These is nothing on record to show that the service of the summons was effected on the witnesses by the A P.P. The order sheet dated 12th June, 1976 however shows that on that date the witnesses were not present and the APP sought an opportunity for producing the witnesses on the next date and the case was adjourned to 12th August, 1976. On 12th August, 1976 also no witnesses were present and the APP was directed to

produce witnesses Nos. 1 to 4 on the next date, i.e. 4th October, 1976. On 4th October, 1976 also the witnesses were not present and a further direction was given for production of the witnesses on 16th November, 1976. On 16th November 1975, the APP sought further opportunity to produce the witnesses and the case was adjourned to 23rd December, 1976. On 23rd December 1976 also the APP sought further opportunity to produce the witnesses and the case was adjourned to 15th February, 1977. On 15th February 1977 also the witnesses were not present and the APP was also not present and thereupon the Judicial Magistrate passed the order dated 15th February, 1977 dismissing the complaint and acquitting the respondent.

3. The learned Public Prosecutor has submitted that in view of the order dated 25th January, 1975 passed by the Judicial Magistrate exempting the personal attendance of the complainant, the Judicial Magistrate was not justified in dismissing the complaint and in acquitting the respondent on the ground that the complainant was not present. In my opinion the aforesaid comment of the learned Public Prosecutor appears to be justified. Since the Judicial Magistrate had passed an order on 25th January 1975 exempting the personal attendance of the complainant Fateh Singh, SHO police station Ladnu, the non-appearance of the complainant on 15th February 1977 was perfectly justified and the Judicial Magistrate should not have dismissed the complaint and acquitted the accused on the ground that the complainant was absent. In case the Judicial Magistrate felt that the presence of the complainant was necessary he ought to have passed an order revoking his earlier order dispensing with the personal attendance of the complainant if the complainant had failed to appear, thereafter he might have dismissed the complaint on the ground of the absence of the complainant. The order passed by the Judicial Magistrate dated 15th February, 1977 cannot, therefore, be in consonance with the provisions of Section 236 Cr.PC.

4. Normally this would have necessitated the remand of the case to the trial court for trial. Shri Mathur, the learned counsel for the respondent has, however, submitted that the incident relates to the year 1973 and nearly ten years have elapsed. Shri Mathur has also pointed out that the report which was lodged by the respondent and which has been made the basis of the complaint against the

respondent does not name the accused and was not directed against any particular person. Shri Mathur also referred to the statement of Shri Puli Gupta, recorded by the police to the effect that the father of the respondent and Hazari chowkidar were instrumental in hanging the rope with a view to defame the wife of respondent. Shri Mathur urged that this would show that the report was made bonafide by the respondent. Further more Shri Mathur has submitted that inspite of repeated opportunities the prosecution failed to produce any evidence to the trial. Shri Mathur also submitted that the appellant has already undergone harassment of a protracted trial in the court of Judicial Magistrate and this appeal has also been pending in this Court for a considerably long period and that in the facts and circumstances of the case and the fact that the matter has been pending for the past ten years and the respondent has undergone a protracted trial for a number of years and further that inspite of repeated opportunities having been given, no witness was produced by the prosecution, I am of the opinion that it would be in the interest of justice that the matter may be allowed to set at rest and the respondent may not be required to undergo a further trial.

5. In the result, while holding that the judgment dated 15th February, 1977 dismissing the complaint and acquitting the respondent was not passed in consonance with law, I am of the opinion that it is not a fit case in which the said order may be set aside and the matter be remanded for further trial to the court of Judicial Magistrate, Deedwana.

6. The appeal therefore, fails and it is accordingly dismissed.