

Jadulal Vs. the State of Rajasthan

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Court : Rajasthan

Decided On : Jul-30-1969

Reported in : 1969WLN398

Judge : B.P. Beri, J.

Appeal No. : S.B. Criminal Revision No. 198 of 1969

Appellant : Jadulal

Respondent : The State of Rajasthan

Disposition : Application allowed

Judgement :

B.P. Beri, J.

1. This is an application by way of revision directed against the order of the Additional Sessions Judge, Baran, dated the 15th March, 1969, whereby he ordered the prosecution of the petitioner under sections 380 and 457 I.P.C.

2. The facts which lead up to this application, briefly stated, are these, Kanhiyalal Mahajan lodged a report in the police station, Atru, that in between the night of the 6th and 7th June, 1961, offences of house breaking and theft were committed in his house. The police submitted a report against four parsons namely Kanhiyalal, Manaklal, Ratanlal and Prabhulal under sections 380, 457 and 120B I.P.C. Jadulal

petitioner before me, was also involved in this theft but he had turned an approver and the Additional District Magistrate, Kota, tendered pardon to Jadulal under the provisions of Section 337 Cr.P.C. Jadulal was examined by the Sub-Divisional Magistrate as a witness, and on the basis of evidence including that of Jadulal, all the four persons mentioned above were convicted under Sections 457 and 380 I.P.C. and the petitioner was released. The four persons convicted preferred an appeal and the learned Sessions Judge Baran, accepting the appeal set aside their conviction on the ground that as pardon was tendered to one of the accused, the case should have been committed to the Court of Sessions. Eventually, the four accused were committed to the Court of Sessions to stand their trial. Jadulal was also summoned as a witness. He appeared before the learned Additional Session Judge on a number of dates but his statement was not recorded. On the 14th September 1966, the petitioner was again present in the Court but the Public Prosecutor abandoned him as a witness and he was released. The learned Additional Sessions Judge convicted two out of the four accused named above and inter alia observed in his judgment that 'Jadulal approver failed to attend the court on the 23rd January 1969, despite information. Thus he has failed to discharge the condition of pardon granted to him. Hence in view of Section 339(1) Cr.P.C. he should be tried for the offence Under Section 457 and 380 I.P.C. Let the Magistrate proceed therefore, in accordance with law,' It is against this part of the order of the learned Additional Sessions Judge, Baran, that Jadulal has made this application.

3. Mr. K.N. Tikku learned Counsel appearing for Jadulal argued that under Section 339 Cr.P.C. it is on the basis of a certificate from the Public Prosecutor that Jadulal could have been prosecuted for the offence in respect of which pardon was tendered to him. There is no certificate on record and the learned Judge has, therefore, acted illegally.

4. Mr. B.C. Chatterjee, Additional Government Advocate does not dispute the correctness of the contention raised by Mr. K.N. Tikku.

5. Section 339 Cr.P.C., inter alia lays down that where a pardon has been tendered under Section 337 or Section 338 and the Public Prosecutor certifies that

in his opinion any person who has accepted such tender has. either by wilfully concealing anything essential or by giving false evidence not complied with the condition on which the tender was made, such person may be tried for the offence in respect of which the pardon was so tendered, or for any other offence of which he appears to have been guilty in connection with the same matter. (The underlining is mine).

6. The certificate of the Public Prosecutor is a condition precedent for an action under Section 339(1). Reference may be made in this connection to Emporor v. Maria Basappa A.I.R. 1925 Bom. 135, Ali v. King Emperor A.I.R. 1925 Lah. 15, Fatta v. Emperor A.I.R. 1947 All. 71 and State of M.P. v. Dalchand : AIR 1960 MP63 . I am in respectful agreement with this view on the plain language of the Section and hold that the learned Additional Sessions Judge was in error when he ordered the prosecution of Jadulal without a certificate from the Public Prosecutor as contemplated by Section 339(1) Cr.P.C.

7. This revision application is, therefore, allowed and the order of the learned Additional Sessions Judge dated the 15th March, 1969, to extent it orders the prosecution of Jadulal is set aside.