

Chander Mohan and ors. Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Feb-03-1997

Reported in : 1997CriLJ1777; 1997(2)WLC642; 1997(1)WLN430

Judge : Rajendra Saxena, J.

Acts : Indian Penal Code (IPC) - Sections 34, 323, 341 and 447; Code of Criminal Procedure (CrPC) , 1974 - Sections 482

Appeal No. : Cri. Misc. No. 84 of 1997

Appellant : Chander Mohan and ors.

Respondent : State of Rajasthan

Advocate for Def. : S.M. Singhvi, Public Prosecutor

Advocate for Pet/Ap. : N.L. Joshi, Adv.

Disposition : Petition allowed

Judgement :

ORDER

Rajendra Saxena, J.

1. Notice was given to learned P.P. who has accepted the same.

2. Heard. Perused the relevant record. A perusal of certified copy of the order of the trial Court dt. 10-7-95 indicates that the police submitted the challan against the accused petitioners for the offences under Sections 447, 323 and & 341/ 34, IPC. On 4-9-95 the learned trial Magistrate took cognizance against the petitioner for the said offences. On 20-11-95 and 17-7-96 the Presiding Officer was on leave. On 26-11 -96 an application for dropping the proceedings against them was filed by the petitioners in view of the directions-given by the Apex Court in Common Cause,' A Registered Society v. Union of India, 1996 Cri LR (SC) 430 : (1996 Cri. LJ 2380). On that day, the learned, A.P.P. and counsel for the, complainant prayed for short adjournment for filing the reply. On the next date a reply was filed. On 16-1 -97 the learned trial Magistrate after hearing the parties by impugned order judgment rejected the said application filed by the petitioners on the sole ground that some of the accused persons were not present on 20-11-95, 17-7-96 & 20-11-96. The petitioners have, therefore, filed this petition under Section 482, Cr.P.C. and prayed that the impugned order be quashed and proceedings against them be dropped.

3. The learned PP has opposed this petition and contended that in this case the trial could not proceed as some of the accused petitioners were not present in the Court.

4. It is true that on 4-9-95, 20-11-95, 17-7-96 and 26-11 -96 some of the accused petitioners were not personally present in the Court but on all these dates applications on their behalf were filed for dispensing with their attendance and those applications were allowed and their personal attendance were dispensed with. In such circumstances, it cannot be held that the trial in this case could not proceed due to the fault of the accused petitioner. On the other hand, the learned Presiding Officer was on leave on 20-11-95 and 17-7-96. Therefore, this was not at all a valid ground for rejecting the application filed by the accused petitioner.

5. Offence under Section 323, IPC is punishable with imprisonment for one year whereas offences under Section 447 and 341, IPC can fetch maximum imprisonment for three months and one month respectively.

6. In the instant case, the cognizance was taken on 4-9-95 and even after lapse of a period of more than one year, the plea of the accused' petitioners was not recorded. Thus the present case squarely falls within the contingencies enumerated in para 2(e) of the directions given by the Apex Court in 'Common Cause,' case (1996 Cri LJ 2380) (cited supra) wherein it has been laid down that where the cases pending in criminal Courts Binder IPC or any other, law for the time being in force are punishable with imprisonment upto one year, with or without fine, and if such pendency is for more than one year and if in such cases trials have still not commenced, the criminal Court shall discharge or acquit the accused, as the case may be, and close such cases.

7. In the case on hand the trial could not proceed as the Presiding Officer was on leave on more than one dates fixed in the case. Hence in my considered opinion the trial Magistrate has not correctly interpreted the directions given by the Apex Court and has committed an error in rejecting their applications and in ignoring the directions given by the Apex Court. The impugned order, therefore, is tantamount to abuse of the process of the Court and in the interest of justice, it is a fit case wherein this Court should invoke its inherent power under Section 482, Cr.P.C. and quash the impugned order.

8. The net result of the above discussion is that this petition is allowed, the impugned order dt. 16 -1 -93 is set aside and the accused petitioners (1) Chandra Mohan (2) Jitender, (3) Rajesh & (4) Surinder are hereby discharged of the offences under Sections 447, 323 and 341 read with 34, IPC and trial against them pending before the trial Magistrate is hereby dropped.