

Balbeer Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Jul-04-1989

Reported in : 1990WLN(UC)433

Judge : G.K. Sharma, J.

Appeal No. : S.B. Cr. Misc. Petition No. 466 of 1989

Appellant : Balbeer

Respondent : State of Rajasthan

Disposition : Petition allowed

Judgement :

G.K. Sharma, J.

1. This petition Under Section 482, Cr. PC is preferred against the order of Judicial Magistrate, Kotputli, dated 6th January, 1989, by which, he rejected the application of the accused-petitioner.

2. A challan against the petitioner was submitted in the court of Judicial Magistrate Kotputli, Under Section 411, IPC. The prosecution examined 6 witnesses and closed its evidence. The case was fixed for defence-evidence. At that stage, the accused on 22nd December, 1988 moved an application that the stolen ornaments alleged to be of silver, were not of silver but were made of gild, and in order to

prove this fact, he wanted to examine witnesses who were experts in the test of this material. For this purpose, the accused requested the Court to call for the ornaments and keep them in the court, so that, the witnesses of the defence might be able to identify the material of the said ornaments. Reading the impugned order, it seems that the ornaments were recovered by the police, but they were not deposited in the court. It is very strange that the stolen ornaments were recovered by the police during investigation, but, at the time of filing of challan, they were not deposited in the court. It means that the recovered articles are still with the police. This is a wrong procedure. The court should have insisted to produce the ornaments along with the challan in the court. After filing of challan, keeping the ornaments with the police is not the correct procedure, and it creates doubt in the mind of the accused, as there are possibilities of their being changed in the police. So, the court should have insisted to produce the ornaments along with the challan-papers. In the order, it has been mentioned that the question of identification of the ornaments was not involved at that stage. I think, the learned Magistrate has not been able to understand the cases properly. There is no question of identification of this matter is that according to the complainant, the ornaments were made of silver. Silver ornaments were stolen away by somebody and sold to the accused person, from whose possession they were recovered by the police. The accused is challenging this fact that the ornaments which were recovered from his possession, are not made of silver but they are of gold. This is the point for proving his innocence. If the accused satisfies the court and the court agrees that the ornaments recovered from his possession, are not made of silver, then, the position would be different. If this contention is not acceptable to the court, then also the position would be a different one. So, in the interest of justice, the accused should have been granted time to prove his innocence, as this is one of the ways of proving one's own innocence. Even looking to the matter from another angle, there is no harm if the accused is permitted to examine some goldsmiths or experts to the effect that the material of the ornaments was not silver. If after the examination of the witnesses on behalf of the defence, the prosecution wants to rebut that evidence, it can move an application to the Magistrate for granting them an opportunity to examine another expert with regard to the material of the ornaments. So, under these circumstances, the order of the

learned Magistrate dated 6th January, 1987, is not a correct order. In the interest of justice, the accused should have been granted time to examine witnesses with regard to the material of the ornaments.

3. The petition is, therefore, accepted. The impugned order dated 6th January, 1987, passed by the learned Magistrate, is set aside; and it is hereby directed that the accused-petitioner be permitted to examine Matadeen and Ramavtar and they would be produced by the accused in the court. The court will keep the ornaments ready in the court at the time of their examination; and I expect that the court would keep the said ornaments in its custody also afterwards.

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