

Sumrathya Vs. the State of Rajasthan

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Court : Rajasthan

Decided On : Sep-09-1981

Reported in : 1981WLN248

Judge : G.M. Lodha, J.

Appeal No. : S.B. Criminal Misc. Bail Application No. 859/81

Appellant : Sumrathya

Respondent : The State of Rajasthan

Disposition : Application dismissed

Judgement :

G.M. Lodha, J.

1. Sumrathya has filed this application under Section 438 Cr. P.C. for issue of directions to the Station House Officer, Police Station Rajgarh District Alwar, to release the accused-petitioner on bail if apprehended, under Section 438, Cr. P.C. in FIR 53/81, and Criminal Complaint No 893/81 pending in the Court of Special Magistrate, Alwar for the offences under Sections 423, 436, and 504 IPC.

2. The petitioner has also prayed that the Special Magistrate, Alwar to directed to convert non-bailable warrants into bailable warrants issued in this case. According to Mst. Nangi, widow of Ramphool, while she was preparing her meal, applicant

Sumarthya came there and abused her like anything. Applicant caught hold of her, grappled with her and then set fire to her Chapper, as a result of which, the said Chapper and goods were burnt.

3. The police after investigation, found the story to be false and submitted a final report. Mst. Nangi then lodged a criminal complaint in the Court of Special Magistrate, who has registered the case against the applicant under Section 436, Section 504 and Section 323, IPC and issued non-bailable warrants. The Magistrate has refused to accept the final report of the police.

4. Shri R.N. Sharma, the learned Counsel for the applicant, submitted that though investigation of the police has revealed, that the case against the applicant was concocted one and in any case, offence of Section 436, IPC was totally false. The Police found on the spot that no goods were burnt, nor the Chhappar was burnt and the story of setting fire to the goods and burning the Chhappar completely, stands amended by the site inspection note.

5. The learned Public Prosecutor and Shri A.S. Chaturvedi the learned Counsel for the complainant have opposed the bail application. Mr. Chaturvedi's contention is that it is only in case, the police did not act impartially and came under the influence of the applicant, that the Magistrate has taken cognizance of the case and rejected the final report.

6. The applicant and the complainant are the near relatives and Mr. Chaturvedi's argument is that the applicant wants to grapple the property of the complainant.

7. I have carefully considered the above submissions of the learned Counsel for the parties, and have also gone through the record of the lower court. The applicant-accused is elder brother of the husband of the complainant. The complainant is a widow. It is difficult to appreciate that a helpless widow would concoct such a false case against her husband's brother and there would be such a voluminous smoke without the slightest fire. The mere fact that the police has given final report, is not enough to reject the prosecution case as the legislature has not given the 'veto' power to the police but the Magistrate under the provisions of the Code of Criminal Procedure is competent to reject the final report and take

cognizance. This is precisely what has been done in this case.

8. Neither this Court, nor the Magistracy is subservient to the police nor they can be compelled to mortgage their judicial authority to the police.

9. It would be prejudicial to the parties if any expression is made about the merits of the case, at this stage. All that can be said, is that on an over-all consideration of facts and circumstances I am convinced that the extra ordinary powers of granting 'bail before jail' should not be allowed to be invoked in this case.

10. The result is, that this application filed under Section 438, Cr.PC. is dismissed. It is made clear that it would be open to the applicant to move application under Section 439, Cr. P.C., before the Magistrate concerned, who would decide it according to law.

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