

Ramavatar Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Aug-26-1987

Reported in : 1988WLN(UC)207

Judge : Vinod Shanker Dave, J.

Appeal No. : S.B. Criminal Misc. Petition No. 587 of 1987

Appellant : Ramavatar

Respondent : State of Rajasthan

Judgement :

V.S. Dave, J.

1. I have gone through the order passed by the learned Additional Chief Judicial Magistrate, No. 1, Alwar, by which he has directed the witnesses to be summoned by his order dated 25-7-1986 in a case which is pending since year 1978. The order does not disclose as to the witnesses were to be examined, for what particular purpose and why it was in the interest of justice to resummon at such a belated stage, when the prosecution evidence was over 5 years before. Change of the Judicial Officer does not mean change of opinion and if the opinion has to be revised, then specific reasons must be disclosed for such change. It is borne out from the order of the learned Magistrate himself that although three witnesses were present in court four years prior to date of passing of this order, yet they had

been given up by prosecutor. A properly drafted application should have been filed explaining why the witnesses were first dropped and opinion is being changed. This court has time and again laid down the principles within which the application under Section 311 Cr.PC should be dealt with and it is expected of the learned Additional Chief Judicial Magistrate to go through them and decide the application assigning full and complete reasons for recalling the witnesses after a long lapse of time clearly showing their relevancy, witnesses can not be resummoned only for filling up the lacunas of the prosecution there must be sound and cogent reasons for doing so. The order dated 25th July, 1986 is set aside and the, learned Additional Chief Judicial Magistrate is directed to decide the application afresh in accordance with the principles laid down.

2. With the above observations, the application is disposed of.

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