

Jalam Chand Vs. State

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Court : Rajasthan

Decided On : Aug-25-1984

Reported in : 1984WLN(UC)398

Judge : Kanta Bhatnagar, J.

Appeal No. : S.B. Cr. Misc. No. 323 of 1984

Appellant : Jalam Chand

Respondent : State

Disposition : Petition allowed

Judgement :

Kanta Bhatnagar, J.

1. Admit. Issue notice. Mr. Udawat learned Public Prosecutor accepts notice on behalf of State of Rajasthan.

2. At the request of the learned Counsel for the parties application was finally heard today. The facts of the case need not be narrated in detail as the same find place in the impugned order dated August 9, 1984 passed by the learned Addl, Sessions Judge, Udaipur. The impugned order dated 8-8 1984 was passed on an application filed by the complainant with the request that cognizance against Jalam Chand may also be taken because during the course of investigation by the

police there was material against him Before framing the charge against the persons who had been committed to the court of Sessions to stand their trial for an offence u/s 307 read with Sections 149 and 148 IPC the learned Sessions Judge decided the application referred to above. The learned Judge was of the opinion but mere was material to proceed against Jalam Chand, Balveersmgh. Gurcharan Snggh and Shispalsingh for the aforesaid offence. This order has been challenged by the learned Counsel for the petitioner on the ground that the learned Sessions Judge has proceeded with the case as it was the court of a Maeisfate. The power under Section 319 Cr. PC. according to the learned Counsel could be exercised only when there was some material coming forth through any evidence recorded in the court during the course of enquiry or trial To substantiate his contention Mr. Mridul Jain placed reliance on the principle enunciated in the case of Sheoramsingh etc v. State of Rajasthan 1982 RLR 550. It WHS held in trial case that the term 'evidence' used in Section 319 means statements of witnesses recorded before court during inquiry or trial and does not include statements under Section 161, 164 or 202(2) and documents filed by the police.

3. The present case is fully covered by the order referred authority of the Division Bench of this Court. Mr. Udawant, learned Public Prosecutor does not dispute this position of law. In this view of the matter taking of cognizance by the learned Additional Sessions Judge against the four petitioners without recording any evidence in the court was an abuse of the court so as to justify interference by this Court in exercise of its inherent jurisdiction.

4. The petition under Section 482 Cr. PC is allowed and the impugned order taking cognizance against the petitioners is set aside. At the request of the learned Public Prosecutor it is made clear that this order need not be understood to mean that hands of the Court are tight for ever and it can not take cognizance against the petitioners even if there is material available in the evidence recorded during the course of trial in the court.