

Surendra Kumar Vs. the State of Rajasthan

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Court : Rajasthan

Decided On : Feb-27-1991

Reported in : 1991WLN(UC)95

Judge : B.R. Arora, J.

Appeal No. : S.B. Criminal Miscellaneous Petition No. 168 of 1990

Appellant : Surendra Kumar

Respondent : The State of Rajasthan

Disposition : Petition dismissed

Judgement :

B.R. Arora, J.

1. This miscellaneous petition is directed against the order dated March 1, 1990, passed by the Special Judge, C.B.I. cases, Jodhpur, by which the learned Special Judge dismissed the application under Sections 91 and 294 of the Code of Criminal Procedure filed by Shri Yaspal Bhatiya.

2. The petitioner and Yaspal Bhatiya are facing trial under Sections 420, 467, 471, 120B IPC and Section 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act, in the Court of the Special Judge, C.B.I, cases, Jodhpur, On January 8, 1990, two applications were moved by Yaspal Bhatiya before the

learned Special Judge, C.B.I. Cases, Jodhpur, under Sections 91 and 294 Cr.P.C. by the application under Section 91 Cr.P.C. Yaspal Bhatiya prayed that three documents, mentioned in that application, should be called from the prosecution as it is necessary for the disposal of the case. By another application, moved under Section 294 Cr.P.C. It was prayed by Yaspal Bhatiya that the prosecution may be asked to admit or deny the documents filed alongwith this application. The learned Public Prosecutor contested both the applications and the learned Special Judge, by his order dated March 1, 1990, rejected both the applications filed by Yaspal Bhatiya and directed the accused to admit or deny the documents produced by the prosecution under Section 173 Cr. PC.

3. Heard learned Counsel for the petitioner and the learned Public Prosecutor for C.B.I, and perused the record of the case.

4. The learned Special Judge dismissed the application under Section 91 Cr.P.C., filed by Yaspal Bhatiya, on the ground that the documents mentioned in the application are neither necessary nor has they any important bearing on the question of framing the charges. When according to the learned Special Judge, the documents in question were neither necessary nor have any important bearing on the framing of the charges then learned lower Court has not committed any illegality in rejecting the application filed by Yaspal Bhatiya under Section 91 of the Code of Criminal Procedure. The Court is required to consider the request of the accused for summoning the documents only if the documents have an important bearing on the question to see : Whether the charges against him are or are not groundless. If the documents have no important bearing on the question of framing the charges then any document, merely on the asking of the accused, cannot be summoned. If the accused wants to place reliance over any document then he can file the certified copy of the same and can requested the Court to summon the document even at the later stage. It may further be mentioned that the application under Section 91 Cr.P.C. was filed by Yaspal Bhatiya and not by the petitioner and Yaspal Bhatiya did not raise any grievance against the order rejecting his application. In this view of the matter, the learned lower Court has not committed any illegality in rejecting the application under Section 91 of the Code of Criminal Procedure filed by Yaspal Bhatiya.

5. Now, I take-up the question : whether the application under Section 294 Cr.P.C. filed by Yaspal Bhatiya, was rightly dismissed by the learned lower Court or not? The learned Special Judge dismissed the application under Section 294 Cr.P.C. filed by Yaspal Bhatiya, only on the ground that the documents filed by Yaspal Bhatiya are neither original nor the certified copies of the originals. They are merely the photostat copies which are not admissible in evidence. The learned Special Judge, therefore, opined that the accused can obtain the certified copies of the original documents and can file the same in the Court and thereafter he can move an application for summoning the original documents and can put-up those documents to the witnesses in their cross-examination. Unless and until the original documents or the certified copies thereof are filed, the prosecution cannot be asked to admit or deny the documents as these documents are not admissible in evidence. In rejecting this application, also, the learned Special Judge has not committed any illegality. When the documents themselves are not admissible in evidence, as neither they are certified copies nor the original documents, then the prosecution cannot be asked to admit or deny the documents. The order passed by the learned lower Court, rejecting the application under Section 294 Cr.P.C. also, does not require any interference. It may further be mentioned that the application under Section 294 Cr.P.C. was filed by Yaspal Bhatiya and not by the petitioner and Yaspal Bhatiya did not raise any grievance against the order rejecting his application. In this view of the matter, the order passed by the learned lower Court, rejecting the application under Section 294 Cr.P.C. filed by Yaspal Bhatiya, also, does not require any interference. Though the learned lower Court, by his order dated March 1, 1990, rejected both the applications filed by Yaspal Bhatiya under Sections 91 and 294 Cr.P.C. but he, also, ordered that the accused should be called to admit or deny the genuineness of the documents produced by the prosecution under Section 173 Cr.P.C. While rejecting the applications filed by accused Yaspal Bhatiya the learned lower Court should have limited its order only to the decision on the two applications filed by Yaspal Bhatiya and should not have passed the order asking the accused to admit or deny the genuineness of the documents. That part of the order was wholly uncalled-for while deciding the applications filed by Yaspal Bhatiya.

6. In this view of the matter, the miscellaneous petition, filled by the petitioner, has got no force and is hereby dismissed.

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