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Prabhatilal Vs. State

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Court : Rajasthan

Decided On : Feb-24-1992

Reported in : 1992WLN(UC)331

Judge : N.L. Tibrewal, J.

Appeal No. : S.B. Cr. Misc. Bail Appl. No. 82 of 1992

Appellant : Prabhatilal

Respondent : State

Judgement :

N.L. Tibrewal, J.

1. The present case depicts not only a sorry state of affairs in the investigation which has been carried in a casual and perfunctory manner, but also leaves serious doubts in its fairness and impartiality.

2. For an incident which took place on November 9, 1991, two cross reports were made at police station Bandikui. From the side of the complainant, the report was lodged by one Kallash Chand Mali and crime No. 352/91 was registered under Section 147, 149, 448, 307 and 323 I.P.C. On the report lodged from the said of the accused party, crime No. 353/91 was registered against the members of the complainant party for the offences under Sections 147, 148, 149, 452 and 323

I.P.C.

3. From the side of the complainant party, one Ram Narain had sustained five injuries, including a lacerate wound on the parietal region. This injury proved to be fatal which resulted in his death on November 10, 1991. Other injuries sustained by Ram Narain were not of serious nature. Some other persons of the complainant party had also sustained simple injuries. Similarly, from the side of the accused party as many as seven persons had sustained several injuries, but simple in nature.

4. Just after registration of the case, the Investigating Officer recorded the statements of the eye witnesses on 9.11.1991 itself. In those statements, it was given out that it was coaccused Prabhu, who had caused the fatal head injury to the deceased-Ram Narain.

5. It appears that subsequently, the investigation was changed and statements of the witnesses, including the eye witnesses are alleged to have been again recorded. In the subsequent statements, the prosecution case has been changed and the name of the petitioner has been substituted to be the author of the fatal injury of the deceased in place of co-accused Prabhu.

6. The learned Session Judge, Dausa had also an occasion to examine this matter in connection with the bail application under Section 439 Cr.P.C. filed by the other co-accused persons. In the said order dated 6.12.1991 he observed as under:

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esa vfHk;qDrx.k izHkqn;ky dk dsl ,slk ugha gSa ftlesa mls tekur ij NksM+k tkos ijUrq 'ks'k vfHk;qDrx.k dk dsl ,slk gS fd mUgsa tekur ij NksM+k tkuk pkfg;sA

7. The learned Counsel for the petitioner has vehemently argued that the name of the petitioner was substituted subsequently as an author of the fatal injury of the deceased with an oblique motive. According to the learned Counsel, investigation in a criminal case, especially in a serious case like murder, is of vital importance and the fate of the trial, as well as of the accused person, mainly depends on such investigation. The learned Counsel argued that a fair and impartial investigation is the backbone and foundation of every criminal case on which the entire pyramid of the case stands, and if such investigation is found to be tainted, partial or otherwise motivated, then it heavily recoils on the entire prosecution case and this ground is sufficient to throw away the entire case. The learned Counsel argued that this fact alone is sufficient to grant pre-arrest bail under Section 438 Cr.P.C. to the petitioner, though the case was registered under Section 302 I.P.C.

8. I have seen the entire police case diary which has been produced by the learned Public Prosecutor in the light of the above submissions made by the learned Counsel for the petitioner. After going through it, I find that the submissions of the learned Counsel have force. I am shocked to notice the manner in which the investigation has been made and the case diary has been maintained by the Investigating Agency. The investigation in a criminal case is the most important and vital aspect. The investigation is the foundation and basis on which the entire pyramid of a criminal case stands. Hence, it must not only be proper and objective, but. it should also be fair and impartial. This Court has come across in several cases that the investigation in a criminal case is made by the concerned officer in a most casual and perfunctory manner. The present case is an example of this fact.

9. If the investigation is not fair and impartial, it seriously affects the ultimate result in the trial and may cause miscarriage of justice. People may lose faith and confidence in police investigation if the guilty police officers are not taken to task and left free inspite of the fact that they have mis-used their powers which may cause the acquittal of the guilty persons and conviction of the innocent persons.

10. From the case diary, it is evident that as per the statement of the prosecution witnesses recorded by the I.O. on 9.11.1991 it was co-accused-Prabhu, who was attributed fatal head injury of the deceased, but subsequently, the statements of those very witnesses have been again recorded in which the name of the petitioner has been substituted in place of co-accused-Prabhu as the author of the fatal injury of the deceased.

11. From the material on the record, one thing is clear that either of the two investigating officers was dishonest in discharging his duties. It cannot be a case of lapse of memory. However, it is a matter of enquiry to be conducted by the higher police authority.

12. If such a state-of-affairs is permitted in the investigation, then the result would be that the guilty persons might be acquitted and the innocent persons are convicted. This is a serious matter and should not be lightly brushed aside, otherwise the people will lose faith and confidence in the investigating agency which is an important limb in the dispensation of justice in criminal cases.

13. This case should be an eye opener for the higher police authorities and it is their duty to see that erring police officers is dealt with properly.

14. In the background of the above facts this Court has been left with no option, but to grant pre-arrest bail under section-438 Cr.P.C. to the petitioner.

15. The SHO/Arresting Officer, Investigating Officer, Police Station Bandikui in F.I.R. No. 352/91 is, therefore, directed that in the event of arrest of petitioner-Prabhu Lai S/o Ramdhan he be released on bail, provided he furnishes a personal bond in the sum of Rs. 10,000/- (Rs. ten thousand only) with two sureties in the sum of Rs. 5,000/- (Rs. five thousand only) each to his satisfaction on the following conditions:

(a) that the petitioner shall make himself available for interrogation by a police officer as and when required;

(b) that the petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, so as to dissuade him

from disclosing such facts to the court, or to any other police officer; and

(c) that the petitioner shall not leave India without the previous permission of the court.

16. A copy of this order be sent to the concerned Supdt. of Police and the Director General of Police for taking proper action against the erring police officer.

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