

Amar Singh Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Dec-13-1989

Reported in : 1989WLN(UC)424

Judge : K.S. Lodha, J.

Appeal No. : S.B. Cr. Misc. Petition No. 92 of 1989

Appellant : Amar Singh

Respondent : State of Rajasthan

Disposition : Petition allowed

Judgement :

K.S. Lodha, J.

1. One Hurji lodged a complaint before the SHO Police Station, Bichhwada that Smt. Kanku wife Natha had a son Vaja How ever Smt. Kanku left the house of Natha and came to live with the father of complainant Daula as his second wife. After the death of his father, she continued to live with the complainant. On 16-9-1982, Smt. Kanku was seriously ill and was not in her senses. On 25-9-1982, while she was still not in her senses, Vaja took her to his house and on 26-9-1982 in the morning, he called the two petitioners Amarsingh. Tehsildar cum Sub-Registrar, Chhotisadri and Om Prakash, who was working as a clerk and got a Will

registered purporting to have been executed by Smt. Kanku. Smt. Kanku died on the same day The Will is said to have been attested by Natha, Bana and Leela and the case of the complainant is to the Will was got attested by him on pretext that a Panchnama of the deceased was prepared. Thus, according to him, the two petitioners were party to the forgery of the Will. On this the police made investigations and, ultimately, filed a final report to effect that none of witnesses produced by the complainant has either supported his case or has stated that Smt. Kanku was unconscious and she had willed away her property in favour of son while she was in complete senses. However, the learned Additional Munsif and Judicial Magistrate, Doongarpur did not accept this final report and took cognizance of the offence under Section 420, IPC against the present petitioners. Aggrieved of this, the petitioners went up in revision before the learned Sessions Judge, Doongarpur, but he declined to interfere. Hence, they have approached this court by way of an application under Section 482, Cr.P.C.

2. I have heard learned Counsel for the petitioners, learned Public Prosecutor and the learned Counsel for the complainant. A perusal of the record goes to show that the learned Additional Munsif and Judicial Magistrate appears to have been led away from the fact that Smt. Kanku died on the same day when the Will is said to have been got registered in the morning of that day and that according to him raised a grave suspicion about the will being a forged one. The view taken by the learned Magistrate appears to be perverse. Merely because the executant of the will died on the same day in the forenoon while the Will had been got executed by him/her in the morning cannot necessarily give rise to the conclusion that the Will was forged one specially when the witnesses examined by the police clearly state that she was in her complete senses when she executed the Will and wanted to give her property to her son Vaja and not to the son of her second husband, i.e. the complainant. Not only this, the Will is said to have been attested by the three witnesses and so far as this attestation is concerned the case of complainant was that they were made to attest the Will on the understanding that the Panchnama about the death of Smt. Kanku was being prepared. The explanation appears to be preposterous on the very fact of it because when Smt. Kanku died in the afternoon there was no question of panchnama being prepared in the morning when the will is said to have been executed. It is not the case of the any witnesses that

any pOlice official was present at the time of the death. In these circumstances I am of the opinion that there is absolutely no material on the record to justify the cognizance of the offence been taken against these petitioners. The orders of the two courts below are, therefore set aside and the proceedings are quashed.

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