

Champa Vs. State of Raj.

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Court : Rajasthan

Decided On : Feb-06-1991

Reported in : 1991(1)WLC116; 1991WLN(UC)544

Judge : N.L. Tibrewal, J.

Appeal No. : S.B. Cr. Misc. Petition No. 979 of 1990

Appellant : Champa

Respondent : State of Raj.

Disposition : Petition allowed

Judgement :

N.L. Tibrewal, J.

1. Being aggrieved against the order framing charges under Section 379-411 IPC, the petitioner Champa has filed this petition under Section 482 Cr.P.C. to quash the said charges and further proceedings in criminal case No. 368/87 pending in the Court of learned Munsif and Judicial Magistrate, Aklera.

2. The case was registered on the report of one Rati Ram which was lodged at P.S. Javar (Camp Mela Harnavda). The prosecution case, as per the report, is that a theft of his two Oxen was committed eight months ago. One Ox, lateron, was recovered from one Kajod Meena and for the second Ox, he was searching. It is

further alleged that the informant had come to cattle fair at Harnavda in search of his second Ox and the same was found in the possession of the co-accused Devi Ram.

3. On the aforesaid information police arrested Devi Ram and recovered the Ox from his possession. The prosecution case is that the co-accused Devi Ram intimate the police during the investigation that he had purchased the Ox from Champa-petitioner, sheet against the co-accused Devi Ram and the petitioner Champa. The learned Munsif and Judicial Magistrate vide impugned order framed charges against the petitioner under Sections 379-411 IPC.

4. The learned Counsel for the petitioner argued that there is not iota of evidence to connect the petitioner with the crime. He further submits that there is no evidence that the co-accused Devi Ram informed the police that he had purchased the Ox, in question from the petitioner. He further submits that otherwise also the statement of a co-accused before a police is inadmissible, and a confessional statement of a co-accused implicating other persons is no evidence against other persons. He further submitted that under Section 30 of the Evidence Act, a confession made by a co accused affecting himself and some other person, is no evidence against the other person but it can also be taken into consideration in order to seek assurance, if there is other evidence to connect the accused with the crime. According to the learned Counsel for the petitioner, there is no evidence in the instant case that the co-accused Devi Ram made any such confession before the police and further the petitioner was also implicated in the said confession.

5. After going through the entire material on record, I am satisfied that there is no evidence to connect the accused with the crime and the charges framed against the petitioner cannot be sustained. There is no evidence on the record that the co accused Devi Ram had made any confessional statement implicating himself as well as the petitioner to the effect that he had purchased the said Ox from him. Further, the evidence of a co accused is no evidence in a legal sence.

6. Taking into consideration the entire material on, record, I am of the view that it is a fit case in which powers under Section 482 Cr.P.C. should be invoked and the

charges framed against the petitioner should be quashed.

7. Consequently, I allow this petition and quash the order dated 27.6.90 passed by learned Munsif and Judicial Magistrate Aklera, in criminal case No. 368/87 and I also quash the charges framed against the petitioner.

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