

Bheru Singh Vs. State of Rajasthan and ors.

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Court : Rajasthan

Decided On : Jun-02-2006

Reported in : 2006CriLJ4344

Judge : Gopal Krishan Vyas, J.

Appellant : Bheru Singh

Respondent : State of Rajasthan and ors.

Disposition : Petition dismissed

Judgement :

ORDER

Gopal Krishan Vyas, J.

1. This is a petition Under Section 482, Cr.P.C. by the author of FIR No. 216/98, P.S., Jaitaran. Bheru Singh, present petitioner, lodged the said FIR with the allegation that he was going along with his younger brother Bahir Singh to deposit the fee of their sister at the school; but, on the way, non-petitioners No. 2 and 3 halted them and assaulted inflicting injuries, On the basis of the allegations in the FIR, the police registered case Under Sections 341 and 323/24, I.P.C. for investigation. Non-petitioner No. 3 also filed an FIR being FIR No. 220/98, P.S., Jaitaran whereupon case Under Sections 341 and 323/24, I.P.C. was registered for investigation against the present petitioner and others. In both the aforesaid

FIRs, viz., FIR No. 216/98 and FIR No. 220/98, the police filed challan, however, in FIR No. 220/98, P.S., Jaitaran, filed by the non-petitioner against the present petitioner and others, the police filed challan for offences Under Sections 341, 323 and 307, I.P.C. Thus, in FIR No. 216/98, the challan was filed in the Court of Addl. Chief Judl. Magistrate, Jaitaran wherein, upon cognizance of offence having been taken, Criminal Case No. 212/98 was registered for trial and the accused non-petitioners are facing trial therein. Since challan was filed by the police for offences Under Sections 341, 323 and 307, I.P.C. in FIR No. 220/98, the case was committed to the Sessions Court and as such came to be tried by the Addl. Sessions Judge, Sojat (Camp Jaitaran) being Sessions Case No. 36/99.

2. In Criminal Case No. 212/98 (arising out of FIR No. 216/98, P.S. Jaitaran filed by the present petitioner), pending before the Addl. Chief Judicial Magistrate, Jaitaran, the petitioner moved application Under Section 323, Cr.P.C. stating that Criminal Case No. 212/98 pending in the Court of Addl. Chief Judicial Magistrate, Jaitaran and Sessions Case No. 36/99, pending in the Court of Addl. Sessions Judge, Sojat (Camp Jaitaran) are cross cases arising out of the same incident, therefore, Criminal Case No. 212/98 may be committed to the Sessions Court so that both the cases may be tried by the same Court viz., Addl. Sessions Judge, Sojat (Camp Jaitaran). The said application was rejected by the learned Addl. Chief Judicial Magistrate, Jaitaran vide the Impugned order dated 29.11.2000. The petitioner preferred a revision petition against order dated 29.11.2000 before the Addl. Sessions Judge, Sojat (Camp Jaitaran). However, the revisional Court found that the petitioner moved the application at a highly belated stage when the criminal case pending before the Addl. Chief Judicial Magistrate was already at a conclusive stage. The revisional Court also agreed with the trial Court that in both the cases neither the time of the incident coincided nor it appears that the incident is Identical having occurred at one place. Thus the revisional Court also dismissed the revision petition filed by the petitioner by order dated 21.11.2001. Hence the present petition Under Section 482, Cr.P.C.

3. In the instant petition, the petitioner has prayed that the impugned orders dated 29.11.2000 passed by the Addl. Chief Judicial Magistrate, Jaitaran and order dated 21.11.2001 passed by the revisional Court may be set aside and trial of both

the cases may be conducted by the same Court.

4. Learned Counsel for the petitioner vehemently argued that both the cases arise out of the same incident and it is settled legal proposition that if there is a cross-case also of a criminal trial, both the cases must be tried and decided by the same Court. It is contended that provision of Section 323 of the Code of Criminal Procedure is enacted for such contingency and it is the duty of the Court to commit the case to the Court where the trial of the cross case is being conducted.

5. Learned Counsel for the petitioner argued that both the Courts below gravely erred in law in rejecting the application of the petitioner and committed serious illegality. He contended that the prosecution witnesses in the present case have been cross-examined on the question of explanation of injury sustained by the accused of the present case in the counter case which also shows that the present case and the cross case pending In the Court of Addl. Sessions Judge, Sojat (Camp Jaitaran) arise out of the same incident. He also contended that the complainant for the present case is the accused of the sessions case and the trial of the cases by different Courts will result in serious prejudice to the petitioner (accused in the Sessions case) and will result in miscarriage of Justice.

6. Learned Counsel for the non-petitioners as well as learned Public Prosecutor vehemently argued that only to delay the final adjudication the present petition has been filed and, in both the cases, the trial is at a fag end. It is submitted that in Sessions Case No. 36/99, pending before the Addl. Sessions Judge, Sojat (Camp Jaitaran), all the prosecution witnesses have been examined, statements of accused-Bheru Singh, Deep Singh and Balvir Singh have been recorded and, in defence, four witnesses have been examined by the learned Addl. Sessions Judge and the case is listed for further evidence of the defence. Likewise, it is further submitted, in Criminal Case No. 212/98, pending before the Addl. Chief Judicial Magistrate, Jaitaran, statements of all the prosecution witnesses have been recorded as well as statements of accused-Khiv Singh and Vikram Singh Under Section 313, Cr.P.C. and five defence witnesses have also been examined. It is argued that both the cases are different in nature and involve different facts and circumstances.

7. I have considered the rival submissions and perused the impugned orders. I have also carefully scanned the record called from the Court below.

8. The language of Section 323 of the Code of Criminal Procedure runs as under:

323. Procedure when, after commencement of Inquiry or trial, Magistrate finds case should be committed.- If, in any inquiry into an offence or a trial before a Magistrate, it appears to him at any stage of the proceedings before signing Judgment that the case is one which ought to be tried by the Court of Session, he shall commit it to that Court under provisions hereinbefore contained and thereupon the provisions of Chapter XVIII shall apply to the commitment so made.

9. Thus, as per the language of the section, there must be Judicial satisfaction of the Magistrate concerned for committal of the case and that can be had upon consideration of the facts and circumstances of the case requiring such commitment of the case by the Magistrate. In the present case, while dealing with the application of the petitioner, the learned Magistrate has clearly observed that the facts of both the cases are different. It is also obvious that trial of both the cases is at conclusive stage and the petitioner's application is highly belated which only shows that the application has been filed to further delay the trial proceedings. It may be pointed out that Section 323 of the Code of Criminal Procedure, while empowering the Magistrate concerned to consider and decide upon the question of commitment of the case to the Court of Session, does not confer any right upon the complainant in this respect and, by virtue of the provision of the section, it is only the satisfaction of the Magistrate concerned upon which, at any stage of the case, the Magistrate can commit the case to the Court of Session.

10. A word may be said about the language of the section also. It is important to note that the Section significantly presupposes and inheres a condition that, 'it appears to him at any stage of the proceedings before signing judgment that the case is one which ought to be tried by the Court of Session' which only shows that the moment the Magistrate Judicially perceives that the case should be committed to the Court of Session the Magistrate loses jurisdiction to entertain and try the case. This is not the position in respect of the case on hand. The petitioner's plea,

at best, is for a tagged trial of both the cases and, therefore, the trial Court has rightly observed that the application is highly belated when the trial in the case is almost complete. However, so far as the said cross case pending before the Addl. Sessions Judge, Sojat (Camp Jaitaran) is concerned, both the Courts below have categorically found that neither the time of the incident alleged coincided nor the facts of the cases are identical and, therefore, it cannot be presumed that both the cases arise out of the same incident. I do not find any error in the impugned orders warranting interference.

Consequently, the petition is dismissed.

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