

Samsu Vs. the State of Rajasthan

Samsu Vs. the State of Rajasthan

SooperKanoon Citation : sooperkanoon.com/765173

Court : Rajasthan

Decided On : Mar-23-1994

Reported in : 1994(1)WLN610

Judge : B.R. Arora, J.

Appeal No. : S.B. Criminal Misc. Petition No. 174 of 1992

Appellant : Samsu

Respondent : The State of Rajasthan

Disposition : Petition dismissed

Judgement :

B.R. Arora, J.

1. The petitioner, by this miscellaneous petition, has challenged the order dated 31.7.90, passed by the Munsif and Judicial Magistrate, First Class, Bagidora (district Banswara), by which the cognizance against the petitioner was taken for the offences under Sections 363, 366, 376, 354 and 341 IPC and the learned Magistrate issued non-bailable warrant to secure the presence of the accused-petitioner.

2. The contention of the learned Counsel for the petitioner is that no case for the offences under-Section 363, 366 and 376 IPC is made-out and the learned

Magistrate committed an error in taking the cognizance against the petitioner for these offences when earlier the cognizance was taken against the petitioner only for the offences under Section 354 and 341 IPC. The learned Public Prosecutor, on the other hand, has supported the order taking the cognizance against the petitioner for the aforesaid offences.

3. I have considered the submissions made by the learned Counsel for the parties.

4. The cognizance is taken of a case and not of a particular offence. At the time of taking the cognizance, the court has only to see: Whether from the complaint, the evidence of the witnesses and the documents on record, any prima facie case to proceed-with against the accused is made-out. If there is a prima facie evidence to proceed-with against the accused then the Court can take cognizance. 'Prima facie evidence means, 'the evidence that is sufficient to establish a fact or to raise a presumption of the truth of fact unless controverted.' If the accused, against whom the cognizance has been taken, has any valid defence available to him then that can be decided by the trial court at the appropriate stage. The accused can agitate his grievances and raise objections before the learned Magistrate and the learned Magistrate will consider all those objections raised by the accused and if after considering the objections raised by the accused, the lower court is of the opinion that no case is made- out, then at the time of framing the charges he can discharge the accused, but the cognizance taken by the learned Magistrate cannot be interfered with or quashed by this Court in its inherent powers at this stage. The powers under Section 482 Cr. PC cannot be lightly used in quashing the order taking the cognizance and quashed the proceedings when a prima facie case has been made-out against the accused-petitioner.

5. After the admission of the miscellaneous petition, the trial court was directed to issue bailable warrant for securing the presence of the accused-petitioner and in pursuance to that the petitioner appeared and filed the bail-bonds and the personal bond. The order passed by the learned Magistrate issuing non- bailable warrant is, therefore, modified to the extent that the petitioner may be summoned by bailable warrant. The accused- petitioner has already appeared and submitted the bail-bonds and the personal bond, as such neither it is necessary to issue the

bailable warrant nor it is necessary for the petitioner to furnish the their bail- bonds and the personal bonds.

6. In this view of the matter, I do not find any merit in this miscellaneous petition and the same is hereby dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com