

Omkar and ors. Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Nov-13-1986

Reported in : 1987(2)WLN658

Judge : Inder Sen Israni, J.

Appeal No. : S.B. Criminal Revision No. 155 of 1986

Appellant : Omkar and ors.

Respondent : State of Rajasthan

Disposition : Petition allowed

Judgement :

Inder Sen Israni, J.

1. This is a criminal revision petition filed by Omkar and others under Section 397/401 Cr. PC against the judgment dated 20-3-1986 passed by the learned Additional Sessions Judge, Dausa, camp at Jaipur in Cr. Revision Petition No. 13/85, whereby he accepted the revision petition of the non-petitioner and reversed the judgment and order dated 11th November, 1982 passed by the Munsif and Judicial Magistrate, Sambher in Cr. case No. 81/82 (345/79), by which the learned Munsif had discharged the petitioners for offence alleged to have been committed under Sections 419, 420, 468 and 120B, IPC.

2. Brief facts giving rise to this revision petition are that complainant Mangu alias Ramjiwan s/o Dalu Ram Ahir, resident of Haripura filed a criminal complaint in the court of Munsif Magistrate, Sambher-Lake against 7 persons, including the petitioners, alleging that there is a land bearing khasra No. 323 measuring 2 bighas and 15 biswas and khasra No. 325 measuring bighas and 11 biswas, situate at Village Bagpura, which belonged to the complainant and the pass-book of the said land is also with him. It was alleged that all the accused petitioners conspired together on 23-9-1978 that the complainant had expired and that Mogha, Kalu Gangaram, and Ramlal are his legal representatives, therefore, the mutation entries he made in their names. It was also alleged that Srinath Das, Patwari Chandlal Sarpanch and Omkar also supported this false story. The complainant, therefore, suffered a loss of Rs. 15,000/-. It was alleged that due to this conspiracy the mutation entry was made on 21-11-1978. It was further alleged that he went to the Police Station on 21-7-1987, but no report was taken and therefore, the complaint was filed in the court. Learned Munsif and Judicial Magistrate forwarded the complaint for investigation to the police under Section 156(3) Cr. P.C. On receipt of this report, the police registered a case No. 76 and started investigation, it came to the conclusion that a case under Sections 420, 419 468 IPC was made out against the 4 accused petitioners, as such the challan regarding the above offence was filed against these petitioners.

3. On 27-11-1981, an application was submitted by the petitioners to the trial court under Section 239 Cr. PC for taking 3 documents on record. One document is the copy of an application submitted by Mogha S/o Narain to Tehsildar, Sambher; the second document was the certified copy of letter issued by the officer of Tehsildar and third was the certified copy of order dated 9-9-1981 passed by the court of S.D.O., Sambherlake. After hearing arguments regarding the charge, the learned Munsif and Judicial Magistrate, Sambherlake, vide his order dated 11-11-1982 came to the conclusion that on the basis of the material available on the record, no prima-facie case is made out against the accused petitioners and, therefore, all the accused petitioners were discharged.

4. Aggrieved by this order of discharge, the State of Rajasthan preferred a revision petition before the Sessions Judge, Jaipur City, Jaipur, which was transferred for

disposal to the Additional Sessions Judge, Dausa, Camp-Jaipur, who vide its judgment and order dated 20-3-1986 allowed the revision petition and set-aside the order dated 11-11-1982 passed by the learned trial court.

5. The contention of Mr. Narendra Jain; learned Counsel for the petitioners is that the learned Additional Sessions Judge has seriously erred in not considering the documents filed on behalf of the petitioners in the trial court, which were the certified copies and, therefore, it was necessary to have considered these documents before framing charge against the petitioners or discharging them. Learned Counsel has contended that even though in the impugned order, the learned Additional Sessions Judge has stated that he has considered the material available on record, but has not mentioned a single word regarding 3 documents, which are the certified copies and which go to the route of the matter, which were submitted in the trial court and were considered by the trial court, therefore, it is clear that the learned Additional Sessions Judge, has absolutely ignored these documents while reversing the order of discharge passed by the learned trial court. It has been further pointed out that the learned Additional Sessions Judge in the impugned order has clearly stated that the charge should be framed only on the basis of evidence recorded during investigation. It is also pointed out that the police during investigation has taken possession of the documents showing khasra Girdavaries from Smt. Years 2011 to 2030 and Jamabandies enteries from 2030 to 2033 and filed the same along with the challan, in the court. It is alleged that even these documents have not been considered by the learned Additional Sessions Judge, considered the entries only from Smt. Years 2038 to 2041. It is also pointed out that the Additional Sessions Judge has gone out of way to remark in the impugned order that Manghu is present in the court, therefore, how could it be said that Manghu is dead. It has been contended that this is a matter of investigation and the court has to reach this conclusion after recording evidence of both the sides whether he is the same Manghu or he is a person who is posing to be Manghu. It is therefore, submitted that such a sweeping observation made by the learned Additional Sessions Judge is bound to cause adverse effect on the case of the accused petitioners.

6. Learned Public Prosecutor, Mr. Suresh Chand Sharma on the other hand has urged that the learned Additional Sessions Judge has referred to such documents whom he thought fit and there is no reason to interfere with the impugned order.

7. In the case of *Centuary Spinning & Weaving . v. State of Maharashtra* : 1972 CriLJ329 their Lordships of the Supreme Court observed that it cannot be said that the court at the stage of framing the charge has not to apply its absolute mind for considering whether or not there is a ground for presuming the commission of offence by the accused. The order framing charge does substantially effect the persons's liberty and it cannot be said that the court must automatically frame the charge merely because the prosecuting authorities by relying on the documents referred to in Section 173 considered it proper to institute the case. The responsibility of framing the charge is that of the court and it has to absolutely consider the question of doing so. Without fully advertng to the material on record it must not blindly adopt the decision of the prosecution'. It may be observed that the learned Additional Sessions Judge, is a senior and experienced Judge and cannot act merely as a mouth piece or post-office of the prosecution, but has to consider the broad probabilities of the case and the total effect of the evidence and the documents produced before the court. It is, therefore, in the interest of justice that the documents placed on the record by the accused petitioners as early as at the stage when the charge was to be framed by the trial court should have been considered by the learned Additional Sessions Judge also. It was also desirable that the learned Public Prosecutor should have been called upon to have admitted or denied the documents produced by the petitioners, the copies of which had also been given to the State. As per the order sheet dated 19-1-1982, it is of course for the learned Additional Sessions Judge, to rely or not to rely on the documents produced on behalf of the petitioners. If the documents are not admitted, the relevant provisions of the Evidence Act, shall be applicable regarding considering the documents at the time of framing the charge against the accused petitioners.

8. The result of the above discussion is that the revision petition is allowed and the order of learned Additional Sessions Judge, Dausa, camp at Jaipur, dated 20-3-1986 is set-aside and the matter is remanded to the learned Additional Sessions Judge with a direction to reconsider the same keeping in view all the documents

produced by the State under Section 173 Cr. Cr. PC as well as the documents filed by the petitioners in the trial court.

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