

Amer Vs. the State of Rajasthan

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Court : Rajasthan

Decided On : Dec-17-1997

Reported in : 1998(3)WLC710; 1998(1)WLN477

Judge : Amaresh ku. Singh, J.

Appeal No. : S.B. Criminal Misc. Petition No. 923 of 1997

Appellant : Amer

Respondent : The State of Rajasthan

Judgement :

Amaresh ku. Singh, J.

1. Heard the learned Counsel for the petitioner.

This petition under Section 482 Cr. P.C. is directed against the order dated 3.12.1997 passed by the learned Additional Civil Judge (Junior Division) and Judicial Magistrate No. 4. Jodhpur in criminal case No. 747 of 1992 whereby the learned Judicial Magistrate declined to grant permission to compound the offence punishable under Section 498A I.P.C. on the ground that the offence was not compoundable according to law. It is not disputed that the offence under Section 498A I.P.C. is not compoundable, therefore, no fault can be found with the order passed by the learned Judicial Magistrate. The learned Counsel for the petitioner

has submitted that the compromise has been effected between the parties and they have started living together at Bombay after compromise and the statement of the complainant (Smt. Chandra) has already been recorded by the learned Judicial Magistrate and in her statement she has not supported the allegations relating to offence under Section 498A I.P.C. and, therefore, the petitioner has approached this Court with a prayer that the proceedings pending before the learned lower Court should be quashed as the continuance there of would amount to abuse of the process of the Court.

2. I have carefully considered the arguments advanced by the learned Counsel for the petitioner. In my humble opinion, distinction must be drawn between the cases in which continuance of judicial proceedings may be described as abuse of the process of the Court and those cases in which continuance of judicial proceedings may be described as fruitless. The distinction between the two type of cases is this. Process of the Court may be said to have been abused if any false representation has been made before the Court so as to obtain a favourable order, by keeping the Court in dark or the proceedings are instituted with ulterior motives or the institution of proceedings is barred by some provision law or the continuance of the proceedings is in contravention of any provision of law or any other cause which shows that the continuance of the proceedings amount to abuse of the process of the Court. On the other hand the proceedings in cases in which the prospect of conviction are minimised on account of witnesses turning hostile or that the distraction of some of the evidence or the causing of any prejudice to the accused during trial but there is no violation of mandatory provisions of law as to the institution of the proceedings or to the continuance there of do not amount to abuse of the process of the Court. It is one thing to say that proceedings pending before a lower Court ought not to be continued because they ought not to have been instituted. It is quite other to say that the proceedings instituted in the lower Court are not likely to yield any fruit, because of the witnesses turning hostile or not supporting the prosecution case. In the first category of cases if this Courts convinced that their proceedings pending in the lower Court ought not to have been instituted or that there continuance is contrary to any provision of law, the proper course would be to quash the proceedings under Section 482 Cr., on the ground that continuance of such proceedings

amounts to abuse of the process of the Court. In the later category of cases I am, afraid the quashing of the proceedings cannot be said to be the proper remedy because once it is held that proceedings were validly instituted and that they are being continue in accordance with law, it cannot be said that the institution and continuance of the proceedings amount to abuse of the process of the Court. Regarding cases which are validly instituted in criminal Courts and in which charge has been framed against the accused person the general rule is that the criminal Court should continue the proceeding and after concluding the trial pass the order of acquittal or of conviction as the case may be. In several cases the witnesses turn hostile or they are not available when process is issued against them to enforce the attendance and in all these cases prosecution can produce other witness or rely upon circumstantial evidence for the purpose of proving its case. In any case where the proceedings are validly instituted and their continuance is not in contravention of any provision of law, the normal rule that trial should be conducted and after conducting the trial judgment of acquittal or conviction should be passed Merely because the parties have compounded a case which is not compoundable in accordance and that they have not supported the prosecution version or that they are not inclined to persue the prosecution or support the prosecution does, not appear to be sufficient ground for quashing the proceedings. Even if such a course were permissible this course should be adopted in the rarest of the rare case.

3. In this case Smt. Chandra who is most important prosecution witness has already been examined. According to the learned Counsel for the petitioner only two prosecution witnesses remain to be examined. The petitioner is said to be sick and is staying at Bombay. The petitioner may apply for exempting his attendance under Section 205 Cr. P.C. on the ground of his illness. It is expected that the learned Judicial Magistrate shall pass suitable order if such an application is moved. It is prosecution to consider how many witnesses are to be examined. Since only two witnesses remain to be got examined, the case will not take long time for the disposal.

4. In the facts and circumstances of the case it is hereby ordered that if any application is submitted by the accused for exempting his attendance such

application shall be disposed of according to law without unnecessary delay. It is further directed that the trial of the case shall be concluded within a period of sixty days so that unnecessary harassment to the accused person is not caused.

5. The petition is disposed of accordingly. The prayer for quashing the proceedings is rejected. A copy of the order be sent to the learned Additional Civil Judge (Junior Division) and Judicial Magistrate No. 4, Jodhpur for information and necessary action.

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