

Ashok Nagar and ors. Vs. State of Rajasthan and anr.

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Court : Rajasthan

Decided On : May-08-2008

Reported in : RLW2008(3)Raj2350

Judge : G.S. Sarraf, J.

Appellant : Ashok Nagar and ors.

Respondent : State of Rajasthan and anr.

Disposition : Petition allowed

Judgement :

G.S. Sarraf, J.

1. The petitioner has filed this misc. petition under Section 482 Cr.P.C. against the order dated 7.8.2007 passed by Chief Judicial Magistrate, Jhunjhunu in criminal case No. 782/2002 whereby learned Magistrate, has held that there is no necessity of pre-charge evidence.

2. The facts as described in the petition are that the respondent No. 2 filed a complaint before Chief Judicial Magistrate, Jhunjhunu under Sections 498A and 406 IPC. The complaint was sent for investigation to Kotwali, Jhunjhunu under Section 156(3) Cr.P.C. After the usual investigation the police submitted a negative FR in the matter. The matter was referred to the police for re-

investigation. However, the police again submitted negative FR. The complainant then filed protest petition before Chief Judicial Magistrate, Jhunjhunu. On the said protest petition the statements were recorded under Sections 200 and 202 Cr.P.C. and on the basis these statements by order dated 18.9.2002 cognizance was taken against the petitioners of the offences under Sections 498A, 406 IPC. By order dated 26.10.2004 learned Chief Judicial Magistrate fixed the case for pre-charge evidence. However, on 7.8.2007 learned Chief Judicial Magistrate has passed the impugned order and has held that there is no necessity of pre-charge evidence.

3. Heard learned Counsel for the petitioners, learned public prosecutor and learned Counsel for the respondent No. 2.

4. Section 190 Cr.P.C. which deals with cognizance of offences by Magistrates ' reads as under:

(1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under Sub-section (2), may take cognizance of any offence-

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under Sub-section (1) of such offences as are within his competence to inquire into or try.

5. In the present case it is clear from the order of the Magistrate taking cognizance that he relied on the statements of the respondent No. 2 and her witnesses recorded under Sections 200 and 202 Cr.P.C. and on being satisfied that a prima-facie case was made out against the petitioners he issued process against them. Thus it is clear that the Magistrate took cognizance against the petitioners under

Section 190(1)(a) Cr.P.C.

6 The case is admittedly a warrant case instituted otherwise than on a police report. Sections 244 to 247 Cr.P.C. deal with trial of cases instituted otherwise than on a police report. A perusal of the aforesaid provisions makes it clear that in the trial of a warrant case instituted otherwise than on a police report, pre-charge evidence has to be taken. Accordingly, before framing the charge against the petitioners pre-charge evidence will have to be taken. The impugned order passed by the Magistrate is entirely whimsical and illegal and, therefore unsustainable. Consequently, this petition is allowed, the impugned order dated 7.8.2007 passed by Chief Judicial Magistrate, Jhunjhunu is set aside and it is directed that learned Chief Judicial Magistrate, Jhunjhunu shall follow the procedure prescribed for the trial of the warrant cases instituted otherwise than on a police report in the light of the observations made hereinabove. It is also directed that he shall make all efforts to conclude the trial at the earliest.

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