

Sunit Kumar Vs. the State of Rajasthan

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Court : Rajasthan

Decided On : Nov-18-1997

Reported in : 1998(1)WLC299; 1998(1)WLN546

Judge : Arun Madan, J.

Appeal No. : S.B. Criminal Revision Petition No. 418 of 1997

Appellant : Sunit Kumar

Respondent : The State of Rajasthan

Judgement :

Arun Madan, J.

1. During the course, learned Counsel for the petitioner has stated at the Bar that the learned trial court has committed obvious fallacy by passing the impugned order dated 13.1.1997 whereby it had declined the petitioner's request for calling the Roznamacha (Daily Diary Register) dated 5.5.1993 in case No. 51/93 registered with Jhotwara police in respect of an application moved by the petitioner with regard to the aforesaid under Section 340 Cr. P.C. The case of the petitioner in short is that he was falsely implicated by the prosecution for the offences under Section 3(1)(V), 3(1)(x) of S.C.S.T. Atrocities Act and Section 447 I.P.C. which was registered against the petitioner at the instance of complainant Ladu Ram. After a full dressed trial the petitioner was finally acquitted of the above charge by

the trial court vide its order dated 27.2.1996. No appeal was preferred by the State against the order of acquittal and hence it had attained its finality. Thereafter the petitioner being aggrieved by his false prosecution in view of the positive findings of acquittal recorded in his favour had moved an application before the trial court under Section 340 Cr. P.C. for taking necessary action in accordance with law against the complainant as well as the erring police officials at whose instance the petitioner had been so falsely implicated in the case.

2. Prima-facie, I am of the considered opinion that once an application had been moved by the complainant in the instant case, the procedure which is mandated by the legislature in accordance with the Section 340 Cr. P.C. for having launched false prosecution against the petitioner which had ended up in his acquittal should have been followed by the trial court, since the very purpose of the said provision would obviously stand violated if the court concerned declines the request of the complainant regarding summoning of the Roznamacha which if made available would prove to be of ready assistance to the trial court before finally arriving at the conclusion as to whether the trial against the accused had been initiated falsely resulting in recording of the findings of acquittal which have been recorded in the instant case. At the same time, I would like to observe that the accused obviously does not as a matter of right can insist for calling of Roznamacha or the case diary but at the same time the court should not forget its duty that the complainant in the instant case had only made a fair and reasonable request for calling the Roznamacha which would obviously be of great assistance to the court concerned and since in the instant case prejudice has obviously resulted to the petitioner by not summoning the Roznamacha which if made available would have given a fair chance of Inquiry by the court as to whether some infirmities had been committed by the Investigating Officer while recording the recording of statements of the witnesses summoned for investigation of the case. It is the case of the petitioner that the Investigating Officer had deposed before the trial court that he had himself arrested Mr. Sumit Kumar petitioner whereas Roznamacha gives out a different version altogether as stated in the petition. I am further of the view that trial court has proceeded on erroneous assumption that Roznamacha is a public document and hence that a party of court file of the original case and that no evidence from outside can be considered, whereas the legal position is otherwise and as has not

been appreciated by the trial court in its true prospective. The trial court has also over looked the provisions of Section 91 of the Code of Criminal Procedure which mandates that at any stage of the proceedings if the court considers necessary for the ends of justice, there is no bar or any embargo on the Powers of the court to summon or call any document including Roznamacha or case diary if the same is necessary to be summoned to secure the ends of justice. I am further of the view that the primary duty of the competent court that in order to secure ends of justice it should not be content with fishing or roving enquiry into the matter but should summon all the relevant record i.e. the Roznamcha which is a register maintained at police station recording daily events and the case Diary if the same is necessary to be summoned. Keeping in view the facts and circumstances of the case the Revision Petition is accordingly allowed and the impugned order dated 13.1.1993 passed by the Special Judge (SC/ST), Jaipur is quashed and set aside.

3. As a result, the trial court is directed to proceed with the matter expeditiously by finally deciding the case in accordance with law after giving the parties to the case a fair opportunity of being heard.

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