

Jitendra and ors. Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Dec-05-1986

Reported in : 1987WLN(UC)95

Judge : Vinod Shanker Dave, J.

Appeal No. : S.B. Cr. Misc. Petition No. 696 of 1986

Appellant : Jitendra and ors.

Respondent : State of Rajasthan

Disposition : Application dismissed

Judgement :

Vinod Shanker Dave, J.

1. The learned counsel for the petitioner has approached this court against the order dated 18-7-1986 where the learned Magistrate has taken cognizance for offence under Section 307, IPC. They have been permitted to be on bail since they have been granted bail by detailed order dated 24-5-1986. Learned counsel submits that change of opinion for offence under section 324, 307 IPC at the time of filing of the chargesheet is not based on any evidence and is based on the mere opinion of the Public Prosecutor which in turn is not based on medical evidence. It is always open to the accused to raise this issue at the time of framing of the

charge as the same is not mechanically framed. The apprehension of the learned Counsel is that his client may be taken into custody in case the Magistrate decides to commit the case. The apprehension is wholly mis-conceived. It is always expected from a Judicial Magistrate that when he passes an order of committal he has to use a sound judicial discretion whether the case is fit for committing in custody and the order is not mechanically drawn. The guidelines in which type of cases, the accused should be committed in custody are well defined and have been re-iterated in the latest decision of the Supreme Court in 1986 III SLVR (Cr.) 105 Raghuvver Singh v. State of Bihar.

2. It is open to the petitioner to challenge the order of discharge if he feels aggrieved. This order of rejection will not affect to the merits of the case. With the aforesaid observations the application under section 482, Cr.PC is dismissed.

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