

State of Rajasthan Vs. Narayan

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Court : Rajasthan

Decided On : Jul-28-1994

Reported in : 1994(3)WLC717; 1994(2)WLN420

Judge : N.C. Kochhar, J.

Appeal No. : S.B. Criminal Revision Petition No. 276 of 1993

Appellant : State of Rajasthan

Respondent : Narayan

Judgement :

N.C. Kochhar, J.

1. The respondent was arrested In case FIR No. 41/91 of Police Station Kishangarh District Ajmer on 4.3.1991 Under Section 3/7 of the Essential Commodities Act, 1955 (the Act). The challan was presented before the learned Special Judge appointed under the Act on 4.12.1991. Vide the impugned order dated 9.6.1993, the learned Sessions Judge, Ajmer (Special Judge under the Act) discharged the respondent on the ground that the challan has been filed after the expiry of period of six months from the date of arrest and in view of Sub-section (5) of section 167 of the Code of Criminal Procedure (the Code) no cognizance could be taken. Feeling aggrieved, the State has approached this court by filing this revision petition.

2. I have heard the learned Counsel for the parties and have also perused the impugned order.

3. Sub-section (5) of section 167 of the Code, on which reliance has been placed in the impugned order, reads as under:

167(5) If in any case triable by a magistrate as a summons case, the investigation is not concluded within a period of six months from the date on which the accused was arrested, the Magistrate shall make an order stopping further investigation into the offence unless the officer making the investigation satisfies the Magistrate that for special reasons and in the interest of justice the continuation of the investigation beyond the period of six months is necessary.

4. Bare reading of the abovesaid provision shows that It applies only when a case is triable by a Magistrate as a summons case. The learned Counsel for the respondent has submitted that since the court of Special Judge appointed under the Act is the court of first instance and has also the power to remand the accused, the learned Special Judge would be a Magistrate within the meaning of Sub-section (32) of section 3 of the General Clauses Act. I have gone through the said section. In my view, the said section would not govern a person having the power of the court of the first instance and with a power to remand if the officer is higher in rank than a Magistrate. Admittedly, the learned Magistrate has only the power to sentence a person upto the period of three years, whereas, the learned Special Judge has the power to sentence upto the maximum provided under the Act i.e. more than three years. The powers under the said Act were earlier given to the Chief Judicial Magistrate i.e. a person higher in rank than a Magistrate. Lateron, the Legislature thought it fit to confer those powers on the persons holding the offices higher than those of even the Chief Judicial Magistrate i.e. Additional Sessions Judges. By no stretch of imagination, it cannot be said that the learned Sessions Judge, Ajmer, who was exercising the powers of Special Judge under the Act, could be termed as a Magistrate within the meaning of sub- section (5) of section 167 of the Code.

5. For the abovesaid reasons, I am of the view that the learned Sessions Judge, Ajmer, while passing the impugned order dated 9.6.1993, failed to notice the

wordings of Sub-section (5) of section 167 of the Code and fell into error.

6. Consequently, I accept this revision petition, set aside the impugned order and remand the case to the learned trial court with a direction to dispose of it in accordance with law. The petition stands disposed of accordingly.

7. The record of the learned trial court, which has been summoned for hearing of this case, should be sent back immediately.

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