

Devi and anr. Vs. State of Rajasthan

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Court : Rajasthan

Decided On : May-17-1985

Reported in : 1986WLN(UC)53

Judge : Kishore Singh Lodha, J.

Appeal No. : S.B. Criminal Misc. Petition No. 98 of 1985

Appellant : Devi and anr.

Respondent : State of Rajasthan

Disposition : Application allowed

Judgement :

Kishore Singh Lodha, J.

1. This application Under Section 482 Cr.PC has been filed against the order of the learned Munsif Magistrate, Jodhpur dated 14-6-1983 by which he directed the counsel for the accused petitioners to produce to petitioners in the court on 1-7-1983 as the witnesses would identify them. Aggrieved of this order the petitioner filed a revision before the learned Sessions Judge but the same was rejected on 27-2-1985 as being not maintainable.

2. I have heard the learned Counsel for the parties and they are agreed that the matter my finally be disposed of at this stage.

3. It appears that a case Under Sections 334, 323 IPC is pending trial before she learned Magistrate against the accused petitioners and some other members of their family. Initially a report about the incident had been lodged to the police wherein the names of these two petitioners does not figure but later a complaint was filed alleging that the police being under the influence of the accused persons and their associates had not correctly recorded the FIR nor had made proper and independent investigations. On this complaint the learned Magistrate had taken cognizance against the accused persons including the petitioner and proceeded with the trial. Some of the eye witnesses of the incident have been examined. On 14-6-1983 when one witness Hanuwant Singh came in the witness box, he stated that he did not know the name of all the accused persons but could identify them if they were before him and on this statement of the witness was reserved and the order referred to above was passed.

4. It is contended by the learned Counsel for the petitioners that the two ladies of the family have wrongly been implicated in the complaint and the very purpose of calling them in the court was to harass them and to compel the other accused persons, the members of their family to withdraw the cross case, which they have instituted against the complainant Igyaram in connection with this very incident and in these circumstances the learned Magistrate did not exercise a proper discretion in directing appearance of the petitioners. It was contended that the witnesses belonged to the same village to which the accused petitioners belonged and they are very well known to each other but the insistence on the part of the prosecution witnesses for their appearance before the court in the circumstances of the case was only to disgrace and harass them. On the other hand, the learned Counsel for the complainant urged that earlier an application for the exemption of attendance of these accused persons had been filed and on 6-4-1977 they were granted exemption on the undertaking of the learned Counsel for the petitioners that if these petitioners were required to be present for the purposes of identification by the witnesses, they will be produced. Now in face of this undertaking the petitioners are not entitled to claim for further exemption from appearance. It was also contended by him that so far as the witnesses who had already named the petitioners, were examined the appearance of the accused petitioners was not insisted upon but when the witnesses who do not know the accused persons by

name and can only identify them if they are present in court, the learned Magistrate was perfectly within his jurisdiction to direct the learned Counsel to keep the petitioners present in court.

5. In rejoinder to these, the learned Counsel for the petitioners urged that the petitioners have already filed undertaking that their identity shall not be disputed at any stage and in view of this undertaking no useful purpose would be served by compelling their appearance before the court.

6. I have given my careful consideration to the rival contentions. It is true that ordinarily this court may not exercise its powers Under Section 482 Cr.PC in the matters of discretion exercised by the court below but where it finds that the court below has acted in a manner which may cause unnecessary harrassment to the party it must step it.

7. In the circumstances of the case, I am clearly of the opinion that the learned Magistrate failed to take into consideration the relevant considerations. As already stated above the matter had first been initiated by filing a report before the police in which the names of these accused petitioners did not figure and witnesses before the police did not name them. It was later that by way of a complaint, the names of these accused persons were brought before the court. The accused persons are ladies. The appearance of the ladies in the court is still looked down upon in the society. The part assigned to these accused persons in the complaint also is of such a nature that their appearance before the court does not appear to be essential specially when the learned Counsel for the accused petitioners had already undertaken by moving an application that the identity of these accused persons shall not be challenged at the stage. There are cross cases . The circumstances of the case, therefore, do not ruled out the possibility that the presence of these accused petitioners may be insisted upon for purposes other than mere identification. In these circumstances, I am clearly of the opinion that the learned Magistrate need not have directed the appearance of the accused petitioners for the purposes of identification by the witnesses when they had already undertaken not to challenge their identity at any stage.

8. I therefore, accept this application and modify the order of the learned Magistrate directing appearance of the petitioners. The accused petitioners need not appear before the court in person and shall be free to appear only through their counsel.

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