

State of Rajasthan Vs. Dev Kishan

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Court : Rajasthan

Decided On : May-15-1987

Reported in : 1987(2)WLN45

Judge : Kishore Singh Lodha, J.

Appeal No. : S.B. Cr. Misc. Application No. 14 of 1984

Appellant : State of Rajasthan

Respondent : Dev Kishan

Disposition : Application dismissed

Judgement :

Kishore Singh Lodha, J.

1. This is an application under Section 308, Cr. P.C. for according sanction for launching a criminal complaint for offence under Section 193, IPC against the non-petitioner Deokishan It is alleged that the police had filed challan for offences under 395, 307, 341, 342 and 120B, IPC against Bheru Singh, Ashok Singh and Nawab Khan in the Court of Munsif and Judicial Magistrate Bheem. The present non-petitioner Deo Kishan was a co-accused in the said case. However, he was made an approver under Section 306, Cr. P.C. and his statement under Section 164, Cr. P.C. was got recorded by the learned Chief Judicial Magistrate, Udaipur,

who gave pardon to accused Deo Kishan. Later the accused was committed to the Court of Additional Sessions Judge, Rajsamand, but when he was produced as a produced as a prosecution witness in that case, he resiled from his statement under Section 164, Cr. P.C. and also did not comply with the conditions under which pardon was granted to him It is alleged that Deokishan purposely gave false evidence before the learned Sessions Judge and concealed the (acts. It is further contended that he has, thus, not complied with the conditions under which the pardon had been granted to him. In these circumstances, it is prayed that it is a fit case where a complaint under Section 193, IPC should be filed, and for that purpose sanction of this court under Section 308, Cr. PC is essential.

2. I have heard learned Public Prosecutor and Mr. B.N. Calla, learned Counsel for the non-petitioner and have gone through the record. It, of course, appears that non-petitioner Deokishan has gone back upon his previous statement under Section 164, Cr. PC and denied the very knowledge of the facts which he had already stated in that statement. The learned Additional Sessions Judge disbelieved the statement of Deokishan, which he gave before him at the trial. He has, however, on the basis of other evidence on the record, found the accused Ashok Singh, Bheru Singh and Nawab Khan guilty of the offences under Section 395, IPC and has sentenced them to five years' rigorous imprisonment and a fine of Rs. 5000/- each, by his judgment dated December 22, 1986, an appeal against which is pending before this court. It further appears that after the statement of Deokishan had been recorded in that sessions case being No. 37/82, a challan for offences under Sections 395, 307, 341, 342 and 123B, etc. IPC was filed against Deokishan in respect of the same incident, out of which sessions case No. 37/82 arose, before the learned Munsif and Judicial Magistrate, Bheem, and the case has been committed to the court of the learned Additional Sessions Judge, Rajsamand, and charges for offences under Sections 120B, 395, and 342, IPC have been framed against Deokishan in sessions case No. 44/83. Some prosecution witnesses have also been examined in that case. In these circumstances, the question is whether sanction for filing complaint for offence under Section 193. IPC should be accorded or not. I am of the opinion that when the prosecution has already launched against the accused-non-petitioner Deokishan for the original offences in respect of which he had been tendered

pardon, it will not be in the interests of justice and expedient to further prosecute him for perjury. If the appellant is convicted of those offences or any of them, which cannot be said to be unlikely for any reason no useful purpose would be served by further prosecuting him under Section 193, Cr. PC. In the case of the conviction of the appellant in relation to the original offences, the sentence or sentences that may be awarded to the non-petitioner, would also not be too light. I am supported in this view by Local Govt. v. Bambhir Bhujua AIR 1927 Nag. 182 and State v. Gurdial Singh .

3. For the reasons stated above, the sanction for prosecuting non-petitioner Deokishan under Section 193, IPC is refused. The application is accordingly rejected.

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