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Court : Rajasthan

Decided On : Nov-02-1989

Reported in : 1989(2)WLN358

Judge : Mohini Kapoor, J.

Appeal No. : S.B. Criminal Misc. Petition No. 595 of 1989

Appellant : Mana Ram

Respondent : State of Rajasthan

Judgement :

Mohini Kapoor, J.

1. Heard, the learned Counsel for the petitioner and the learned Public Prosecutor. The petitioner has prayed that the charge against the petitioner for the offence under Section 376 read with Section 109, IPC should be quashed.

2. The case in brief is that, the prosecutrix Baby came to the residence of Shri Dungar Ram, MLA in the MLA quarters at Jaipur where on night time, one Rekha Ram committed rape with her. The allegation against the present petitioner is that he was standing outside and that he and others gave beating to her husband Dasrath Singh. In the FIR it has been mentioned that the present petitioner Mana Ram also entered the room in which the prosecutrix was sleeping with the

intention to commit rape upon her. Thus story, given in the first information report has not been supported in the statement given under Section 161 Cr. PC and in the statement of the prosecutrix made under Section 164 Cr PC but only allegation is that he was also standing with others and that he had taken liquor with Rekharam and her husband Dasrath Singh prior to the occurrence.

3. This is not a stage for appreciating the evidence which has been collected by the prosecution in this case but what is to be seen is whether there are grounds for proceeding against the accused. Charge has to be framed only on the basis of the material submitted along with the challan. It cannot be said that there are grounds for proceeding against the accused. The First Information Report alone cannot be said to be a substantive piece of evidence. In this case, when in the statement under Section 161 Cr. PC and statement under Section 164 Cr. PC there is no allegation that the petitioner committed the offence under Section 376 IPC read with Section 109 IPC, then he cannot be made to face the trial merely because he was also present when the occurrence took place. In this case the acts attributed to this petitioner are not such, which can call under the acts which constitute an offence of abetment. Considering all these facts, it can be said that there are no reasonable grounds on basis of which it could be said that the petitioner should be made to face the trial for the offence under Section 376 read with Section 109 IPC.

4. Accordingly, this petition is accepted, the charge is quashed and the accused petitioner is discharged for the offence under Section 376 read with Section 109 IPC.