

Ramdev Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Mar-03-2006

Reported in : RLW2007(1)Raj689; 2005WLC(Raj)UC201

Judge : Vineet Kothari, J.

Appellant : Ramdev

Respondent : State of Rajasthan

Disposition : Petition dismissed

Judgement :

Vineet Kothari, J.

1. This Misc. Petition Tiled under Section 482 Cr.P.C. is directed against order of trial Court dated 7.12.2005 passed by the Additional Sessions Judge (Fast Track), Sikar in Sessions Case No. 75/2005 whereby he rejected the application filed by the accused petitioner under Section 311 Cr.P.C. for recalling the prosecutrix in the trial which is pending against the accused petitioner for offence under Sections 366, 376 and 383 IPC.

2. Mr. Gupta, the learned Counsel for the petitioner submits that there are variations in the statements of prosecutrix recorded by the police under Section 161 Cr.P.C. and also under Section 164 Cr.P.C. recorded before the learned

Magistrate and the statement recorded by the Trial Court. He has shown me the copies of the said statements and submitted that since the crossexaminations of the prosecutrix could not be fully and properly done when the statements were recorded by the trial Court on 7.6.2005, the learned trial Court ought to have allowed the application filed by the petitioner under Section 311 of the Cr.P.C. by recalling the prosecutrix for re-cross examination. He further submits that the learned trial Court has erred in observing that the powers under Section 311 Cr.P.C. are not meant to fill up the lacunae. He further submits that for the prosecution the lacunae cannot of course be filled up by use of powers under Section 311 Cr.P.C. whereas for defence, this legal principle does not apply and therefore, the application filed by the petitioner under Section 311 Cr.P.C. was justified.

3. Learned Counsel for the petitioner placed reliance upon the two decisions of this Court, one in the case of Ram Gopal v. State of Rajasthan RCC 1999(1) 457 wherein this Court allowed the application filed under Section 311 Cr.P.C. for recalling PW. 18 for proving the documents executed by her and exhibited before the Court concerned in a trial for offence under Sections 302, 457 and 201 IPC. In that case, the prosecution witnesses were sought to be summoned for re-examination to prove the registered sale deed as well as the compromise duly arrived at between the parties which could not despite due diligence, be proved in evidence unless the said witness Smt. Prem was confronted with the said relevant documents executed by her in favour of the person concerned and which was material for the just decision of the case. This case with great respects, is entirely based on different set of facts and circumstances and is not applicable to the facts and circumstances of the instant case which relates to Section 376 IPC. Another Judgment cited by Mr. Gupta is Ammi Lal @ Immi Chand and Ors. v. State of Rajasthan RCC 2002 (3) 1258 : RLW 2002(2) Raj. 1188 wherein this Court while reiterating the principle that the powers under Section 311 Cr.P.C. are not meant to be used for the purpose of enabling the prosecution to fill up any lacunae in their evidence, held that the powers are entirely discretionary under Section 311 Cr.P.C. and therefore, the Court upheld the rejection of the application under Section 311 Cr.P.C. refusing to recall PW. 4 the Doctor after closing the evidence of the witnesses of both the sides in a trial of a case for offences under Sections

307, 326, 324, 323 and 34 of the IPC.

4. Learned Counsel for the complainant however, opposes these submissions and submits that the learned Counsel for the petitioner was aware of both the statements recorded under Sections 161 and 164 of the Cr.P.C. of the prosecutrix and had not only the full opportunity of cross examination of the prosecutrix in the statements recorded by the trial Court on 7.6.2005 but in fact such detailed cross-examination which took place which itself runs into 5 to 6 page of the statement of the prosecutrix. Therefore, according to the learned Counsel filing an application under Section 311 Cr.P.C. filed by the petitioner was not only unsustainable and was gone merely with a view to prolong the trial but it also amounts to abuse of the process of law and therefore, the trial Court in the fair use of its discretion rightly rejected the said application. Learned P.P. supports these submissions made by the learned Counsel for the complainant.

5. Having heard the learned Counsel for the parties and upon a perusal of the impugned judgment as also the various statements recorded by the police, the Magistrate concerned under Section 161 and 164 Cr.P.C. and also recorded before the trial Court, this Court is of the view, that no interference is called for by this Court in the present misc. petition filed under Section 482 Cr.P.C. as no miscarriage of justice appears to have been caused by rejecting the said application filed under Section 311 Cr.P.C. in the impugned judgment passed by the court below as not only MI and ample opportunity of cross-examination was given to the accused/his counsel before the trial Court but In fact a detailed cross examination of prosecutrix has taken place.

6. Accordingly, the present Criminal Misc. Petition is without any substance and the same is dismissed.