

Mahaveer Vs. Smt. Poona Devi and anr

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Court : Rajasthan

Decided On : Mar-24-1998

Reported in : 1998(3)WLC358; 1998(1)WLN285

Judge : Amaresh Ku. Singh, J.

Appeal No. : S.B. Criminal Revision Petition No. 177 of 1988

Appellant : Mahaveer

Respondent : Smt. Poona Devi and anr

Disposition : Petition dismissed

Judgement :

Amaresh Ku. Singh, J.

1. Heard the learned Counsel for the petitioner, the learned Public Prosecutor and the learned Counsel for the non-petitioner no. 2.

2. This criminal revision petition is directed against the order dated 2nd February, 1988 passed by the Munsif and Judicial Magistrate, Ladnu in complaint case no. 44/1986. By the above mentioned the Munsif and Judicial Magistrate, Ladnu accepted the final report submitted by the police and dismissed the protest petition.

3. The petitioner's case is that on 22nd March, 1986 he gave some old ornaments to Smt. Poona Devi (non-petitioner No. 1) so that by utilising the gold of those ornaments, new ornaments as desired by the petitioner may be manufactured by Dalam Chand (non-petitioner No. 2), who is the husband of non-petitioner No. 1. Dalam Chand carries on the business of manufacturing gold ornaments at his shop. According to petitioner, at the time of delivery of ornaments to the non-petitioner No. 1, the ornaments were weighed and agreement was executed in presence of witnesses by the non-petitioner No. 1. The agreements was scribed by Shri Jai Chand. According to petitioner, the non-petitioners did not manufacture the new ornaments nor they returned the old ornaments to the petitioner and misappropriated them. The petitioner approached the police to register a case, but his prayer was declined, therefore, he filed a complaint on 2nd June, 1986 in the Court of Munsif and Judicial Magistrate. Ladnu alleging the commission of offences under Sections 420 and 406 IPC.

4. The complaint was sent to the S.H.O. of the Police Station, Ladnu under Section 156(3) Cr. P.C. The police registered the FIR No. 56/1986 and after investigation submitted a final report.

5. Smt. Poona Devi (non-petitioner No. 2) submitted a report in writing at Police Station, Ladnu on 24th May, 1986, in which she alleged that she did not execute any agreement nor obtained any ornaments from the petitioner Mahaveer and that her thumb impressions were obtained on stamp papers as well as on blank papers in a fraudulent manner. She prayed that action be taken against Mahaveer and others for having committed offences under Sections 420, 467, 468, 471 and 384 IPC. On the basis of the report of Smt. Poona Devi, the S.H.O. of the Police Station, Ladnu registered the FIR No. 48/1986 and after investigation submitted the charge-sheet under Section 173 Cr. P.C. against the accused persons, namely, Mahaveer, Bhanwar Lal and Jai Chand. On the basis of the charge-sheet, the Munsif and Judicial Magistrate took cognizance of the offence and framed charges against the accused persons.

6. The Munsif and Judicial Magistrate, before whom the charge-sheet against the accused persons, namely, Mahaveer, Bhanwar Lal and Jai Chand and the final,

report relating to FIR No. 516/1986 had been filed after taking into consideration the facts and circumstances of the case, came to the conclusion that there was no reason to allowed the protest petition.

7. It is well established that after the submission of the report under Section 173 Cr. P.C. the Magistrate is required to apply his judicial mind to the report submitted by the police as well as the other documents with a view of find out whether any offence was in fact committed and if so whether he should take cognizance of such offence. The Magistrate is not bound to act according to the opinion expressed by the investigating agency. The discretion vested in the Magistrate under Section 190 Cr. P.C. is a judicial discretion which must be judicially exercised. It is open to the Magistrate to come to the Conclusion that the report submitted by the police under Section 173 Cr. P.C. does not disclose the commission of any offence or that there is no sufficient ground to take cognizance of the offences or that the cognizance should not be taken in view of the bar imposed by any law. In the instant case, having regard to the fact on the basis of evidence collected by the police, a challan had been filed against Mahaveer, Bhanwa Lal and Jai Chand as a prima facie case of forgery of agreement was made out against them, the learned Munsif and Judicial Magistrate, Ladnu could not take the cognizance of any offence on the basis of the complaint made by the petitioner, because when the very story alleged in the complaint was found to be false, it could not be said that any offence had been committed by the non-petitioner No. 2. The order dated 2nd February, 1988 passed by the learned Munsif and Judicial Magistrate, Ladnu cannot be said to be illegal, improper or unjust.

8. For the reasons mentioned above this petition has no force. It deserves to be dismissed and is hereby dismissed.