

Roopi and ors. Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Feb-16-2009

Reported in : RLW2009(4)Raj3345

Judge : Mahesh Chandra Sharma, J.

Appellant : Roopi and ors.

Respondent : State of Rajasthan

Disposition : Petition dismissed

Judgement :

Mahesh Chandra Sharma, J.

1. This revision petition has been filed by the accused petitioners, against the order dated November 20, 2008 of Additional Sessions Judge (Fast Track) No. 3 Bharatpur Camp Bayana in Criminal Case No. 115 of 2008 whereby charge under Sections 325, 307, 148, 323 and 341 1PC was framed against the accused petitioners Roopi and Rustam and charge under Sections 325/149, 307/149, 148, 323 and 341 was framed against accused petitioners Gillhari, Sunder, Nihal Singh, Rajendra, Timan Singh and Smt. Dhoopi.

2. Brief facts of the case are that on July 8, 2007 in the night about 11 P.M. accused petitioners came at the residence of complainant visharnbhar Dayal and

gave abuses. Roopi gave Farsa blow on the head of Devi Singh. Rustam gave lathi blow over left eye of Devi Singh. Ramesh Chand came to rescue him he was also given Farsa blow by Roopi. Rustam gave lathi blow on account of which Ramesh suffered fracture on his hand. Accused petitioners taken away Golden chain of 2 Tolas. The police after investigation filed charge sheet under Sections 147, 148, 149, 323, 341, 325 and 307 IPC against the accused petitioners in the Court of Additional Chief Judicial Magistrate Bayana where from the case was committed to the Court of Sessions. The Additional Sessions Judge (Fast Track) No. 3 Bharatpur Camp Bayana vide order dated November 20, 2008 framed charge under Sections 325, 307, 148, 323 and 341 IPC against the accused petitioner Roopi and Rustam and charge under Sections 325/149, 307/149, 148, 323 and 341 was framed against accused petitioners Gillhari, Sunder, Nihal Singh, Rajendra, Timan Singh and Smt. Dhoopi. Aggrieved against the order of framing charge present revision petition has been filed.

3. I have heard the learned Counsel for the parties.

4. Mr. Sanjay Mehrishi, learned Counsel for the accused petitioners contended that the order framing charge against the accused petitioners is bad in the eye of law, against the material and evidence available on record.

5. On the other hand, Mr. Hari Bareth, Public Prosecutor opposed the arguments advanced by Mr. Sanjay Mehrish. Mr. Bareth, argued that the trial court rightly framed the charge against the abuses petitioners on the basis of the material available in the charge sheet and the statements recorded under Section 161 Cr.P.C. This Court in revisional power should not interfere with the order framing charge against the accused petitioners. Any comment by me on the merits is likely to prejudice the case of the accused or the prosecution.

6. This Court in *Om Prakash and Anr. v. State of Rajasthan* S.B. Cr. Revision Petition No. 1282 of 2003, decided on January 22, 2009 laid down following principles in regard to framing of charge by the courts below:

(i) No reasons are required to be recorded when the charges are framed against the accused persons.

(ii) In cases instituted otherwise than on a police report the Magistrate is required to write an order showing the reasons only if he is to discharge the accused.

(iii) Only in a case where it is shown that the evidence which the prosecution proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged in cross-examination or rebutted by defence evidence cannot show that the accused committed the crime, then and then alone the court can discharge the accused.

(iv) the High Courts to be loathe in interfering at the stage of framing the charges against the accused.

(v) At the beginning and the initial stage of the trial the truth, veracity and effect of the evidence which the prosecutor proposes to adduce are not to be meticulously judged.

(vi) It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with innocence of the accused or not.

(vii) At the initial stage if there is a strong suspicion which leads the court to think that there is ground for presuming that the accused has committed an offence then it is not open to the court to say that there is no sufficient ground for proceeding against the accused.

(viii) If the evidence which the prosecutor proposes to adduce to prove the guilt of the accused is challenged in cross-examination or rebutted by the defence, if any, cannot show that the accused committed the offence, there will be no sufficient ground for proceeding with the trial.

(ix) The Supreme Court reminded the High Courts of their statutory obligation to not to interfere at the initial stage of framing the charges merely on hypothesis, imagination and far fetched reasons which in law amount to interdicting the trial against the accused persons.

(x) Unscrupulous litigants should be discouraged from protecting the trial and preventing culmination of the criminal cases by having resort to uncalled for an unjustified litigation under the cloak of technicalities of law.

7. The Apex Court in *Om Wati v. State* : AIR 2001 SC 1507 held as under: : AIR 2001SC 1507 held as under: it would not be safe at this stage to deprive the prosecution in proving its case on the basis of direct evidence, the statement of the deceased claimed to be admissible under Section 32 of the Evidence Act and the other documents including the inquest report allegedly disclosing the infliction of injuries on the person of the deceased which resulted in his death. The acceptance of the opinion of the doctors, as incorporated in the post mortem report for the cause of death of deceased being hepatic failure following viral hepatitis' cannot be accepted on its face value at this stage. Therefore the order of the High Court would be illegal and liable to be set aside.' The Supreme Court reminded the High Courts of their statutory obligation to not to interfere at the initial stage of framing the charges merely on hypothesis, imagination and far fetched reasons which in law amount to interdicting the trial against the accused persons. Unscrupulous litigants should be discouraged from protecting the trial and preventing culmination of the criminal cases by having resort to uncalled for an unjustified litigation under the cloak of technicalities of law.

8. For these reasons the revision petition is dismissed. Since the main case has been dismissed, the stay application also stands dismissed.

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