

Narayan Prasad Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Apr-16-1999

Reported in : 1999(1)WLN581

Judge : G.L. Gupta, J.

Appeal No. : S.B. Cr. Misc. Petition No. 599 of 1997

Appellant : Narayan Prasad

Respondent : State of Rajasthan

Disposition : Petition dismissed

Judgement :

G.L. Gupta, J.

1. This misc. petition under Section 482 Cr.P.C. is directed against the order dt. 25.2.1997 passed by the learned Chief Judicial Magistrate, Churu whereby he ordered joint trial of the petitioners.

2. The relevant facts of the case are these. On 15.10.1992, the Chief Medical & Health Officer, Ratangarh lodged first information report at P.S. Churu stating therein that the officers of the Medical & Health Department after forming separate groups went to Gudari Bazar, Churu in order to take samples of food articles and as they started taking samples 30-40 persons collected and they did not allow the

officials to take samples and even gave beatings to them and snatched their papers. On this report, a case under Sections 147, 148, 149, 332, 353, 336, 382, 379, 472 and 504 IPC and Section 3 of the S.C./S.T. (Prevention of Atrocities) Act was registered. The police after the completion of the investigation filed a challan against 11 petitioners. The petitioners filed an application Under Section 223 Cr.P.C, seeking separate trial in respect of the separate incidents, which was rejected by the Magistrate.

3. Mr. Mehta pointing out that separate incidents had taken place at four different shops of the traders, and the accused are not common to all the four incidents, contended that there cannot be joint trial of the accused Under Section 223 Cr.P.C.

4. The learned P.P. tried to defend the order of the learned Magistrate.

5. I have carefully considered the above arguments. It is alleged that there were four checking parties and the members of the checking party had gone to different shops, and when the samples were being taken, the traders resisted and some 30-40 persons collected there and they did not allow the members of the checking parties to take samples. It is however obvious by the material on record that different persons were beaten at different shops. It is also evident that the accused were not common at all the four shops. The F.I.R. shows that after the incidents all the members of the checking parties collected in the Circuit House and they narrated the incidents which took place in their presence and thereafter the F.I.R. was written.

6. It is not the case for the prosecution that the traders knew before hand that on that day the checking parties would visit the market, and the petitioners had conspired to attack the checking parties. It is also obvious on record that the shops, where the incidents had taken place were not adjacent. One incident had taken place on the shop of M/s. Agarwal Store, the other incident on the shop of M/s. Ramswaroop Rajendra Prasad the third on the shop in the line opposite to the shop of M/s. Agarwal Store & the fourth occurrence took place in the shop of Goyanka kirana Store. The site inspection memos prepared by the I.O. clearly reveal that the shops where the incidents had taken place, were not adjacent and

they were at the different places. Besides that the perpetrators of the crimes on the different shops were different. Of Course, one or two persons are common in respect of the occurrences which took place on the four shops, but by that it cannot be said that the offences were committed in the course of same transaction within the meaning of Section 223(a) Cr.P.C. In my opinion, the incidents which took place on 4 different shops, may be at the same time, cannot be said to have occurred in the course of the same transaction.

7. Section 223(a) Cr.P.C. provides that persons accused of the same offence committed in the course of same transaction may be charged and tried together. It is obvious that it is enabling provision. The general rule is that every person is entitled to insist that his case should be tried separately. A joint trial in the circumstances mentioned in Section 223 is not compulsory and the Court has a discretion to order separate trials if that serves the purpose of justice best. The burden to justify the joint trial is always on the prosecution. It has to be accepted that it would be very hard and almost oppressive to any set of persons, to charge them together unless the whole of the evidence against all of them is precisely the same. In the instant case, it cannot be said that the whole of the evidence against all the accused will be the same. As a matter of fact, the evidence will be different in respect of the incidents which have taken place at different shops. There is, therefore, a danger of prejudice being caused to the petitioners, if they are tried jointly.

8. The nature of the offence committed by the different petitioners may be same, yet if they are asked to meet the charges of the other accused, it cannot be denied, they will be prejudicially affected. As such, it is not expedient that all the petitioners are tried jointly.

9. Consequently, the petition succeeds. The impugned order is set aside. The learned Magistrate shall proceed with the trial of the case against the accused in respect of the occurrence which took place on the shop of M/s. Agarwal Store. He shall permit the prosecution to file separate charge-sheets in respect of the occurrence which took place on other shops, and all the cases shall be tried separately.

