

Magher Singh Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Mar-27-1998

Reported in : 1998(3)WLC267; 1998(1)WLN378

Judge : Amaresh Ku. Singh, J.

Appeal No. : S.B. Criminal Misc. Petition No. 659 of 1994

Appellant : Magher Singh

Respondent : State of Rajasthan

Disposition : Petition dismissed

Judgement :

Amaresh Ku. Singh, J.

1. Heard the learned Counsel for the petitioner and the learned Public Prosecutor and perused the impugned order dated 16th September, 1994 passed by the learned Additional Chief Judicial Magistrate, Suratgarh in criminal original case No. 324 of 1989 State of Rajasthan v. Magher Singh.

2. By the aforesaid order, the learned Additional Chief Judicial Magistrate directed that PW. 5 Badri Prasad be recalled for the purpose of further examination in order to prove the statement of Surja Ram (deceased), who had expired due to injuries received by him.

3. The learned Counsel for the petitioner has challenged the impugned order on three grounds. The first submission of the learned Counsel for the petitioner is that the impugned order was passed at the instance of Om Prakash, who was neither the complainant nor a party to the case and on the application of Om Prakash, it was not open to the Additional Chief Judicial Magistrate to exercise the power conferred by powers under Section 311 Cr. P.C. the second submission is that it was the duty of the prosecution to prove the statement of Surja Ram during the Trial, but the prosecution neglected to perform their and. therefore, at the session of the trial when almost entire evidence was recorded, it was not open to the Additional Chief Judicial Magistrate to exercise his power under Section 311 Cr. P.C. The third submission is that if the Investigating Officer is recalled at this stage and he is further examined in order to prove the statement of Surja Ram, great injustice is likely to occur to the petitioner, who is the accused.

4. The learned Public Prosecutor has supported the order passed by the Additional Chief Judicial Magistrate.

5. I have carefully considered the arguments advanced by the learned Counsel for the petitioner and the learned Public Prosecutor.

6. Section 311 Cr. P.C. empowers the Court to summon any person or to recall any person, who was examined in the case for further examination if the Court considers that it is necessary to do so for the sake of proper disposal of the case or just decision of the case. The powers Under Section 311 Cr. P.C. are conferred on the Court so that the Court may not be handicapped in deciding the case in a just manner. This power is to be read with the powers conferred by the Section 165 of the Evidence Act. Section 165 of the Evidence Act provides that the Judge may, in order to discover or to obtain proper proof of relevant facts or any question he pleases, in any form, at any time of any witness, or of the parties about any fact relevant or irrelevant, and may order the production of any document or thing and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor without the leave of the Court to cross-examine any witness upon any answer given in reply to any such question. Section 311 Cr. P.C. empowers the Court to summon any person as a witness or examine any person

in attendance though not summoned as a witness or recall any person already examined and makes it obligatory on the part of the Court to summon and examine or recall and re-examine any such person, if his evidence appears to it to be essential to the just decision of the case.

7. In the instant case, I am satisfied that the learned Additional Chief Judicial Magistrate has not exceeded his jurisdiction under Section 165 of the Evidence Act read with Section 311 Cr. P.C.

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

9. A copy of this order be sent to the learned Additional Chief Judicial Magistrate for information and necessary action.

10. The stay granted by this Court on 3rd October, 1994 is hereby vacated.

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