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Court : Rajasthan

Decided On : Aug-21-1987

Reported in : 1987WLN(UC)443

Judge : Shaym Sunder Byas, J.

Appeal No. : S.B. Criminal Misc. Application No. 57 of 1983

Appellant : Lalu Ram

Respondent : Pitha Ram

Disposition : Application dismissed

Judgement :

Shyam Sunder Byas, J.

1. By this application under Section 482, Cr. PC the accused has challenged the correctness of the order of the learned Sessions Judge, Churu dated October 12, 1982, by which his revision against the taking of cognizance was dismissed.

2. Briefly recalled, the facts are that Pitharam Sarpanch, Gram Panchayat Bigawas lodged a report at Police Station , Dungargarh on July 30, 1977 stating therein that in the night of July 28, 1977 the accused took away four she-buffaloes from the cattle-pond of the Panchayat. The police registered a case and after investigation, filed the final report stating therein that no offence was made out.

The Sarpanch, feeling dissatisfied with the action of the police, presented a complaint in the Court of the learned Judicial Magistrate, Ratangarh against the accused Laluram for offences under Sections 457 and 380, IPC. The learned Magistrate, after holding inquiry, took cognizance of the offence under Section 379, IPC and summoned the accused to face trial. The accused challenged the order of the learned Magistrate before the Sessions Judge. His revision was, however, dismissed and the order of the Magistrate was up-held. The accused has come-up under Section 482, Cr. PC and has invoked the inherent powers of this court for quashing the orders of the Magistrate and the Sessions Judge.

3. I have heard the learned counsel for the parties and the learned Public Prosecutor. I have also gone through the impugned orders and the record of the case.

4. Mr. Bishnoi has challenged the order of the Sessions Judge on the ground that there was no evidence on record to take cognizance of the offence against the accused. It was also argued that the police had submitted the final report stating therein that no case of theft was made out. The stolen property, viz. she-buffaloes, belonged to the accused and as such he could not be said to have committed the offence of theft of his own property. It was on the other hand, contended by Mr. Rajwanshi that she-buffaloes were lodged in the cattle-pond of the Panchayat and their removal from there by the accused amounts to an offence of theft. It was also argued that this Court should not lightly make interference in the order of the courts below, who have held that there was prima facie evidence against the accused to take cognizance of the offence. I have taken the respective submissions into consideration.

5. The learned Sessions Judge has discussed the matter at length in his impugned order dated October 12, 1982. It cannot be said that he committed any error in his approach of the matter which may require any correction or modification. It is still open to the accused to agitate before the Magistrate that no case was made out against him and as such he should be discharged. The opportunity of agitating the whole matter before the Magistrate is available to the accused. Keeping in view these circumstances, I decline to interfere in the impugned order.

6. The application of the accused under Section 482, Cr. PC is, therefore, dismissed.

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