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Court : Rajasthan

Decided On : Apr-13-1988

Reported in : 1988(1)WLN712

Judge : Dinker Lal Mehta, J.

Appeal No. : S.B. Cr. Revision Petition No. 8 of 1988

Appellant : Ashok Kumar

Respondent : State of Rajasthan

Judgement :

D.L. Mehta, J.

1. This revision petition has been preferred by the petitioner against the order dated 14-12-1987, passed by the learned Additional Sessions Judge, Sikar, whereby he directed that the charge he framed under Section 302 read with Sections 147, 148 and 149 of the IPC.

2. The allegations against the present petitioner is that he forewarned the deceased while he was going that some people are sitting near the 'Garh' and there is likely-hood that he may be murdered. The words used are as under-'AAJ TERI KHER NAI HAI, GADH KE PAAS AADMI BAITHE HAI' There is a reference in the dying declaration about the warning given by the petitioner. It is an admitted

position that the name of the petitioner does not find place in the FIR and he was not present on the spot. There is no allegation against the petitioner that he has participated in the commission of crime. In any way, giving of the forewarning to the deceased that some people are sitting nearby 'Gadh' and he is likely to be killed is indicative of the fact that the object of the petitioner was not to commit murder or to cause any injury to the deceased.

3. After dictation of this order Mr. A.K. Gupta, learned Counsel for the complainant, submits that there is a D B. judgment of this Court in which this Court has held that no application under Sections 397 and 401, lies the judgment has not been produced before me. Even the Court must draw the distinction between the interlocutory order and intermediary order. If the other view is taken and the proceedings against the petitioner come to an end it cannot be interlocutory because it will result in the end of the prosecution. In interlocutory order, even if set-aside, and the proceedings continues. Where the order relating to the framing of the charge is set-aside, proceedings come to an end and as such I am of the view that it cannot be said to be an interlocutory order. It may be an intermediary order. Even if it is assumed that there is any judgment, even then this Court can pass an order under Section 482, Cr. PC where the revision petition does not lie. To prosecute a person only on a loss of property when there is no evidence against him, it may result in conviction which should not to be allowed to stand.

4. In the result, the petition is accepted and the order passed by the learned Additional Sessions Judge, dated 14-12-1987, relating to the framing of the charge against the petitioner is set-aside. The petitioner is discharged.