

Arjun Singh and ors. Vs. State of Rajasthan and anr.

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Court : Rajasthan

Decided On : Mar-09-2010

Reported in : RLW2010(2)Raj1334

Judge : Mahesh Bhagwati, J.

Appellant : Arjun Singh and ors.

Respondent : State of Rajasthan and anr.

Disposition : Petition allowed

Judgement :

Mahesh Bhagwati, J.

1. By way of this criminal misc. petition filed under Section 482 of Cr.P.C, the petitioners have prayed to set aside the order dated 27.7.2009 rendered by the learned Sessions Judge, Merta as also the order dated 22nd June, 2004 passed by the Additional Chief Judicial Magistrate, Merta who first accepted the Final Report (unoccurred) given by the police after completion of investigation and thereafter, in continuation of the order, he took cognizance of the offences under Sections 336 and 504 of IPC.

2. Heard learned Counsel for the petitioners, learned Counsel for the respondent No. 2 as also learned Public Prosecutor appearing for the State and carefully

perused the impugned orders.

3. The sole question springing for consideration in the instant petition is, as to whether a Judicial Magistrate can accept the Final Report unoccurred given by the police after completion of investigation and take the cognizance of the offence on protest petition simultaneously by way of passing only one order

4. Learned Counsel for the petitioners took me through the order dated 22nd June, 2004 rendered by Additional Chief Judicial Magistrate, Merta and focused on Para 7 of the impugned order, which relates to acceptance of Final Report unoccurred given by police. Thereafter, he took me through Para 11 of the impugned order, wherein the cognizance of the offences under Sections 336 and 504 of the IPC is found to have been taken by the learned trial Court. It is relevant to record that the learned Sessions Judge in criminal revision petition No. 8/2005 dismissed the revision petition and maintained the order dated 22nd June, 2004 passed by the learned trial Court.

5. Adverting to the facts of the instant petition, the police is found to have given Final Report unoccurred after completion of investigation, as no evidence was found to have been on record against the petitioners namely Arjun Singh, Raghuveer Singh and Samundra, which could fasten them in the offences under Sections 336 and 504 of IPC. Thereafter, learned Additional Chief Judicial Magistrate, Merta recorded the statements of the witnesses under Section 202 of Cr.P.C. and observed that the cognizance of the offences under sections 336 and 504 of IPC had already been taken by the court on 16th November, 2002 and proceeded under Section 204 of Cr.P.C.

6. The impugned order of the Additional Chief Judicial ex-facie is found to be contrary to the provisions of Law. How is it possible that the Additional Chief Judicial Magistrate will accept the Final Report (FR) and then on protest petition he will take the cognizance of the offences? If the Final Report had been given by the police and the protest petition was filed by the complainant, it was incumbent on the Judicial Magistrate to examine the complainant and the witnesses, if any, under Section 202 of Cr.P.C. There was no need to pass a separate order with regard to Final Report given by the police. Law envisages that if, from the

statements of the witnesses recorded under Sections 202 of Cr.P.C. no offence is made out, the complaint can be dismissed under Section 203 of Cr.P.C. and FR can be accepted but if any evidence appears on record, which could fasten the accused persons with any offence, he could take cognizance under Section 190 of Cr.P.C. and issue process under Section 204 of Cr.P.C. but the order dated 22nd June, 2004 passed by the Additional Chief Judicial Magistrate is found to be totally contrary to the provisions of law, which deserves to be set aside. Since, the learned Sessions Judge, Merta has maintained or upheld the order dated 22nd June, 2004 rendered by the learned Additional Chief Judicial Magistrate, Merta, hence the order dated 27th July, 2009 passed by the Sessions Judge in revisional jurisdiction also needs to be dismissed automatically.

7. For the reasons stated above, the criminal misc. petition filed under Section 482 of Cr.P.C. is allowed and the order dated 27th July, 2009 passed by the learned Sessions Judge, Merta and order dated 22nd June, 2004 rendered by Additional Chief Judicial Magistrate, Merta are set aside.

8. However, keeping in view the above factual situation, it is deemed proper to remit the case back to the court of Additional Chief Judicial Magistrate, Merta for passing an order afresh after considering the statements of witnesses and relevant material on record and affording an opportunity of being heard to both the parties in accordance with the provisions of law.

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