

Dhanno Devi Vs State and ors.

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Court : Delhi

Decided On : Aug-11-2010

Judge : Mr. S. L.Bhayana, J.

Appeal No. : Crl. M.C. No. 943/2008

Appellant : Dhanno Devi

Respondent : State and ors.

Advocate for Def. : Mr. Sunil K. Jha, Adv.

Advocate for Pet/Ap. : Mr. Bhupesh Narula, Adv.

Judgement :

1. Whether reporters of local paper may be allowed to see the judgment? Yes
2. To be referred to the reporter or not? Yes
3. Whether the judgment should be referred in the Digest? Yes

1.This petition has been filed by the petitioner under Article 227 of the Constitution of India read with Section 482 Cr.P.C challenging the order dated 19.11.2007 passed by learned trial Court.

2. Learned trial Court in the impugned order has held that learned Metropolitan Magistrate has wrongly summoned the accused person u/s 319 Cr.P.C on the basis of testimony of PW 3 Mani Ram whose even examination- in-chief has not

been completed. Learned ASJ in his order dated 19.11.2007 has observed as under:-

"In these circumstances, I feel learned trial Court has acted in a haste in summoning the accused under Section 319 Cr.P.C. and for the said reason only, impugned order passed by learned trial Court summoning the petitioner as an accused under Section 319 Cr.P.C. is hereby quashed and learned trial Court is directed to complete the testimony of PW 3 Mani Ram and thereafter form a view whether petitioner accused Narender Gupta is at all required to be summoned.

3. I have heard learned counsel for the parties and perused the record. The impugned order does not suffer from any illegality and the Court below has rightly observed that examination-in-chief and cross examination of PW- 3 Mani Ram should be completed by learned Metropolitan Magistrate and only then the learned Metropolitan Magistrate should apply his mind and on his subjective satisfaction only, he should have summoned the accused person u/s 319 Cr.P.C.

4. This view also finds support from the judgment passed by Hon'ble Supreme Court of India in case titled Mohd. Shafi v. Mohd. Rafiq & Anr. (AIR 2007 Supreme Court 1899). The relevant portion of the judgment reads as under:-

"From the decisions of this Court, as noticed above, it is evident that before a Court exercises its discretionary jurisdiction in terms of Section 319 of the Code of Criminal Procedure, it must arrive at the satisfaction that there exists a possibility that the accused so summoned is in all likelihood would be convicted. Such satisfaction can be arrived at inter alia upon completion of the cross examination of the said witness. For the said purpose, the court concerned may also like to consider other evidence. We are, therefore, of the view that the High Court has committed an error in passing the impugned judgment. It is accordingly set aside. The appeal is allowed."

5. In view of above discussion, I therefore hold that there is no infirmity in the order passed by learned ASJ.

6. The petition is without any merit, the same is, therefore dismissed.

