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Pramod Kumar Vs. State

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Court : Rajasthan

Decided On : Jun-29-2011

Judge : Mahesh Bhagwati, J.

Acts : Indian Penal Code (IPC) - Sections 307; Code Of Criminal Procedure (CRPC) - Section 200, 202, 70 (2)

Appeal No. : Case No. CRLMP 1214 of 2008

Appellant : Pramod Kumar

Respondent : State

Advocate for Def. : Mr. G.S. Rathore, Adv

Advocate for Pet/Ap. : Mr. Anoop Dhand, Adv

Judgement :

1. Having considered the submissions made at the bar and carefully perused the relevant material on record including the impugned order, it is noticed that one FIR came to be registered at Police Station, Jurhera, wherein the police, after completion of investigation, gave the Final Report. The learned trial court, on protest petition, examined the complainant as also the injured witnesses under Section 200 and 202 of Cr PC and having considered the medical report, site plan, FSL report, statement of witnesses, took the cognizance of the offence under Section 307 of Indian Penal Code and ordered to summon the accused Pramod

through a warrant of arrest. Aggrieved with this order of summoning the accused through a warrant of arrest, the petitioner filed an application under Section 70 (2) of Cr PC imploring the court to convert the warrant of arrest into bailable. The learned trial court vide order dated 6th June, 2007 dismissed the application.

2. Learned counsel for the petitioner canvassed that the Hon'ble Apex Court in umpteen cases has repeatedly held that initially the accused should be ordered to be summoned through a summon only even in the non bailable offences. The petitioner is prepared to face the trial of the case, but his arrest in the case would be of no avail nor will serve any purpose. Hence, the order dated 6th June, 2007 be set-aside and the petitioner may be ordered to be summoned through a bailable warrant.

3. Learned PP, E Converso, has opposed the submissions made by the learned counsel for the petitioner and defended the impugned order stating the same to be just and proper and further submitted that it did not call for any intervention.

4. Having considered the submissions made at the bar and carefully ruminated over the legal provisions, it is revealed that the accused Pramod opened fire at the injured Shyam Singh and Shyam Singh sustained fire arm injuries on his left shoulder. The occurrence stood supported by other eye witnesses, who were present on the scene of occurrence. The police, despite there being ample evidence on record, gave Final Report in the case. The learned trial court deprecated the approach of the police and having recorded the statements of the injured and other supporting witnesses U/s. 200 and 202 of Cr PC found that there was sufficient evidence on record to proceed against the accused petitioner for the offence under Section 307 of Indian Penal Code. The learned trial court is found not to have committed any error in summoning the accused through a warrant of arrest as the offence under Section 307 of Indian Penal Code is triable by the Court of Sessions and is also punishable with life imprisonment. It is left with the discretion of the Court as to whether the learned trial court deems it fit to summon the accused through a bailable warrant or warrant of arrest or summon, but this discretion, of course, is required to be exercised judicially. The learned trial court is found to have passed the impugned order ad-longum and it is found to have

suffered from no infirmity. I do not find any reason to convert the issuance of warrant of arrest into bailable warrant and the Cr. Misc. Petition being bereft of any merit, in view of the afore-stated circumstances, deserves to be dismissed, which stands dismissed accordingly.

5. Consequent upon the dismissal of writ petition, the stay application, filed therewith, does not survive and that also stands dismissed.

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