

Kapil Senani and anr Vs. State and anr

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Court : Rajasthan Jodhpur

Decided On : Mar-03-2013

Appellant : Kapil Senani and anr

Respondent : State and anr

Judgement :

1. S.B. CRIMINAL MISC. PETITION NO. 102/2009 (Kapil Senani & Anr. Vs. State of Rajasthan & Anr.) DATE OF ORDER :

03. March, 2012 HON'BLE MR. JUSTICE SANDEEP MEHTA Mr. Pradeep Shah, for the petitioners. Mrs. Chandralekha, Public Prosecutor. Mr. Bharat Singh, for the respondent No.2. The present misc. petition has been filed on behalf of the petitioners challenging the order dated 20.12.2006 passed by the learned Addl. Chief Judicial Magistrate, Salumber in Criminal Regular Case No.826/2006 taking cognizance against the petitioners for the offences under Sections 420, 406 and 120-B IPC on negative a final report. The said order has been affirmed by the learned Addl. Sessions Judge (Fast Track) No.3, Udaipur Camp Salumber by order dated 28.07.2008. Briefly stated the facts necessary for the disposal of this misc. petition are that the respondent No.2 filed a complaint against the petitioners in the court of the learned Addl. Chief Judicial Magistrate, Salumber, which was forwarded under Section 156(3) Cr.P.C. to the Police Station Jhallara, Distt. Udaipur for investigation, whereafter, the FIR No.31/2006 was registered and investigation commenced. The police after investigation submitted a negative final report in the court of the learned Addl. Chief Judicial Magistrate, Salumber. Prior to

filing of the FIR No.31/2006, earlier on also on the basis of a complaint to the Superintendent of Police, Udaipur made by the present complainant, another FIR No.91/2004 was registered at

2. the Police Station Jhallara, Distt. Udaiur itself and after investigation on the said report which was registered for the offences under Sections 147, 148, 149 and 384 IPC, the police filed a final report on 23.08.2004 which was accepted by the court on 07.04.2005. In the instant case, on the submission of the negative final report, the complainant appeared before the court and argued that cognizance should be taken against the accused, on which, the learned trial court proceeded to take cognizance against the petitioners and two others for the offences under Sections 420, 406 and 120-B IPC. The petitioners challenged the order of the learned Magistrate by way of filing a revision petition, which came to be heard by the learned Addl. Sessions Judge (Fast Track) No.3, Udaipur Camp Salumber and the learned Addl. Sessions Judge proceeded to reject the revision petition filed by the petitioners and hence this misc. petition before this Court. Learned counsel for the petitioners submits that the allegations made in the earlier FIR filed by the complainant were exactly the same as made in the instant FIR. The incident which is alleged in the earlier FIR No.91/2004 is of the same date, which is the subject matter of the present case as well. The complainant in the said FIR alleged that the employees of the Finance Company forced him to sign the documents and also forcibly took away the documents of his tractor etc. and then his tractor was also stolen away and sold. In the present case, the subject matter of the FIR is the deprivation of the possession of the tractor of the complainant by using fraudulent means in the

3. year 2003. Learned counsel submits that there are grave discrepancies in the allegations made in the earlier FIR and in the present FIR which lead to the irrefutable conclusion that the whole case as set up by the complainant is nothing but a bundle of lies. He submits that in the earlier FIR, the complainant's case was that his tractor was forcibly looted by certain persons on 05.12.2003 and one of those persons was one Yogesh Joshi. The said allegations of the complainant were found to be false and the FR thus submitted on the investigation of the earlier FIR has also been accepted. Learned counsel submits that the complainant had

been deprived of his tractor by the accused persons mentioned in the earlier FIR No.91/2004 by use of force then obviously the allegations made in the instant FIR regarding the tractor having been taken away by the petitioners by cheating, the complainant cannot be accepted on their face value. It is thus submitted that the order taking cognizance in the present case having been passed in total ignorance to the material available on the record of the case, as such, the same deserves to be quashed. Per contra, learned counsel appearing on behalf of the respondent No.2 Mr. Bharat Singh submits that the complainant is a poor agriculturist and the petitioners who are the representatives of the finance company have cheated the complainant and have deprived him from his tractor and therefore no interference is warranted in the instant misc. petition seeking quashing of the order taking cognizance. I have heard learned counsel for the parties, perused the

4. orders impugned passed by the learned courts below and given my thoughtful consideration to the arguments advanced at the bar. Un-disputedly, the complainant had filed the earlier FIR in regards to the deprivation of the same tractor in the year 2004. The tractor of the complainant was allegedly taken away by the accused persons by use of force in the year 2003-04. Thereafter, the complainant filed the FIR regarding extortion and the allegations of the complainant were found to be false. The FR thus filed has been accepted by the competent court, which is none else but the court of the learned Addl. Chief Judicial Magistrate, Salumber. Nearly two years after the acceptance of the earlier FIR, the instant FIR has been filed and in the present FIR, the story has been changed by the complainant and now he has come out with a theory that he was deprived of his tractor by the accused persons by cheating him. The different versions of the complainant in the two FIRs are virtually impossible to reconcile. The subject matter of both the FIRs essentially is taking away of the tractor of the complainant by the accused persons. If the tractor had been taken away by use of force in the year 2003-04, then, obviously, the allegations of the complainant that the accused persons cheated him out of his tractor and took the same away cannot be accepted ex facie. The allegations of the earlier FIR filed by the complainant was found to be false and having failed in his attempt to entangle the accused in his earlier attempt, a new story has been created to prosecute the accused. This clearly

5. amounts to a malafide use of the tool of criminal prosecution to harass the accused. Resultantly, this Court is of the opinion that the order taking cognizance passed by the learned Addl. Chief Judicial Magistrate, Salumber by order dated 20.12.2006 as affirmed in revision by the learned Addl. Sessions Judge (Fast Track), No.3, Udaipur Camp Salumber by order dated 28.07.2008 cannot be sustained. Accordingly, this misc. petition succeeds. The order dated 20.12.2006 passed by the learned Addl. Chief Judicial Magistrate, Salumber in Criminal Regular Case No.826/2006 taking cognizance against the petitioners for the offences under Sections 420, 406 and 120-B IPC as affirmed by the learned Addl. Sessions Judge (Fast Track) No.3, Udaipur Camp Salumber by order dated 28.07.2008 are hereby quashed and set aside. (SANDEEP MEHTA), J.

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