

Saheb Ram and anr Vs. State

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Court : Rajasthan Jodhpur

Decided On : Nov-23-2012

Appellant : Saheb Ram and anr

Respondent : State

Judgement :

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR
ORDER S.B.CRIMINAL MISC. PETITION NO.489/2011 Saheb Ram & Anr. Vs.
State of Rajasthan Date of order :

23. 11.2012 HON'BLE MR. JUSTICE SANDEEP MEHTA Mr. M.K.Garg, for the petitioners. Mr. K.K.Rawal, P.P. Mr. Farzand Ali, for the complainant. <><><> The instant misc. has been filed by the petitioners challenging the order dated 5.10.2010 passed by the learned Judicial Magistrate 1st Class, Tibbi, whereby cognizance has been taken against the petitioners for the offences under Sections 341, 323/34 and 452 of the IPC as affirmed by the learned Additional Sessions Judge (Fast Track) No.1, Hanumangarh vide his order dated 23.2.2011. The contention of the learned counsel for the petitioners is that 4 independent witnesses have stated that the quarrel took place in the lane outside the complainant's house and therefore, the order taking cognizance against the petitioners for the offence under Section 452 IPC is absolutely illegal and amounts to an abuse of process of the Court. He, therefore, prays that the misc. petition be allowed and the order impugned be set aside to the extent of taking cognizance against the petitioners for the offence under Section 452 IPC. Per contra, Shri

Farzand Ali learned counsel for the complainant submits that the complainant in his statement has clearly disclosed that he was sitting inside his house and smoking Hukka, at that time, the accused persons entered into the house with preparation to cause hurt and assaulted him. He, therefore, submits that ex-facie the ingredients of the offence under Section 452 IPC are made out against the petitioners and prays that the misc. petition be dismissed. Learned Public Prosecutor has adopted the arguments advanced by the learned counsel for the complainant. Upon a consideration of the arguments advanced at the bar and after going through the orders impugned and the material available on record, it is apparent that the complainant in his statement recorded under Section 161 Cr.P.C. in distinct terms, has alleged that he was sitting in his room at 8 O'clock in the night, at that time, the accused persons after making preparation to cause hurt, entered inside the house and assaulted him. In view of the aforesaid statement, the essential ingredients of the offence under Section 452 IPC are made out prima-facie disclosed against the petitioners. The Magistrate, therefore, has committed no error in taking cognizance against the petitioners for the said offence. The order taking cognizance has already been affirmed in revision, therefore, the instant misc. petition under Section 482 Cr.P.C. is nothing but a second revision in the garb of a misc. petition. A second revision by the same party is barred by virtue of Section 397(3) Cr.P.C. The misc. petition thus being bereft of any force, is hereby dismissed. Stay petition is also dismissed. (SANDEEP MEHTA), J.

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