
(2000) 01 SC CK 0170

In the Supreme Court Of India

Case No : Criminal Appeal No. 438 of 1998 With Criminal A. No. 439 of 1998

Bhagwan Sahai Khandelwal

APPELLANT

Vs

The State of Rajasthan and Another

RESPONDENT

Date of Decision : 27-01-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 307

Citation : (2000) 7 JT 569

Hon'ble Judges : R.P. Sethi, J;G.B. Pattanaik, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. This appeal is by the concerned Magistrate, who had not taken cognizance u/s 307 I.P.C. though charge sheet had been filed. We are not entering into the merits of the conclusion of the learned Judge as to whether the Magistrate could have refused to take cognizance u/s 307 I.P.C. We are examining only the correctness and propriety of the order of the learned Judge in making remarks against the Magistrate on the basis of what was stated in a petition filed before the learned Chief Justice which was ordered to be treated as a petition u/s 482 of the Code of Criminal Procedure. It is no doubt true in that petition, serious allegations had been made against the Magistrate, who is the Appellant before us. But without even offering an opportunity to the Magistrate in the proceeding, and without having his say in the matter, the learned Judge could not have jumped to the conclusion that it clearly appears that the allegations against the Magistrate are substantiated, and therefore the order passed by the Magistrate should be interfered with. Not only that the learned Judge has accepted the allegations made but also directed for instituting a departmental enquiry against the Magistrate concerned, after placing him under suspension. This observation and direction of the learned Judge on the basis of allegations made in a petition cannot be sustained, and we have, therefore, no hesitation to expunge the so-called observation and direction of the learned Judge while passing order on

6.11.1997 in Criminal Miscellaneous Petition No. 520/1996. So far as the legality of the order passed by the learned Judge is concerned, it remains to be examined in the Criminal Appeal No. 439/1998 which has been filed by the accused Bhagirath, which is pending before this Court.

2. The present appeal is allowed to the extent indicated above.