
(2009) 09 RAJ CK 0092

In the Rajasthan High Court

Case No : Criminal Revision Petition No. 1278 of 2008

Hema Soni

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 17-09-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 511

Citation : (2009) 09 RAJ CK 0092

Hon'ble Judges : Raghvendra S. Chauhan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.S. Chauhan, J.—The petitioner has challenged the order dt. 19.07.2008 passed by the Additional Chief Judicial Magistrate No. 2, Bharatpur whereby the learned Magistrate has rejected the protest petition filed by the petitioner and has accepted the final negative report submitted by the police.

2. Mr. Mohd Aslam Khan, the learned Counsel for the petitioner, has contended that at the preliminary stage of taking cognizance, the learned trial Court cannot critically analyze the evidence. At this initial stage, the trial Court is only concerned with whether a prima facie case does exist or not. Since the petitioner has given graphic description of the incident of an offence under Sections 376, and 376 read with Section 511, sufficient prima facie case did exist for the learned trial Court to take cognizance. However, instead of taking cognizance, the learned trial Court has critically analyzed the evidence on record and has passed the impugned order. Hence, the learned trial Court has over-stepped its jurisdiction.

3. On the other hand, Mr. Javed Chaudhary, the learned Public Prosecutor, has contended that although the impugned order is a detailed one, the learned trial Court was duty bound to discuss the evidence as the evidence was contrary to the negative final report submitted by the police. Hence, he has supported the

impugned order.

4. Heard the learned Counsel for the parties and perused the impugned order.

5. It is, indeed, trite to state that at the stage of taking cognizance, the learned trial Court is only concerned with the existence of a prima facie case. At this initial stage, the learned trial Court cannot, and should not, shift through the evidence. For, at this moment, the trial Court cannot be concerned whether eventually the accused would be convicted or not. A bare perusal of the impugned order clearly reveals that the learned trial Court has meticulously and critically analyzed the evidence. Thus, the learned trial Court has gone far beyond its jurisdiction. Interestingly, the learned trial Court has not even considered and has not compared and contrasted the evidence given by the petitioner and finding of the police. Lastly, considering the fact that the petitioner has described the incident in detail, prima facie a case does exist for taking cognizance. However, notwithstanding this observation of this Court, the learned trial Court is expected to exercise its discretion in accordance with law.

6. In this view of the matter, the revision petition is, hereby, allowed; the order dt. 19.07.2008 is, hereby, quashed and set aside. The learned trial Court is directed to exercise its discretion strictly in accordance with law.