
(2008) 09 RAJ CK 0003

In the Rajasthan High Court

Case No : Criminal Miscellaneous Petition No. 1033 of 2008

Karim Khan

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 03-09-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 446, 482

Citation : (2008) 09 RAJ CK 0003

Hon'ble Judges : Bhanwaroo Khan, J

Bench : Single Bench

Advocate : R.S. Choudhary, for the Appellant; S.K. Vyas, PP, for the Respondent

Final Decision : Allowed

Judgement

Bhanwaroo Khan, J.—Mr.S.K.Vyas, learned Public Prosecutor is directed to accept notice on behalf of the State. He accepts the notice.

2. The petitioner has moved this criminal misc. petition u/s 482 Cr.P.C. against the orders dated 06.01.2004 and 19.04.2007 passed by the judicial Magistrate, 1st Class, Khajuwala Distt. Bikaner whereby when the petitioner failed to appear before the Court on the date fixed, his bailbonds were forfeited and proceedings u/s 446 Cr.P.C. were initiated. Later on, on 19.04.2007 when the presence of the accused-petitioner could not be procured, he was declared absconder and proceedings under Sections 82 and 83 Cr.P.C. were initiated.

3. The case is listed at admission stage and notice was issued to the learned Public Prosecutor.

4. Both parties have agreed to decide the case finally at admission stage.

5. The question of illegality of order dated 06.01.2004 is concerned, it is found that there is neither any illegality nor any irregularity in the order. The accused-petitioner when failed to appear on the date fixed for, the Court forfeited his bailbonds and proceedings u/s 446 Cr.P.C. were initiated and he was summoned

by arrest warrant. There is neither any illegality in the order passed nor any irregularity, the order dated 06.01.2004 is perfectly legal.

6. The order dated 19.04.2007 is not sustainable in law because no proceedings under Sections 82 and 83 Cr.P.C. were initiated before declaring the accused-petitioner as an absconder. It was mandatory for the Court to have followed the procedure mentioned in Sections 82 and 83 Cr.P.C. before declaring the petitioner as absconder. After completion of the said proceedings, the accused-petitioner should have been declared as a absconder.

7. The Court while declaring the accused-petitioner as absconder has not followed due procedure as provided in the statute, the order so passed cannot be sustained. The nature of offence against the accused-petitioner is u/s 323 and 341 IPC.

8. Consequently, the order dated 19.04.2007 is quashed and set aside and the order dated 06.01.2004 is modified to the extent that the accused-petitioner instead of arrest warrant be summoned through bailable warrant of Rs. 10,000/-.