
(2005) 07 RAJ CK 0074

In the Rajasthan High Court

Case No : Criminal Revision Petition No. 368 of 2005

Laxman Ram Meghwal and Others

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 21-07-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 161, 319, 397
Penal Code, 1860 (IPC) — Section 143, 323, 447
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(1)

Citation : (2006) 1 RCR(Criminal) 512 : (2005) 4 RLW 2492 : (2005) WLC 638

Hon'ble Judges : H.R. Panwar, J

Bench : Single Bench

Advocate : Suresh Kumbhat, for the Appellant; O.P. Rathi, Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

H.R. Panwar, J.—This criminal revision petition u/s 397 of the Code of Criminal Procedure, 1973 for short, "the Code" is directed against the Order dated 5.4.2005 passed by the Special Judge, SC/ST Prevention of Atrocities Act Cases, Balotra For Short, "the Trial Court", whereby the Trial Court, on an application filed by the prosecution, arraigned the petitioners as accused and took cognizance against them and summoned them by non-bailable warrants. Aggrieved by the order impugned, the petitioners have filed the instant criminal revision petition.

2. I have heard learned Counsel for the parties. Perused the impugned order and the police challan papers as also the statements of as many as 12 prosecution witnesses which have been recorded till the date of passing of the impugned order.

3. The facts giving rise to the instant revision petition are that on 11.7.2002, complainant PW-5 Uda Ram filed a complaint before the Judicial Magistrate,

Siwana for the offences Under Sections 447, 323, 143 IPC and Section 31x of the Scheduled Castes/Scheduled Tribes Prevention of Atrocities Act, 1989 for short, "the Act" hereinafter. The Judicial Magistrate, Siwana, forwarded the complaint to the police u/s 1563 of the Code for investigation. After thorough investigation, the police filed challan against accused Ghewar Ram, Vaga Ram, Akha Ram and Aada Ram for the offences noticed above. However, negative final report was filed so far present petitioners are concerned. The Trial Court framed charges against the aforesaid four accused persons who were challaned and proceeded with the trial. After examination of as many as 12 witnesses, the Public Prosecutor filed an application u/s 319 of the Code before the Trial Court seeking arraigning of the present two petitioners as accused as these two petitioners, not being the accused, have also committed the offence. By the impugned order, the application u/s 319 of the code allowed and the petitioners were directed to be arraigned as accused and tried with co-accused already facing the trial.

4. The statement of PW-5 Uda Ram was recorded u/s 161 of the Code vide Exhibit D/1. When examined by the Trial Court, he admitted that in his previous statement Exhibit D/I, it has not been stated that he was abused by the present petitioners indicating his caste. He failed to produce any document which may show his ownership or possession over the land in question.

5. The police also recorded the statement of PW-7 Dunga Singh u/s 161 of the Code vide Exhibit D/2, wherein it has not been stated that the accused grappled with the complainant and abused him indicating his caste. It has not been stated therein that he intervened. It appears that prior to this occurrence, a case was registered by the former Sarpanch Gumna Ram Meghwal against this witness and one Jabbar Singh and therefore, there is enmity between this witness and the petitioners.

6. There are material contradictions in the statement of PW-8 Pappu Ram. From the statement of this witness, it appears that the plot in question has neither been allotted nor sold to the complainant by the Gram Panchayat and it was the complainant who tried to trespass over the plot and was removed by the order of the Tehsildar as the plot in question was earmarked for a park by the Gram Panchayat. 7. From the perusal of the statement of all the material witnesses, it is clear that none of the witnesses could say as to what exact words were used by the accused while allegedly abusing the complainant. Even some of the witnesses have not stated in their statements that the complainant was at all abused by the accused. Petitioners No. 1 and 2 are also the members of Scheduled Caste. The Trial Court, without noticing the material contradictions in the statement of the witnesses examined and the various infirmities in the prosecution case, arraigned the petitioners as accused.

8. In Michael Machado and Another Vs. Central Bureau of Investigation and Another,

"The basic requirements for invoking the above section is that it should appear to

the Court from the evidence collected during trial or in the inquiry that some other person, who is not arraigned as an accused in that case, has committed an offence for which that person could be tried together with the accused already arraigned. It is not enough that the Court entertained some doubt, from the evidence, about the involvement of another person in the offence. In other words, the Court must have reasonable satisfaction from the evidence already collected regarding two aspects. First is that the other person has committed an offence. Second is that for such offence that other person could as well be tried alongwith the already arraigned accused."

"It was further observed as under:

"The Court while deciding whether to invoke the power u/s 319 of the Code, must address itself about the other constraints imposed by the first limb of Sub-section 4, that proceedings in respect of newly-added persons shall be commenced afresh and the witnesses re-examined. The whole proceedings must be recommended from the beginning of the trial, summon the witnesses once again and examine them and cross-examine them in order to reach the stage where it had reached earlier. If the witnesses already examined are quite large in number, the Court must seriously consider whether the objects sought to be achieved by such exercise are worth wasting the whole labour already undertaken. Unless the Court is hopeful that there is a reasonable prospect of the case as against the newly-brought accused ending in being convicted of the offence concerned we would say that the Court should refrain from adopting such a course of action."

It was further held by the Hon''ble Apex Court as under:

"No doubt the statements may create some suspicion against the appellant. But suspicion is not sufficient to hold that there is a reasonable prospect of convicting the appellants of the offence."

9. In the instant case, the material witnesses have already been examined. In view of the material contradictions in the statement of witnesses and other various infirmities in the prosecution case, in my view the Trial Court was not satisfied in arraigning the petitioners as accused.

10. Consequently, the revision petition is allowed. The impugned order dated 5.4.2005 passed by the Trial Court is set aside. The stay petition stands disposed of.