
(1991) 02 RAJ CK 0027

In the Rajasthan High Court

Case No : Criminal Miscellaneous Petition No. 247 of 1988

Peeru Khan and Others

APPELLANT

Vs

The State of Rajasthan and Another

RESPONDENT

Date of Decision : 07-02-1991

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 190, 482
Penal Code, 1860 (IPC) — Section 147, 148, 149, 307, 323

Citation : (1991) WLN 51

Hon'ble Judges : B.R. Arora, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

B.R. Arora, J.—This petition u/s 482 Cr.P.C. has been filed by the petitioners against the order dated July 27, 1988, passed by the Additional Chief Judicial Magistrate No. 3, Jodhpur, by which the learned Additional Chief Judicial Magistrate took cognizance against the petitioners u/s 307 I.P.C.

2. Bismilla W/o Shri Jahoor Mohamed, on June 26, 1987, lodged a First Information Report at Police Station, Mahamandir, Jodhpur, against Peeru Khan, Kallu Khan, Bafati, Chandu, Gafoor, Babu Hussain, Chhotu, Smt. Chhoti, Smt. Kulsam and Smt. Nathi and on this report, the police registered a case against the accused under Sections 147, 148, 149, 323, 341 and 336 I.P.C. The police, after necessary investigation, presented the challan against Peeru Khan, Gafoor Khan, Chhotukhan, Hussain, Kallu Khan, Babu Khan, Bafati, Chandu Khan, Smt. Chhoti, Smt. Kalsum, Smt. Nathi and Bafati under Sections 147, 148, 149, 341, 323 and 325 I.P.C. in the Court of the Additional Chief Judicial Magistrate No. 3, Jodhpur, on July 20, 1987. Alongwith the challan, the accused were, also, produced and they were ordered to be released on bail on their furnishing surety in the sum of Rs. 2000/- and the personal bonds in the like amount. On that very day, the counsel for the complainant filed an application u/s 190 Cr.P.C. for taking cognizance against the accused u/s 307 I.P.C. also. The notice of this

application was given to the accused and after hearing the arguments, the learned Magistrate, by his order dated July 27, 1988, allowed the application against the petitioners under Sections 147, 148, 149, 341, 323, 325 and 307 I.P.C. It is against this order that the present miscellaneous petition u/s 482 Cr.P.C. has been filed by the petitioners.

3. Heard learned Counsel for the petitioners, the learned Counsel for the complainant and the learned Public Prosecutor.

4. It is contended by the learned Counsel for the petitioners that from the bare reading of the evidence on record, collected by the police during investigation, no case for taking cognizance against the accused-petitioners u/s 307 I.P.C. is made-out and the learned lower Court committed an error in taking the cognizance against the accused-petitioners u/s 307 I.P.C. The learned Public Prosecutor, on the other hand, has supported the order passed by the learned lower Court. I have considered the rival submissions made by the learned Counsel for the parties.

5. At the time of taking cognizance, the Court has only to see that whether from the evidence of the witnesses and the documents on record. Any prima facie case to proceed-with against the accused is made-out. If there is a prima facie evidence to proceed-with against the accused, then the Court can take the cognizance. If the accused, against whom the cognizance has been taken, has any valid defence available to him than that can be decided by the trial Court at the appropriate stage. As the order, taking the cognizance is an ex-parte order, passed by the learned Magistrate, without giving any opportunity of hearing to the accused, therefore, if the accused has any grievance against the order passed by the learned Magistrate then they can agitate their grievance and raise objections before the learned Magistrate and the learned Magistrate will consider all those objections raised by the accused. If after hearing the arguments the Court is of the opinion that no case is made-out then it may discharge the accused-petitioners. But the cognizance taken by the learned Magistrate cannot be interfered-with or quashed by this Court under its inherent powers at this stage.

6. Consequently, the miscellaneous petition filed by the petitioners, has got no force and is hereby dismissed.