
(2019) 02 RAJ CK 0240

In the Rajasthan High Court

Case No : Criminal Miscellaneous (Pet.) No. 889 Of 2019

Roop Singh And Ors

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

Date of Decision : 26-02-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 91, 173, 227, 482
Indian Penal Code, 1860 — Section 323, 332, 353, 415

Citation : (2019) 02 RAJ CK 0240

Hon'ble Judges : Pushpendra Singh Bhati, J

Bench : Single Bench

Advocate : Dharendra Singh, V.S. Rajpurohit

Final Decision : Allowed

Judgement

1. The petitioners have preferred this criminal misc. petition under Section 482 Cr.P.C. claiming the following relief:

"It is therefore, most humbly and respectfully prayed that the Misc. Petition may kindly be allowed and the order dated 23.01.2019 passed by learned Additional Session Judge (Women Atrocities) Cases in Criminal Revision Petition No.33/2018 (CIS No.159/2017) and Order dated 21.03.2017 passed by Additional Chief Judicial Magistrate, PCPNDT Act Cases Bikaner in Criminal Case No.859/2015 may kindly be quashed and set aside and the application filed by the petitioner may kindly be allowed as prayed for in the interest of justice."

2. Brief facts of this case as noticed by this Court are that an FIR bearing No.7/1992 was lodged by Shri Badri Narayan Soni in relation to an incident happened on 13.01.1992 at 5:00 PM alleging therein that the complainant's house was demolished by the present petitioners. As per the pleadings of the petitioners, the police did not find the offence proved against the petitioners under Section 332, 353 and 415 of IPC, but proceeded as against them only under Section 323 of IPC. The cognizance was taken by the learned court below

against the present petitioners alongwith Sarpanch of the Gram Panchayat. However, before the charges could be framed, an application was moved by the petitioners requesting the learned trial court to summon a copy of certain documents namely, notice No.1/90 dated 10.01.1990; the resolution of Gram Panchayat, Napasar dated 14.01.1990 for removal of unauthorized possession over the land and; attendee register dated 13.01.1992, wherein the petitioner was appointed as a government servant.

3. Learned counsel for the petitioners submits that the learned court below has failed to appreciate the contents of the aforementioned application. Since the documents sought to be summoned by way of the said application were pivotal to the facts of the case, therefore, the learned court below ought to have allowed such application while summoning those documents.

4. Learned counsel for the petitioners further submits that the aforementioned documents sought to be produced are not available on the record of the cross cases, despite the same, the learned trial court has dismissed the application only on the ground that the documents are available in the record of the cross cases.

5. Learned Public Prosecutor is not in a position to refute the aforesaid facts and only raised a legal objection that at the stage before the charges are framed, calling of documents should not be permissible.

6. Learned counsel for the petitioners in his rejoinder arguments, has relied upon the judgment rendered by Hon'ble Apex Court in Nitya Dharmananda @ Lenin & Anr. Vs. Sri Gopal Sheelum Reddy also known as Nithya Bhaktananda and Anr. decided on 07.12.2017 in Criminal Appeal No.2114/2017. The relevant portion of the said judgment, reads as under:

"7. In Debendra Nath Padhi, supra, it was observed:

"25. Any document or other thing envisaged under the aforesaid provision can be ordered to be produced on finding that the same is "necessary or desirable for the purpose of investigation, inquiry, trial or other proceedings under the Code". The first and foremost requirement of the section is about the document being necessary or desirable. The necessity or desirability would have to be seen with reference to the stage when a prayer is made for the production. If any document is necessary or desirable for the defence of the accused, the question of invoking Section 91 at the initial stage of framing of a charge would not arise since defence of the accused is not relevant at that stage. When the section refers to investigation, inquiry, trial or other proceedings, it is to be borne in mind that under the section a police officer may move the court for summoning and production of a document as may be necessary at any of the stages mentioned in the section. Insofar as the accused is concerned, his entitlement to seek order under Section 91 would ordinarily not come till the stage of defence. When the section talks of the document being necessary and desirable, it is implicit that necessity and desirability is to be examined considering the stage

when such a prayer for summoning and production is made and the party who makes it, whether police or accused. If under Section 227, what is necessary and relevant is only the record produced in terms of Section 173 of the Code, the accused cannot at that stage invoke Section 91 to seek production of any document to show his innocence. Under Section 91 summons for production of document can be issued by court and under a written order an officer in charge of a police station can also direct production thereof. Section 91 does not confer any right on the accused to produce document in his possession to prove his defence. Section 91 presupposes that when the document is not produced process may be initiated to compel production thereof."

8. In Hardeep Singh Etc. versus State of Punjab and ors. Etc. (2014) 3 SCC 92 a Bench of five-Judges observed:

"19. The court is the sole repository of justice and a duty is cast upon it to uphold the rule of law and, therefore, it will be inappropriate to deny the existence of such powers with the courts in our criminal justice system where it is not uncommon that the real accused, at times, get away by manipulating the investigating and/or the prosecuting agency. The desire to avoid trial is so strong that an accused makes efforts at times to get himself absolved even at the stage of investigation or inquiry even though he may be connected with the commission of the offence."

9. Thus, it is clear that while ordinarily the Court has to proceed on the basis of material produced with the charge sheet for dealing with the issue of charge but if the court is satisfied that there is material of sterling quality which has been withheld by the investigator/prosecutor, the court is not debarred from summoning or relying upon the same even if such document is not a part of the charge sheet. It does not mean that the defence has a right to invoke Section 91 Cr.P.C. de hors the satisfaction of the court, at the stage of charge."

7. After hearing learned counsel for the parties as well as perusing the record of the case alongwith the precedent law cited at the Bar, this Court is of the opinion that the precedent law cited by learned counsel for the petitioner applies in the present case and though ordinarily, the learned courts below should proceed on the basis of the material produced in the charge sheet so as to deal with the issue of charge, but if the Court is satisfied and there is a material which shall be necessary to make adjudication at the stage of charge and is not a part of charge-sheet, then such material can be taken on record.

8. In view of above, the present petition is allowed and while quashing and setting aside the impugned order dated 23.01.2019 passed by learned Additional Session Judge (Women Atrocities) Cases in Criminal Revision No.33/2018 (CIS No.159/2017) and order dated 21.03.2017 passed by learned Additional Chief Judicial Magistrate, PCPNDT Act Cases, Bikaner in Criminal Case No.859/2015, the learned court below is directed to summon the aforementioned three documents, while allowing the application moved by the petitioners and such

documents shall be taken on record by the learned court below.