
(2011) 04 RAJ CK 0055

In the Rajasthan High Court

Case No : Criminal Revision Petition No. 412 of 2011

Sewaram Swami

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 23-04-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 319
Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2011) 04 RAJ CK 0055

Hon'ble Judges : Raghvendra S. Chauhan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.S. Chauhan, J.—The Petitioner has challenged the order dated 29.03.2011, passed by the Additional Sessions Judge (Fast Track) No. 2, Sikar, Headquarter Shrimadhpor, whereby the learned Judge has dismissed the Petitioner's application u/s 319 Code of Criminal Procedure and has refused to take cognizance against the Respondent Nos.2 and 3, Mahesh Kumar Swami and Dr. Uma K. Raghuvanshi, respectively.

2. The brief facts of the case are that on 03.10.2008, Mahesh Kumar Swami lodged a written report at Police Station Thoi, District Sikar with regard to an incident which had allegedly taken place on 30.09.2008, wherein he alleged that Kanaram and Om Prakash, the Petitioner's son, had assaulted Sanwar Mal. Due to this assault, Sanwar Mal was injured and he was rushed to the S.D.M. Hospital, Jaipur. However, during the course of treatment, Sanwar Mal expired on 02.10.2008. On the basis of the said report, the Police registered a FIR, FIR No. 142/2008 for offences under Sections 302, 34 IPC. During the course of investigation, the Petitioner and his sons were arrested. The charge-sheet was filed both against the Petitioner and against his sons. During the course of trial, the prosecution examined seven witnesses. On 17.03.2011, the Petitioner, who is accused in the present case, moved an application u/s 319 Code of Criminal

Procedure praying that process should be issued against Mahesh Kumar, the complainant, and Dr. Uma K. Raghuvanshi; they should be arrayed as accused in the present case. However, vide order dated 29.03.2011, the learned Judge dismissed the said application. Hence, this petition before this Court.

3. Mr. Mahesh Kalwania, the learned Counsel for the Petitioner, has vehemently contended that Sanwar Mal, after being assaulted, was kept in the hospital for four days. Despite the opinion of the doctors that he needs to undergo an operation, no operation was performed. Therefore, the death of Sanwar Mal was not caused by the accused-Petitioner and by his sons, but was caused due to negligence of the complainant and the medical negligence of the treating doctor. Hence, both the complainant and Dr. Uma K. Raghuvanshi are responsible for the death of Sanwar Mal. He has further contended that the Petitioner has been falsely implicated in the present case due to a family animosity between the complainant's family and that of the accused-Petitioner.

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

5. This petition is highly misplaced for the following reasons : firstly, although seven witnesses have been examined, not a single witnesses has uttered a single word against the Respondent Nos.2 and 3 with regard to their involvement in the death of Sanwar Mal. Therefore, there is no evidence available before the learned trial court to proceed against the Respondent Nos.2 and 3. Hence, the learned trial court is certainly justified in dismissing the application u/s 319 Code of Criminal Procedure.

6. Secondly, in case there were any evidence against the Respondent Nos.2 and 3, obviously it was for the prosecution to move the application u/s 319 Code of Criminal Procedure Section 319 Code of Criminal Procedure cannot be used by an accused-person to buttress his defence and to pray that another person should be arrayed as an accused. Therefore, the submission of an application u/s 319 Code of Criminal Procedure itself was highly misplaced. In case, the Petitioner wishes to buttress his defence that the death was caused due to medical negligence, he is free to do so without impleading the Respondent No. 3 as an accused.

7. Hence, this Court does not find any illegality or perversity in the impugned order. This petition, being devoid of any merit is, hereby, dismissed.