
(2019) 02 RAJ CK 0117

In the Rajasthan High Court

Case No : Criminal Miscellaneous (Pet.) No. 3349 Of 2016

Shankar Lal And Ors

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

Date of Decision : 15-02-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 197, 482

Citation : (2019) 02 RAJ CK 0117

Hon'ble Judges : Pushpendra Singh Bhati, J

Bench : Single Bench

Advocate : Sudhir Saruparia, M.S. Panwar

Final Decision : Partly Allowed

Judgement

1. Despite service, no one has put in appearance on behalf of the respondent No.2.

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

"Hence, it is prayed that the petition may kindly be allowed and order dated 16.09.2016 and 21.09.2013 passed by both the Courts below be quashed and set aside.

Any other relief which Court may think fit be granted in favour of the petitioner."

3. Learned counsel for the petitioner submits that all the four petitioners are public servant and are entitled for protection under Section 197 Cr.P.C.

4. Learned counsel for the petitioner further submits that originally the case was registered in 2008 and cognizance was taken on 04.11.2011. On 27.08.2012, the petitioners preferred a revision against the cognizance but the learned revisionary court has observed that the petitioners shall be free to file separate application under Section 197 Cr.P.C. before the learned trial court at appropriate stage. On 21.09.2013, the petitioners preferred an application before the learned

trial court under Section 197 Cr.P.C. but the same was rejected on the ground that there was no power of review pertaining the cognizance order. Again the revision of the petitioners against the order dated 21.09.2013 was dismissed on 16.09.2016 on the ground that the impugned order passed was lawful.

5. Learned counsel for the petitioners however, makes a limited submission that application of the petitioners under Section 197 Cr.P.C. may be dealt with by the learned trial court on merits, strictly in accordance with law.

6. Learned Public Prosecutor opposes the submissions made on behalf of the petitioners.

7. After hearing learned counsel for the parties and perusing the record of the case, this Court is of the opinion that since the petitioners are public servants, therefore, it is mandatory for the learned court below to have decided the application under Section 197 Cr.P.C. on its own merits.

8. In view of the above, the present petition is partly allowed and the matter is remanded back to the learned trial court to decide the application under Section 197 Cr.P.C. on its own merits, by passing a speaking order as to whether how the trial can continue without obtaining proper sanction from the sanctioning authority.