
(2004) 06 RAJ CK 0024

In the Rajasthan High Court

Case No : Criminal Miscellaneous Petition No. 79 of 1996

Sohanlal

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 02-06-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (2004) 4 RCR(Criminal) 717

Hon'ble Judges : N.N. Mathur, J

Bench : Single Bench

Advocate : Umesh Sharma for Mr. R.S. Rathore, for the Appellant; S.S. Rathore, Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

N.N. Mathur, J.—By way of instant petition u/s 482 Cr.P.C, petitioner has challenged the order dated 10. 11.1995 passed by the learned Judicial Magistrate, Bansoor taking cognizance against him for the offence u/ss.394,504 and 341 IPC.

2. In spite of notice, none appears for the second respondent Girraj.

3. Briefly stated the facts of the case are that the second respondent Girraj presented a complaint in the Court of learned Judicial Magistrate, Bansoor on 30.8.1995 stating inter alia that on 26.8.1995 at about 8 P.M., while he was on the way in front of the temple near Tehsil Office, the accused petitioner herein met him. The accused enquired as to where he was going in the night. An oral altercation took place between them. The accused abused and assaulted him. He also took away a wrist watch and cash amounting to Rs.380/-. The complainant went to lodge the report of the incident at the Police Station but he was not allowed. He also stated that the incident was witnessed by Hemraj, Satish Kumar etc. In support of the complaint, Girraj examined himself and produced witnesses Hemraj and Satish Sharma. Learned Magistrate by the impugned order has taken

cognizance against the petitioner for the offences u/ss. 394,504 and 341 IPC.

4. It is submitted by the learned counsel that the entire case is false and fabricated. He further submits that petitioner is a Government servant and at the time of the incident, he was at Police Station, Behror in connection with the election duty. He has also produced a copy of the Rojnamcha in that regard.

5. I have considered the contentions raised by the learned counsel. It is not for this Court to entertain the defence of the accused at this stage. However, it is not a simple case of abusing and assaulting the complaint. There is also allegation of robbery to the effect that the wrist watch and Currency Notes were taken away. This aspect requires investigation by the police. In such a case, instead of proceeding on the basis of the statements of the witnesses, learned Magistrate ought to have sent the complaint for investigation under Sec. 156(3) Cr.P.C. In absence of evidence of recovery, ultimately it would be difficult to establish the charge u/s 5041 PC. The plea of alibi could have also been investigated by the police, if the matter was sent for investigation. To my mind, the learned Magistrate has committed error in straightaway proceeding through the complaint by taking statements of the witnesses u/s. 202 Cr.P.C. Such a complaint can be filed by anyone at any time with a view to humiliate and insult a person to settle the score. Thus, to prevent abuse of the process of Court, I consider it appropriate not to further allow the proceedings pursuant to the order of the learned Magistrate Bansoor dated 10. 11.1995.

6. Consequently, the Miscellaneous Petition is allowed. The order of the learned Judicial Magistrate dated 10. 11.1995 is quashed and set aside.