
(2010) 08 RAJ CK 0183
In the Rajasthan High Court
Case No : Criminal Appeal No. 1083 of 2008

State of Rajasthan

APPELLANT

Vs

Banti @ Mohd. Hassan and Another

RESPONDENT

Date of Decision : 13-08-2010

Acts Referred:

Arms Act, 1959 — Section 25, 3
Criminal Procedure Code, 1973 (CrPC) — Section 378
Penal Code, 1860 (IPC) — Section 120B, 201, 302, 34
Rajasthan Police Act, 2007 — Section 29, 29(1)(1)

Citation : (2011) 2 RLW 1215

Hon'ble Judges : Narendra Kumar Jain, J; Meena V. Gomber, J

Bench : Division Bench

Advocate : J.R. Bijarnia, P.P, for the Appellant;

Judgement

Narendra Kumar Jain, J.—Additional District and Sessions Judge (Fast Track), Chomu vide its judgment and order dated 30.10.2007 in Sessions Case No. 24/2006 acquitted the accused-respondents Banti @ Mohd. Hassan S/o Ali Hassan and Sumeet Kumar S/o Bala Sahai from the offences under Sections 120-B, 302/34, 201 IPC and Section 3/25 of the Arms Act. Being aggrieved with the same, the State of Rajasthan preferred leave to appeal u/s 378 of the Code of Criminal Procedure. This Court vide order dated 13.10.2008 granted leave to appeal to State of Rajasthan and issued notice to accused-respondents.

2. As per office report dated 2.1.2009, notices of respondents No. 1 and 2 were received unserved due to their non-presence at their houses.

3. This Court again issued fresh notices to the accused-respondents. As per office report dated 9.4.2009, notice of Respondent No. 1 was received unserved with report that he is out of station and notice of respondent No. 2 was received unserved with report that his house is locked.

4. This Court again issued fresh notices on 17.4.2009. As per office report dated 20.10.2009, notice of Respondent No. 2 Sumit Kumar was received duly served

but the notice of Respondent No. 1 Banti @ Mohd. Hassan was received unserved for want of fresh address.

5. This Court vide order dated 26.10.2009 issuedailable warrants against both the accused-respondents. Again, vide order dated 19.5.2010, after perusing the report ofailable warrants, this Court directed that the accused-respondents be produced before this Court through non-ailable warrants and non-ailable warrants were issued against them.

6. As per office report dated 9.8.2010, non-ailable warrants of both the accused-respondents were received executed from serving agency, i.e. S.H.O. Police Station Chomu, District Jaipur, Rural with the report that both the respondents are not present at their address since last 5-6 months.

7. On 27.5.2006 a written report was lodged by complainant Wahid S/o Kamruddin and a chalked FIR No. 328/2006 was registered at Police Station Chomu. After completion of investigation, Police filed a charge-sheet against accused-respondents to punish them. However, trial Court acquitted both the accused-respondents. Being aggrieved with the same. State preferred leave to appeal against both the accused-respondents which was granted by this Court.

8. From the above, it is clear that it is the State, which has filed charge-sheet before the trial Court to punish the accused-respondents and it is the State, which has filed criminal leave to appeal before this Court to set aside the order of acquittal passed by the trial Court and to punish both the accused-respondents. In these circumstances, it is the duty of the State to furnish fresh addresses of the accused-respondents, if the State wants that accused-respondents be punished. It is highly undesirable on the part of the Police for not arresting and producing the accused-respondents despite issuance of non-ailable warrants against them by this Court for want of fresh address or their non-presence at their houses, or on the ground that they are not available at their address for last 5-6 months. Every time a different report has been sent by concerned S.H.O. instead of effecting service of notice of execution ofailable and non-ailable warrants. The address of accused is furnished by Police only to this Court. If the accused-respondents are not available on the address furnished by the State to this Court, then it was their duty to find as to where the accused-respondents are residing at present. No one will furnish their address except the Police, who has filed charge sheet in the case against them and the State, which has preferred leave to appeal before this Court.

9. As per Clause (1) of sub-section (1) of Section 29 of the SA, 2007, it is the duty and responsibility of a police officer to perform his duties and discharge such responsibilities as may be enjoined upon him by law or by any authority empowered to issue such directions under any law. Section 29(1)(1) of the Rajasthan Police Act, 2007 is reproduced as under:

29. Functions, Duties and responsibilities of police officers--(1) The following shall be the functions, duties and responsibilities of a police officer:-

(a to k).....

(1) to perform such duties and discharge such responsibilities as may be enjoined upon him by law or by an authority empowered to issue such directions under any law.

10. This Court vide order dated 19.5.2010 directed that the accused be produced before this Court through non-bailable warrants, which were issued by this Court. From the report of S.H.O., Police Station Chomu, it appears that he has sent a frivolous and flimsy report repeatedly, which clearly shows that he has not performed his legal and statutory duty cast upon him vide above mentioned provision of law and for the same, he is liable for suitable legal action to be initiated against him. However, before passing any final order against him, we think it fit and proper to issue notice to him i.e., S.H.O. Police Station Chomu, District Jaipur, Rural to explain and show cause as to why a suitable legal order may not be passed against him.

11. A copy of this order may be sent to S.H.O. Police Station Chomu, District Jaipur, Rural through Superintendent of Police, Jaipur District Rural.

12. A copy of this order may also be sent to Director General of Police, Rajasthan, Jaipur for taking necessary action and to issue necessary circular to all the concerned to comply with the directions issued by this Court and not to send any repeated frivolous and flimsy reports in the matter of service of notice or execution of bailable or non-bailable warrants against the accused-persons. Fresh non-bailable warrants of the accused-respondents may again be issued and sent to the Superintendent of Police, District Jaipur Rural for execution.

Put up on 30.8.2010.