
(2014) 04 RAJ CK 0005

In the Rajasthan High Court

Case No : Criminal Miscellaneous Petition No. 760 of 2014

Vijay and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 16-04-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 120B 120-B 376 420

Citation : (2015) 3 Crimes 151

Hon'ble Judges : Vijay Bishnoi, J

Bench : Single Bench

Advocate : Shambhoo Singh, Advocate for the Appellant; R.K. Bohra, PP,
Advocate for the Respondent;

Final Decision : Partly Allowed

Judgement

Vijay Bishnoi, J.

1. This criminal misc. petition under Section 482 Cr.P.C. has been filed by the petitioners against the order dated 21.3.2014 passed by the Additional Sessions Judge, Bali, District Pali (hereinafter referred to as "the revisional court") in Criminal Revision No. 34/2012 filed on behalf of the petitioners whereby the revision petition was dismissed by the revisional court. The petitioners have also challenged the order dated 26.9.2012 passed by the Additional Chief Judicial Magistrate, Bali, District Pali (hereinafter referred to as "the trial court") whereby cognizance was taken against the petitioner No. 1 for the offence punishable under Section 376 I.P.C. and against the petitioner No. 2 for the offence punishable under Section 376/120-B IPC. On the basis of complaint filed by the respondent No. 2 before the trial court, the police registered an FIR No. 33/2011, dated 11.4.2011 at Police Station Falna against the petitioners for the offence punishable under Section 376, 420 and 120B I.P.C. After conclusion of the investigation, the police filed negative final report before the trial court while concluding that the allegations levelled in the FIR by the respondent No. 2 are

false. The respondent No. 2 filed protest petition before the trial court and the trial court after taking into consideration the evidence collected by the police during the course of investigation and the conclusions arrived at by the police, has held that the grounds on which the negative final report has been given by the police are not proper in view of the cogent evidence available against the petitioners for commission of offences punishable under Sections 376 I.P.C. & 376/120B I.P.C. and, therefore, it took cognizance against the petitioners for the offences punishable under Sections 376 and 376/120B I.P.C. and summoned the petitioners through arrest warrant.

2. Being aggrieved with this, the petitioners preferred revision petition before the revisional court. However, the revisional court also dismissed the said revision petition and confirmed the order passed by the trial court. The learned counsel for the petitioners after attempting to argue the case on merits for quite some time has confined his prayer only to the extent that the petitioners may be ordered to be summoned through bailable warrant instead of arrest warrant.

3. The learned counsel for the petitioners has placed reliance on the decision of the Hon''ble Supreme Court rendered in Inder Mohan Goswami and Another Vs. State of Uttaranchal and Others,

4. Learned Public Prosecutor has opposed the prayer of the petitioners while contending that the petitioners are guilty of committing heinous offence, therefore, no relief can be granted to them at this stage.

5. In the present case, the police has filed a negative final report, however, the trial court took cognizance against the petitioners on a protest petition filed by the respondent No. 2. The trial court while directing for summoning the petitioners has not given any reason for issuing the arrest warrant instead of bailable warrant. The Hon''ble Apex Court in the case of Vikas Vs. State of Rajasthan, has held as under:

"The court should properly balance both personal liberty and societal interest before issuing warrants. There cannot be any straight-jacket formula for issuance of warrants but as a general rule, unless an accused is likely to tamper or destroy the evidence or is likely to evade the process of law, issuance of non-bailable warrants should be avoided. The conditions for the issuance of non-bailable warrant are reiterated in the case of Inder Mohan Goswami (Supra) and in the case of State of U.P. Vs. Poosu and Another, , wherein it is mentioned that Non-bailable warrant should be issued to bring a person to court when summons or bailable warrants would be unlikely to have the desired result. This could be when firstly it is reasonable to believe that the person will not voluntarily appear in court; or secondly that the police authorities are unable to find the person to serve him with a summon and thirdly if it is considered that the person could harm someone if not placed into custody immediately."

6. In the present case, the learned trial court, while summoning the petitioners through arrest warrants, has not recorded its reasonable belief that the

petitioners will not appear in the trial court or the police authorities are unable to find the petitioners or the petitioners can harm someone, so it is necessary to keep them in custody immediately. In the above noted facts and circumstances of the case, this criminal misc. petition is partly allowed while maintaining the order of summoning the petitioners for aforementioned offences. The direction to summon the petitioners by warrant of arrest is hereby modified and the trial court is directed to summon the petitioners throughailable warrants. The stay petition is also dismissed.