

(2016) 09 RAJ CK 0076

RAJASTHAN HIGH COURT

Case No: Criminal Revision No. 309 of 2015

Sheeshpal Son of Shri Lichmana

Ram - Petitioner @HASH State of

Rajasthan - Non-Petitioner

APPELLANT

Vs

RESPONDENT

Date of Decision: Sept. 23, 2016

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 397, Section 401
- Penal Code, 1860 (IPC) - Section 34, Section 436, Section 447

Citation: (2016) 4 CriLR 1951

Hon'ble Judges: Goverdhan Bardhar, J.

Bench: Single Bench

Advocate: Mr. Suresh Kumbhat, Advocate, for the Appellant/Petitioner; Mr. O.P. Rathi, Public Prosecutor, for the Respondent

Final Decision: Disposed Off

Judgement

Mr. Goverdhan Bardhar, J. - The present revision petition has been filed against the order dated 05.02.2015, passed by the learned Additional Sessions Judge, Churu whereby he has framed the charges for offences under Sections 436, 447/34 IPC against the petitioners.

2. Counsel for the petitioners argued that it is settled legal position that an ordinary thatched roof/ shed resting on bamboos or pillars or bricks having no doors cannot be treated as building within the meaning of the term used under Section 436 IPC. As per the case of the prosecution, there was a thatched roof allegedly raised by the complainant, open from all sides and undisputedly without any walls or door; simply a cot was lying there with no kitchen or any dwelling and/or residential unit. Therefore offence under Section 436 IPC is not made out against the petitioners. In support of his contentions, counsel for the petitioners has placed reliance upon the

judgment of the Allahabad High Court in the case of **Babulal & Anr. v. State [AIR (39) 1952 Allahabad 146]**.

3. Learned Public Prosecutor supports the impugned order of framing of charge passed by the learned trial court.

4. Heard the counsel for the parties and perused the impugned order dated 05.02.2015, passed by the learned trial court as also gone through the material available on record.

5. For framing charge for offence under Section 436 IPC, it is required that there should be ample evidence on the record to show that the place/shed was ordinarily used for keeping as place for the custody of properties or human dwelling and which has furnishings doors etc. Without evidence to show that the place is covered by definition of "building", charge regarding offence under Section 436 IPC cannot be framed. But the learned trial court has not considered this aspect of the matter. The thatched shed/structures without furnishings & doors meant for the purpose of keeping agriculture equipments etc. destroyed by fire due to mischief, the offence falls under Section 435 and not under Section 436 IPC.

6. In view of above, the impugned order dated 05.02.2015 passed by the learned trial court i.e. Additional Sessions Judge, Churu is set aside to the extent of framing of charge for offence under Section 436 IPC against the petitioners and the matter is remanded back to the learned trial court with the direction to pass order of framing of charge afresh after hearing both the parties and in accordance with law.

7. The revision petition stands disposed of accordingly.