

(2019) 08 J&K CK 0011

In the Jammu And Kashmir High Court

Case No : Miscellaneous Criminal Cases (CRMC) No. 201 Of 2018

Balbir Singh And Others

APPELLANT

Vs

State Of Jammu & Kashmir And Others

RESPONDENT

Date of Decision : 09-08-2019

Acts Referred:

Code Of Criminal Procedure, 1898 — Section 561A
Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 109, 201, 405, 415, 406, 407, 408, 409, 420
Jammu And Kashmir Prevention Of Black Marketing And Maintenance Of Supplies Of Essential Commodities Act, 1988 — Section 3, 7

Citation : (2019) 08 J&K CK 0011

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Final Decision : Partly Allowed

Judgement

Sanjeev Kumar, J

1. This quashment petition filed in terms of Section 561-A Cr.PC is directed against the order dated 17.09.2016 passed by the Special Mobile Magistrate (Passenger Tax) Jammu whereby the petitioners have been charged for the commission of offences punishable under Sections 109/201/420/407 of Ranbir Penal Code (For short "the RPC").

2. With a view to appreciating the grounds of challenge urged on behalf of the petitioners to assail the impugned order, it would be necessary to briefly notice the prosecution story. On 17.06.2014, the Police Station, Domana received an information from reliable sources that two vehicles bearing registration No. JK02L-4137 and JK02T-2672 driven by the drivers, namely, Moti Lal and Tarsem Kumar were loaded with government ration, i.e. Rice and Flour from Central Store, Ware House, Jammu for ration depot, Bhardore Saari and the same were unloaded in Singh Flour Mill instead of taking it to the Ration Depot, Bhardore Saari. The police was also informed that the owner of the Singh Flour Mill along

with few others in connivance with the employees of CAPD Department have diverted the government ration to the private mill for making wrongful profit. On the basis of this information, the Police of Police Station, Domana registered an FIR No.243 of 2014 dated 27.06.2014 itself and set the investigation in motion against the accused. The Police Team rushed to Singh Flour Mill and on reaching there found the accused, namely, Raghbir Singh, Sanjeev Singh, Tarsem Kumar, Subash Chander, Om Parkash and Moti Lal present in the Flour Mill. The owner of the Mill Balbir Singh, however, had absconded. Both the vehicles carrying the ration were found on spot and some ration of CAPD was found unloaded from the vehicles and some was in the process of being unloaded in the Mill. The Police also found that the government ration, which was carried in government bags was filled in the bags carrying the mark of private mill. The police seized the ration on spot and during investigation found the persons challaned involved in the commission of various offences under Sections 109/201/420/407 RPC and 3/7 Essential Commodities Act whereas the accused Raj Kumar an employee of the CAPD was challaned for the commission of offence under Sections 409/109 RPC. The trial Court heard Senior Prosecuting Officer for the State and the counsel representing the accused on framing of charge. The Court did not find any prima-facie material against Ram Singh and Sanjay Manhas to connect them with the offence alleged against them and, accordingly, they were discharged. However, the rest of the accused including the petitioners herein were found prima-facie involved in the commission of offences under Sections 420/407/109 and 201 RPC, and they were, accordingly, charged for the aforesaid offences by the trial Court vide its order dated 17.09.2016. It is this order, which is impugned in this petition. The petitioners assail the impugned order and seek the quashment of the charge primarily on the following grounds:-

(i) That the material collected by the Investigating Officer during investigation even if accepted to be genuine and correct on its face value, does not make out the ingredients of any of the charged offences;

(ii) That the charge under Sections 420/407 RPC, which offences are mutually exclusive and cannot be committed simultaneously by any person at the same time qua the same property is not sustainable in law; and

(iii) That there is no concrete evidence collected by the Investigating Officer to connect the accused Sanjeev Singh with the commission of the charged offences. On the strength of the documents placed on record in terms of order dated 30.07.2019, it is urged that the Flour Mill where government ration was allegedly unloaded belongs to only accused Balbir Singh and accused Sanjeev Singh has been unnecessarily arraigned as accused and only for the reason that he is brother of the Mill owner Balbir Singh.

3. Having heard learned counsel for the parties and perused the record, it would be necessary to first set out the provisions of Section 405 and 415 of the RPC.

"405. Criminal breach of trust.

Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do, commits criminal breach of trust."

415. Cheating.

Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act of omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".

4. As is evident from the bare reading of Section 405 RPC, it defines the term "Criminal breach of trust" which is punishable under Section 406 RPC, but if it is committed by a carrier, it is punishable under Section 407 RPC and if it is committed by clerk or servant, it is punishable under Section 408 RPC. The criminal breach of trust by public servant, or by banker, merchant or agent, is however, punishable under Section 409 RPC. The ingredients of offence of criminal breach of trust as can be culled out from Section 405 RPC are as under:-

(i) There must be entrustment of the property with the accused or the accused must be entrusted with any dominion over the property;

(ii) The accused dishonestly misappropriates or converts to his own use that property or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust; or

(iii) Willfully suffers any other person so to do.

5. From the prosecution story, which is prima-facie substantiated by the prosecution by collection of evidence during investigation clearly reveals that the government property, i.e., ration was entrusted to the carriers for its transportation to the depot of the society for its distribution to the consumers/public at large, but, the same was, instead, carried to a private mill where it was sold for consideration.

Clearly the carriers, i.e., the drivers of the vehicles dishonestly misappropriated the ration and converted it to their own use by disposing it of in violation of the legal mode in which they were supposed to carry it to the depot of the society. As per the allegations contained in the challan, this was done by the drivers of two carriers with the active connivance of the public servant, i.e., an employee of the CAPD, who has been separately charged for the offences under Sections

409/109 of the RPC. Not only the employee of CAPD, namely, Raj Kumar and carriers of the vehicles, which were carrying the government ration were involved in the commission of charged offence, but, the owner of the Mill and few others, who have been named in the challan as accused had abetted the commission of offence and therefore, have been charge by the aid of Section 109 of the RPC.

6. In view of the foregoing reasons and also going by the prosecution story as it is, it is abundantly clear that the charge under Section 407 of the RPC read with Section 109 of the RPC is prima-facie made out against the petitioners. There is enough material on record to figure out the involvement of the accused Sanjeev Singh also in the commission of the charged offences. He along with others has been found instrumental in converting the government property entrusted to the carriers for their person use by facilitating the carriers to act in violation of the direction of the law prescribing the mode in which the property entrusted was to be carried. There should be no doubt that the vehicles driven by two accused, i.e. drivers, which were carrying the government ration, were to be off-loaded in the depot of the society at Bhardore Saari and the ration, which they were carrying was meant for its distribution to the consumers/public at large. They, in connivance with other accused, carried this ration to a private mill where same was disposed of dishonestly in clear breach of the trust. I have, thus, no doubt in my mind that all the petitioners are prima-facie involved in the commission of offence under Section 407 of the RPC read with Section 109 of the RPC. However, I am of the considered view that even if the prosecution story as projected in the challan is accepted as a gospel truth and believed, still the ingredients of Section 415 of the RPC, which defines the offence of "cheating" are clearly not made out. I do not find any element of inducement by any of the accused to any person to deliver any property. The deception and inducement are sine qua non for constituting an offence of "cheating" as defined in Section 415 RPC. In the instant case, there is no allegation of any deception or fraudulent or dishonest inducement of any person. The ration when loaded in the carriers from the Central Store Depot situated at Ware House, Jammu was bound for ration depot of the society situated in Bhardore Saari and meant for distribution to the general public/consumers. It was, however, diverted by the accused in connivance with each other and off-loaded at a private mill where it was shifted from the government bags carrying mark of CAPD and filled in the bags of flour mill just to conceal the identity and it is because of this reason the Police has added Section 201 of the RPC and the Magistrate has, accordingly, charge sheeted the petitioners. But, the charge under Section 420 of the RPC, which makes the offence of cheating as defined in Section 415 of the RPC punishable is clearly not made out from the prosecution story and evidence collected during the course of investigation.

7. Accordingly, this petition is partly allowed and the impugned order in so far as it charges the petitioners for the commission of offence under Section 420 of the RPC is concerned is quashed. However, rest of the charges framed against the petitioners under Sections 407/109/201 of the RPC are sustained. The trial Court

shall now proceed against the accused for the offences punishable under Sections 407/109/2012 of the RPC only.

8. Disposed of as above.

9. Registry is directed to send down the record along with copies of this order.