

(1985) 01 RAJ CK 0085

In the Rajasthan High Court

Case No : Criminal Miscellaneous Petition No. 171 of 1982

Bhajan Singh

APPELLANT

Vs

The State of Rajasthan

RESPONDENT

Date of Decision : 02-01-1985

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 202, 482
Penal Code, 1860 (IPC) — Section 380, 408, 409

Citation : (1985) WLN 75

Hon'ble Judges : K.S. Lodha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

K.S. Lodha, J.—This application u/s 482 Cr. PC has been filed by Bhajan Singh against the order of the learned Munsif & Judicial Magistrate, Sri Karanpur by which cognizance of an offence u/s 408 I P.C. was taken against him.

2. Briefly stated the facts giving rise to this application are that there was some disputes in relation to the sale of a cow between Dilawar Singh, Tara Singh and Munshi Singh. A report was lodged to the police station about the theft of the cow and in that connection Dilawar Singh is alleged to have been arrested by the police. The case of the complainant Dilawar Singh is that it was the present petitioner Bhajan Singh who was S.H.O. police Station Kesarisinghpur at that time, who had taken him in custody and had also affected the search of his person and during that search apart from other articles he had also taken "gold Kada" from his hand but he did not record the recovery of this "Kada" in the arrest memo and later did not return the same to the complainant after his releases on bail despite his application and he thus committed an offence Under Sections 408 and 409 IPC. The complaint was filed on 16-7-80 and the learned Magistrate forwarded it to the police for investigation directing that as the police officer was involved, the investigation must be carried out by a person not below the rank of Dy. S.P. The Dy. S.P. after investigation filed the final report. The

complainant thereupon filed a protest application. After enquiry Under Sections 200 and 202 Cr. P.C. the learned Magistrate took cognizance of offence u/s 408 I.P.C. against the present petitioner. The petitioner being aggrieved of this order has come up before this Court praying that the order of taking cognizance against him may be quashed.

3. I have heard the learned counsel for the parties and have gone through the record.

4. It has been urged by the learned counsel for the petitioner that a false case has been raised against him by the complainant on account of his displeasure against the petitioner for his arrest in the case u/s 380 IPC. He further pointed out that the present complaint has been lodged after inordinate delay, that the fact of recovery of "Kada" from the person of the complainant was not mentioned in the application filed by the complainant for the return of the article after his release on bail in that case u/s 380 IPC that as a matter of fact, the present petitioner did not arrest the complainant Dalawar Singh but it was "Kashi Ram, S I who had arrested him in that case and had prepared the arrest memo and, therefore, there was no occasion for the present petitioner for removing "gold Kada" from the person of Dalawar Singh. He urged that after a thorough investigation the Dy S.P. has filed the final report and in these circumstances the learned Magistrate was not justified in taking cognizance of the offence u/s 408 against the petitioner on the tainted evidence of the complainant and his associates.

5. The learned counsel for the complainant on the other hand urged that not being satisfied with the investigation carried out by the learned Dy. S.P. the complainant had filed a protest petition and had produced reliable evidence against the accused-petitioner before the learned Magistrate and, therefore, the learned Magistrate was justified in taking cognizance against the petitioner. This Court according to the learned counsel should not interfere with the order of the learned Magistrate at this stage.

6. I have given my careful consideration to the rival contentions. Although, the contentions raised by the learned counsel for the petitioner may not be rejected out right at this stage it is also equally true that the complainant had placed before the learned Magistrate some evidence in support of his complaint. The learned Magistrate cannot, therefore, be said to have acted in a perfunctory manner nor the order passed by him can be said to be wholly unjustified or perverse. In these circumstances it will not be proper for this Court to interfere with the order of the learned Magistrate. It will be open to the petitioner to urge these points before the learned Magistrate at the appropriate time of the framing of the charge.

7. With these observations the application is rejected.