
(1991) 01 RAJ CK 0002

In the Rajasthan High Court

Case No : Criminal Miscellaneous Petition No. 143 of 1988

Bishambar Lal

APPELLANT

Vs

The State of Rajasthan and Another

RESPONDENT

Date of Decision : 16-01-1991

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397, 468, 482

Citation : (1991) 1 WLN 191

Hon'ble Judges : B.R. Arora, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

B.R. Arora, J.—This miscellaneous petition is directed against the order dated February 22, 1988, passed by the Additional Sessions Judge No. 2, Hanumangarh, by which the learned Additional Judge dismissed the revision-petition filed by the petitioner.

2. The Secretary, Krishi Upaj Mandi Samiti, Pilibanga filed a complaint against the petitioner Under Sections 4(2), 17 and 28(1)(2) of the Rajasthan Agriculture Produce Marketing Act, 1961, in the Court of the Munsif and Judicial Magistrate, First Class, Suratgarh, on June 16, 1979. The learned Magistrate, by his order dated June 15, 1981, took cognizance against the petitioner and issued process. After the service of the notice, the petitioner appeared before the learned lower Court and preferred a revision petition against the order dated June 15, 1981. This revision petition was heard by the learned Additional Sessions Judge No. 2, Hanumangarh, who, by his order dated February 22, 1988, dismissed the revision petition filed by the petitioner, by holding that the objections raised by the petitioner can be decided by the trial Court itself and directed the petitioner to raise all these objections before the trial Court: but he prima facie was of the opinion that a prima facie case to proceed-with against the petitioner is made-out. It is against this order that the present petition u/s 482 Cr. P.C. has been filed.

3. Heard learned Counsel for the petitioner, the learned Public Prosecutor and the learned Counsel for the respondent No. 2.

4. It is contended on behalf of the petitioner that the petition is barred by time. According to the petitioner, the alleged contravention was made between the period from June 8, 1976 to October 5, 1977, for which the petitioner is being prosecuted. The offence is punishable with three months rigorous imprisonment and a fine and in such matters, the cognizance as per the provisions of Section 468(2) Cr. P.C. can be taken within the period of one year. As the cognizance in the present case was taken on June 15, 1979, it is clearly barred by time. The next contention raised by the learned Counsel for the petitioner is that even from a bare reading of the complaint, no case against the petitioner has been made-out and, therefore, the complaint deserves to be quashed. It has, also, been contended that it has not been proved that the petitioner was a partner of the firm and they were required to take the licence as provided under the Act, or the Rules. As the petitioner was not the licensee, therefore, he cannot be prosecuted and punished. Certain other grounds were, also, taken by the learned Counsel for the petitioner. The learned Public Prosecutor as well as the learned Counsel for the respondent No.2 have supported the order passed by the learned lower Court.

5. I have considered the rival submissions made by the counsel for the parties.

6. Section 397 of the Code of Criminal Procedure puts a statutory bar on filing of the second revision petition by the same person and, therefore, to over-come this difficulty, the petitioner has filed this petition u/s 482 Cr. P.C. Merely by changing the nomenclature, the statutory bar cannot be over-come. The petitioner, in this miscellaneous petition wants to get the order of framing the charge passed by the learned Judicial Magistrate, revised, which is nothing but a revision petition. As the second revision petition by the same person is not maintainable, therefore, this miscellaneous petition u/s 482 Cr. P.C., by which the petitioner wants to get the order passed by the learned Judicial Magistrate revised, is, also, not maintainable.

7. At the time of taking the cognizance, the Court has to apply its mind on the evidence of the witnesses and the suspected conditions of the offence to satisfy itself that a prima facie case is made-out to proceed with against the present accused. At this stage, the evidence is not to be meticulously examined as required to be examined at the final stage. If there is prima facie evidence to proceed-with then the Court can take cognizance and proceed-with the matter. If the accused, against whom the cognizance has been taken, has any valid defence available to him, then he can agitate that point before the trial Court and the trial Court will decide his objections if so raised at the appropriate stage. But the power u/s 482 Cr. P.C. cannot be lightly used in quashing a proceeding when a prima facie case has been made-out against the petitioner. It has been held by the Supreme Court in the case of State of Haryana and others Vs. Ch. Bhajan Lal and others,

We also give a notice of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the Court will not be justified in embarking upon an enquiry as to the reliability or genuineness of otherwise of the allegations made in the F.I.R. or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice.

8. In this view of the matter, I am of the opinion that if the petitioner has any valid defence available to him, including the point mentioned above, the petitioner can raise all these objections before the learned trial Court and the learned trial Court will decide all these objections at the appropriate time if so raised.

9. In this view of the matter, the order passed by the learned Munsif and Judicial Magistrate, First Class, Suratgarh, taking cognizance and no interference is required to be made under the inherent powers of this Court.

10 . In the result, I do not find any force in the miscellaneous petition filed by the petitioner and it is, therefore, dismissed.