

(1989) 06 SHI CK 0005
In the High Court Of Himachal Pradesh
Case No : Cr.M.P. (M) No. 359 of 1986

H. Ramnik Lal and Another

APPELLANT

Vs

Hardyal Singh Chauhan and Another

RESPONDENT

Date of Decision : 12-06-1989

Acts Referred:

Constitution of India, 1950 — Article 227
Criminal Procedure Code, 1973 (CrPC) — Section 181(4), 482
Penal Code, 1860 (IPC) — Section 409, 420

Citation : (1989) 1 ILR HP 541

Hon'ble Judges : Bhawani Singh, J

Bench : Single Bench

Advocate : B.K. Malhotra, for the Appellant; Praneet Gupta and Devinder Gupta for Respondent No. 1; Respondent No. 2 Sub-Divisional Judicial Magistrate, Theog, for the Respondent

Final Decision : Allowed

Judgement

Bhawani Singh J.

1. The petition u/s 482 of the Code of Criminal Procedure read with Article 227 of the Constitution of India seeks to quash the proceedings in Criminal Complaint No. C.C. 354-1/83, pending in the Court of Sub-Sub-Divisional Judicial Magistrate, Theog.

2. The facts, in brief, are that the Respondent instituted a private complaint u/s 420 read with Section 409 of the Indian Penal Code alleging that the Petitioners, who are Commission Agents for fruits, were sent 491 boxes of apple to be sold at Coimbatore and after selling the same and deducting the commission, the Petitioners were to sent the remaining amount of Rs. 7620-70. Despite assurance, the same was not sent with the result that the Petitioners have committed the aforesaid offences by utilizing the money of the complainant. The Petitioners were summoned by the Court and now they challenge the proceedings initiated in the Court of Judicial Magistrate, Theog.

3. Shri B.K. Malhotra, who appears for the Petitioners, submits that the court of Judicial Magistrate at Theog in Himachal Pradesh has no jurisdiction to entertain and decide the complaint. Jurisdiction to decide the matter squarely lies with the courts at Coimbatore. In order to support this submission, it is contended that the goods were sent to Coimbatore, sold there and the price was realized at that place. In view of these submissions, the learned Counsel urges that the learned Judicial Magistrate issued process and started proceedings without application of mind.

4. In order to decide this submission of the learned Counsel, it is necessary to reproduce the relevant part of Section 181(4) of the Code of Criminal Procedure:

81. xx xx xx xx xx xx xx xx (4) Any offence of criminal misappropriation or of criminal breach of trust may be inquired into or tried by a court within whose local jurisdiction the offence was committed or any part of the property which is the subject of the offence was received or retained, or was required to be returned or accounted for, by the accused person.

XX XX XX XX 5. By reference to above quoted provision, it is contended that in the light of the decision of High Court of Delhi in Ram Saroop Rastogi and Ors. v. State and Anr. 1979 CLR 78, the Court at Coimbatore has only jurisdiction to entertain any such complaint and not the court at Theog. I do not appreciate this submission of the learned Counsel. The provisions of Section 181(4) of the Code of Criminal Procedure, as quoted above, are clear and enable the court at Theog to entertain the complaint in question and try the matter. The Petitioners may have received the goods at Coimbatore for sale; they were liable to render the accounts and make the payments at Theog. They are trustees/agents of the complainant to sell apple boxes in question at Coimbatore. Reference to words "..... or was required to be returned or accounted for by the accused" indicate clearly that in case the goods are not sold, they are to be returned back to the principal (complainant) at Theog and in case the goods are sold, the Petitioners have to account for the sale price to the complainant, obviously at Theog. The judgment cited by the learned Counsel, therefore, does not lay down any contrary principle as is intended to be asserted.

6. Brij Lal Vs. Emperor, is the judgment nearest to the point in issue. In this case, an agent in Bengal fails to remit money to his principal at Caw pore and a complaint is filed against him u/s 409, Penal Code, in relation thereto by the principal at Caw pore, the Criminal Courts at Caw pore have jurisdiction as the accused agent is bound to make the remittance to Caw pore. This case has a direct assistance in handling the problem in the present case. Moreover, allegations in the complaint also determine the place of trial of the offences contained therein. The contention that the court of judicial Magistrate at Theog has no jurisdiction to entertain the complaint is rejected.

7. The second point urged by Shri B.K. Malhotra relates to the nature of the dispute between the parties. It is contended that the nature of the dispute is of

civil nature and initiation of criminal proceedings cannot be considered to be legally permissible. On the other hand, Shri Praneet Gupta, vice Shri Devinder Gupta, appearing in opposition of this petition, submits that his client has been hoodwinked by the Petitioners. He asserts that sale amount has been eaten away by the Petitioners and they be directed to pay the same. In my opinion, the submission of Shri B.K. Malhotra, has a force. The parties are contesting the balance amount payable on the sale of apple boxes in question. The complainant claims that an amount of Rs. 7620.70 is still to be paid by the accused although an amount of Rs. 7150 has been paid. The Petitioners allege that whatever was payable, already has been paid, No more amount is due to the complainant as amounts were also to be utilized towards the commission and other sundry charges. Here is a circumstance; which indicates existence of dispute between the parties which Cannot be made the basis of criminal proceedings. More appropriate remedy is to take the matter to a civil court instead of litigating it in a criminal court [AIR 1925 Lah 289 (2), Ladha] Shah v. Zaman Ali)

8. In these circumstances, the proceedings cannot be allowed to continue in a criminal court.

9. Lastly, Shri B.K. Malhotra argues that the perusal of the complaint does not disclose commission of any offence by the Petitioners. My attention has been drawn meticulously to every part of the same and I see substance in this submission. I see that the complaint as well as the statement recorded by the Judicial Magistrate, Theog, does not disclose commission of any offence under either of the complainant. Simply because! The Petitioners have not paid the balance amount to the complainant, it cannot be inferred that they have misappropriated the same within the meaning of Section 409 of the Indian Penal Code. As already observed, there is dispute between the parties as to the amount relating to this transaction, the same is of civil nature.

10. The net result of the aforesaid discussion is that there is merit in this petition and the same is allowed. The proceedings pending in the court of Judicial Magistrate, Theog, are hereby quashed.