

(1983) 09 AHC CK 0083

In the Allahabad High Court

Case No : Criminal Miscellaneous Case No. 1188 of 1981

Madan Lal and Another

APPELLANT

Vs

State and Another

RESPONDENT

Date of Decision : 28-09-1983

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 302, 482
Penal Code, 1860 (IPC) — Section 406
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Penal Code, 1860 (IPC) — Section 406

Citation : (1982) 8 ACR 258

Hon'ble Judges : R.C. Deo Sharma, J

Bench : Single Bench

Advocate : Shanker Sharma and S.H. Ibrahim, for the Appellant; S.P. Shukla and G.A., for the Respondent

Final Decision : Allowed

Judgement

R.C. Deo Sharma, J.—This is an application u/s 482 of the Code of Criminal Procedure; and arises in the following circumstances:

2. Lal Mani Dubey, opposite party No. 2 filed a complaint against the applicants Madan Lal and Murari Lal who are real brothers. This complaint was filed in the court of Munsif-Magistrate III of district Sultanpur on 26-3-1981 u/s 406 of the IPC. The allegations were that applicants were doing business under the name and style of M/s. Asha Ram Khushi Ram Iron Steel Rolling Mill, Amolh, in district Patiala (Punjab) and in connection with their business used to visit Dubey Ka Purwa, the village of the complainant-opposite-party No. 2. In Dubey Ka Purwa resided one Sri S.N. Dwivedi with whom the applicants had business dealings. The complainant-opposite-party No. 2 was also known to the applicants in that connection. It was on 25-3-1981 that the opposite-party No. 2 claimed to be coming to Lucknow with his companions Ram Pal and Ram Kishore. He was

waiting for conveyance on the crossing of Beraunsa but did not get any and hence started in an Ekka towards Sultanpur. While he had gone ahead of Bazar Gosain Ganj and was in village Itkauli and it was about 5 p.m. he saw a car coming from east. When the car slowed down on account of some crowd on the road the complainant opposite-party No. 2 saw the applicants sitting in the car and recognising them asked them to stop the car and give him a lift to Lucknow towards which side they were going. The applicants agreed to accommodate the opposite-party No. 2 and his other two companions and while the opposite party No. 2 had handed over his attache case to Madan Lal, applicant No. 1 and was trying to take out his other luggage from the Ekka, the applicants immediately asked the driver to go ahead and the car started. Thus the applicants took away the attache case and did not stop on his asking. According to the complaint the attache case contained Rs. 1100.00 cash besides clothes. He informed the Police Station Kotwail, Sultanpur, on 25-3-1981 reporting the incident but the police did not appear in a mood to help him immediately and, therefore, he filed the complaint in question the very next day. The opposite-party No. 2 was examined u/s 200 Code of Criminal Procedure and it appears that two witnesses were also examined u/s 302 Code of Criminal Procedure, and the applicants were summoned for an offence u/s 406 IPC. Feeling aggrieved by this order the applicants have moved this application u/s 482 Code of Criminal Procedure, alleging that the complaint was filed on absolutely baseless allegations at the instance of S.N. Dwivedi mentioned in the complaint itself. It was further alleged that the said S.N. Dwivedi had been to Amolh and wanted to start some business there and had also taken some loan from Punjab Financial Corporation, Chandigarh, Punjab National Bank Mandi, Govindgarh Branch etc., but did not start any business and usurped the amount. He then started supplying coal to the applicants and although the applicants had made full payment against a receipt duly signed by S.N. Dwivedi yet he denied to have received the payment and demanded more money in order to blackmail the applicants. They refused to pay the amount over again and confronted him with his own receipt and consequently S.N. Dwivedi could not take any action through court or otherwise and accordingly he, through his friend Lal Mani Dubey opposite party No. 2 who also belonged to his own village manipulated to have his complaint filed falsely in order to harass the applicants so that they may have to run from Patiala in order to defend the case at Sultanpur. A counter affidavit was filed by the opposite party No. 2 admitting most of the facts about the complainant etc., and also the business carried on by the applicants although the extent of their business and their status was not clearly admitted. A rejoinder affidavit has been filed by the applicants who have also produced an extract of assessment order regarding income tax for the assessment year 1980-81.

3. I have heard learned Counsel for the parties and have also gone through the record. It is admitted that the applicants belong to district Patiala in Punjab and are running a business of rolling mill. They are also paying income tax, whatever be the amount on which they are assessed, because the extract filed by them

shows that they have been assessed along with their mother on an amount of Rs. 95790.00. However, it has not been challenged that they are persons of status and are running a rolling mill. It has also not been denied on behalf of the opposite parties that they were carrying on business and that the opposite-party No. 2 as also S.N. Dwivedi had been to Patiala in connection with their business. The contention of the opposite-party No. 2 was that the applicants sometimes used to visit their village in district Sultanpur but this had been denied on oath through an affidavit by the applicants who have stated that they never visited Sultanpur even for a single day.

4. Looking to the allegations made in the complaint it will appear that on 25-3-1981 the opposite-party No. 2 was intending to go to Lucknow but not finding a conveyance he was proceeding towards Sultanpur on an Ekka when by chance he happened to see the car of the applicants who stopped on his request. It was again by chance that both these applicants and the driver agreed to accommodate the three persons including the opposite-party No. 2. It is not known whether there was any other occupant in the car or not. It was then alleged that the attache case was handed over to Madan Lal, applicant No. 1 and while he was trying to take out his other luggage from the Ekka the applicants ran away in the car with that attache case. In the statement u/s 200 of the Code of Criminal Procedure, the opposite-party No. 2, however, stated that when the car stopped he placed the attache in the car whereas in the complaint it was stated that it was handed over to Madan Lal, applicant No. 1 personally. This slight contradiction may not be of any importance by itself but this shows the anxiety of the opposite-party No. 2 to bring the case within the ambit of Section 406 of the IPC by showing that the attache case was actually entrusted to Madan Lal, applicant No. 1, and was not merely placed in the Car.

5. Learned Counsel for the applicants besides pointing to the above improbabilities and the accident of meeting the applicants on the way while opposite-party No. 2 was coming on an Ekka has also drawn my attention to the fact that a report is alleged to have been lodged with the police on 25-3-1981 and yet without waiting for investigations being conducted, the opposite-party No. 2 hastened to file this complaint on the very next day. It was alleged in the complaint that because the police was not prepared to take immediate action, therefore, he had per force to take the shelter of the court the very next day when he felt that the police was not going to help him. No copy of the FIR, has been filed and it is not clear whether any FIR, was actually lodged because what is alleged in the complaint is that information was conveyed to the police but it did not agree to render immediate help, and hence a complaint was being filed.

6. It was held in *Bhagwat Prasad Mishra v. Sri Rajesh Kumar Shukla*, 1982 L CR 389 by a learned Single Judge of this Court relying on a Supreme Court decision reported in *Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi and Others*, that a complaint could be quashed in proceedings u/s 482 Code of Criminal Procedure if the allegations made therein were patently absurd and inherently improbable

so that no prudent person could reach a conclusion that there was sufficient ground for proceeding against the accused. What has to be seen is not whether the allegations made in the complaint are impossible of belief but whether the allegations are so patently absurd and inherently improbable that no prudent person could reach a conclusion that there was sufficient ground for proceeding against the accused. In the instant case there are several improbabilities and they are of such magnitude that it is difficult to believe the version contained in the complaint. It was a chance that at the particular moment, the applicants who belonged to Patiala in Punjab happened to come to Sultanpur and were passing by the side of village Iткаuli when the Ekka of the opposite-party No. 2 also happened to pass. Both the vehicles were moving and yet the opposite-party No. 2 sitting in the Ekka asked the car to stop to his surprise found that it was occupied by the applicants who were already well known to him from before. All these (sic) appears too much to be believed. Moreover, the conduct of opposite-party No. 2 is not seeking police help in a proper way and filing the complaint the very next day of lodging the report, if at all it was lodged is another glaring feature going to indicate that there was no substance in the complaint filed by the opposite-party No. 2. It accordingly deserves to be quashed.

7. The application is accordingly allowed and the complaint filed by the opposite-party No. 2 against the applicants u/s 406 IPC, in the court of the Munsif-Magistrate III, Sultanpur, is hereby quashed.