
(1978) 03 AHC CK 0090

In the Allahabad High Court

Case No : Criminal Miscellaneous Case No. 78 of 1978

Madan Lal Jain and Others

APPELLANT

Vs

Sri Ram

RESPONDENT

Date of Decision : 27-03-1978

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 202, 482
Penal Code, 1860 (IPC) — Section 379

Citation : (1978) ACR 427

Hon'ble Judges : Mahavir Singh, J

Bench : Single Bench

Final Decision : Disposed Of

Judgement

Mahavir Singh, J.—This is an application u/s 482, Code of Criminal Procedure by the accused of a case pending against them u/s 379, IPC in the court of Chief Judicial Magistrate, Hardoi in a complaint case No. 38 of 1976 No. 189 of 1976.

2. The allegations made by the applicants are that a complaint was filed by the opposite party against them for committing an offence u/s 379, IPC. It was alleged that he (opposite party) is dealer of food grains and oil seeds in Galla Mandi of town Sandila district Hardoi. About eight days prior to the date on which the complaint was filed, i.e. 22-6-76, the applicant No. 1 had sent a letter to him that he was coming for purchase of oil seeds and food grains and these applicants reached there in the evening of 19th June, 1976 and stayed at the shop in the night. They stayed in the shop next day also and (refused) to give orders after contacting their companions on phone. The applicants were said to have stayed alone in the shop. Next morning on 21-- 6-76 at about 8.00 A. M., the opposite party reached the shop and then he found that the lock of the cash box (Golak) was broken and Rs. 500/- and one golden chain weighing about 21/2 tolas were missing from that place. He immediately went in search of the applicants and when he was going towards the station, he learnt from witnesses that they had seen them going towards the station at about 5.30 A.M. However,

they were not found at the station as the train had already left.

3. After taking the evidence u/s 202, Code of Criminal Procedure the applicants were summoned by the magistrate to stand their trial u/s 379 IPC.

4. The case of the applicants is that they were being harassed on account of business dispute with the firm M/s Shambhu Dayal Ram Narain in the town of Rura district Kanpur. Ram Narain has a real brother who has been Tahsildar at Sandila and it appears that Ram Narain through his tahsildar brother put pressure on the opposite party to file complaint against them. The applicants are respectable businessmen of district Burdwan in West Bengal.

5. No counter-affidavit has been filed on behalf of the opposite party. Learned Counsel for the opposite party merely contends that normally there is no reason to interfere by this extra ordinary remedy available u/s 482, Code of Criminal Procedure. I need not enter into the allegation of the applicants that the complaint filed by the opposite party is motivated by Ram Narain in the interest of the firm through his Tahsildar brother. But the case can be disposed of on account of the other contention raised by the applicants. Section 482, Code of Criminal Procedure is applicable to such cases where a criminal proceeding is being pushed by way of abuse of the process of law. In the present case that contingency exists. Even if the allegations made by the opposite party in the complaint are accepted on their face value, no offence u/s 379, IPC can be said to have been made out.

6. The allegations made by the opposite party are that the applicants slept in the shop in which thefts was detected at about 8.00 A. M. by the opposite party. According to the allegations made in the complaint, the applicants were said to have left the shop near about 5.00 A M. because they were seen by the witnesses going towards the station at 5.30 A. M. so between 5 A. M. to 8 A.M. finding no body inside the shop, some miscreants can also commit the offence.

7. The petition is accepted and the proceedings pending against the applicants in the court of Judicial Magistrate, Hardoi in the above mentioned case are quashed.