

(1990) 11 AHC CK 0125

In the Allahabad High Court

Case No : Criminal Misc. Application No. 8064 of 1982

Mahendra Kumar Modi and Others

APPELLANT

Vs

Ram Kumar Sharma and Another

RESPONDENT

Date of Decision : 21-11-1990

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397(2), 482
Industrial Disputes (Central) Rules, 1957 — Rule 40, 5
Penal Code, 1860 (IPC) — Section 415, 419, 420, 463, 464

Citation : (1991) 15 ACR 65

Hon'ble Judges : D.P.S. Chauhan, J

Bench : Single Bench

Advocate : G.S. Chaturvedi, for the Appellant;

Final Decision : Allowed

Judgement

D.P.S. Chauhan, J.—By means of this application u/s 482, Code of Criminal Procedure the applicants have prayed for quashing the proceedings in Criminal Case No. 665 of 1980, Ram Kumar Sharma v. Raghubar Dayal and Ors., pending before the Chief Judicial Magistrate, Ghaziabad.

2. The complainant, Ram Kumar Sharma, lodged a complaint purporting to be under Sections 419/420/468/469/470/471/464, IPC, against the applicants (Accused No. 14 to 16) and others alleging that Mazdoor Union Modi Lalten Works, Modi Nagar, Ghaziabad (hereinafter referred to as "the Union") is a registered trade union vide registration No. 1068 dated 9-8-1952, and the complainant is its President It was alleged that Mahendra Kumar Modi, the Managing Director, got the hunger strike resorted to by the workers withdrawn on assurance regarding acceptance their demands. On non-fulfilment of the demands, a notice of hunger strike was again given on 14-9-1979, which was suspended till 1-10-1979 on the intervention of the Labour Department. Notice for hunger strike was again given on 2-10-1979. The allegation made is that the accused No. 1, Raghubar Dayal, and accused No. 3, Mohan Prasad, illegally

claiming themselves to be the President and Secretary respectively of the Union sent a fake list of members and office bearers to the Registrar, Trade Union, Kanpur. The allegation further was that they with a view to damage the interest of the workers colluded with the applicants in the present petition and entered into an illegal agreement with them on 10-9-1979, which was void under Rules 5 and 40 of the U.P. Industrial Disputes Rules, 1947. A FIR was lodged on 29-9-1979 at P.S. Modi Nagar, but the police did not take any action, hence the complaint.

3. The Magistrate recorded the statements of the complainant and the witnesses and this is how the proceedings came into existence.

4. Heard learned Counsel for the applicants, learned Counsel for the complainant and also the learned Additional Public Prosecutor. It may be noticed that although the complainant had put-in appearance, but had not filed any counter affidavit.

5. Learned Counsel for the applicants submits that the complaint is frivolous and does not make out any offence of cheating and forgery. Cheating is defined in Section 415, IPC, which requires that a person deceiving any other person, fraudulently or dishonestly, induces the person to deliver any property to any person. The complaint does not set out any such case. Deception as per allegations in the complaint, is practiced on the Labour Department and the Labour Department has not done anything on the basis of any alleged deception, which being an essential ingredient of Section 415, IPC is honest in the present case. Nothing has been disclosed in the complaint as to what was done or omitted to be done by the Labour Department as a result of the alleged agreement and what harm or damage to the Labour Department in body, mind and reputation or property was caused.

6. The trade union after its registration becomes a body corporate and only question, as it appears, is that such a person is to be represented by whom. In the present case, there are two rival claimants as office bearers of the Union and such rival claim of rival set of claimant can be settled either by the Registrar or by the Civil Court and the claim of the two rival groups, alleging themselves to be elected office bearers, would not amount to any deception on the Labour Department.

7. The complaint nowhere discloses as to which of the rival group was recognised by the Registrar and the complainant does not disclose that the Civil Court granted any declaration in favour of any rival claimant.

8. The next submission to be seen is as to whether the ingredients of forgery are made out. For an offence u/s 463, IPC, making of a false document or part of a document with intent to cause damage or injury to the public or to any person is a condition precedent. Making of a false document is provided u/s 464 IPC, which says that one must cause it to be believed to the other that any document or part of document was made, signed, sealed or executed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed,

sealed or executed. In the present case, the complaint does not contain any allegations that the accused caused it to believe that the document relating to the election of the office bearers was made, signed, sealed or executed by or by the authority of a person by whom or by whose authority they knew that it was not made. The case was that they snowed that they had been elected and they did not misrepresent causing the same to be believed that the document was made by some other authority or person. So the position comes that ingredients of forgery and making of a false document are also missing in the complaint.

9. Once the ingredients of cheating are missing from the complaint, no offence u/s 420, IPC can be established. Secondly, when the ingredients of forgery u/s 463 and making a false document u/s 464, IPC, are missing from the complaint, no offence Under Sections 468, 469 and 471, IPC can be established

10. The submission advanced by the learned Counsel for the Respondent that it is not a case where this Court should exercise the power u/s 482, Code of Criminal Procedure, as the order summoning the accused is revisable. There is nothing on record to show as to whether summons were Issued by the Magistrate to the applicants and that stage would come only after the summonses are issued. The argument is only hypothetical. Neither any document is filed nor any counter affidavit is there on record to indicate anything. Even otherwise, a Full Bench of this Court in H.K. Rawal v. Nidhi Prakash 1989 AWC 632, has held:

But in case the impugned order clearly brings about a situation which is an abuse of the process of the Court or for the purpose of securing the ends of justice interference by the High Court is absolutely necessary, then nothing contained in Section 397(2) can limit or effect the exercise of the inherent powers by the High Court. But such cases would be few and far between. The High Court must exercise the inherent powers very sparingly. One such case would be the desirability of quashing of a criminal proceeding initiated illegally, vexatiously or as being without jurisdiction.

11. In the present case, the allegations in the complaint do not make out any offence and the proceedings are vexatious. Further, after keeping the case pending here in this Court for about 8 years, it would be abuse of the process of the Court to entertain such a technicality which insted of advancing justice would work injustice by causing harassment specially when no offence is made out against the applicants on the face of the allegations in the complaint.

12. One more aspect which may be dialated, is regarding the reliability of the witnesses after the passage of such a long time as the testimony of the witnesses becomes weaker and weaker day by day for the reason that the human memory is indirectly proportionate to the passage of time and in such a situation, chances of error would become greater and greater.

13. In view of facts, circumstances and position of law as considered above, I deem it to be a fit case for exercise of power u/s 482 Code of Criminal Procedure

for securing the ends of justice.

14. The application is accordingly allowed and the complaint together with the proceedings thereupon in Criminal Case No. 665 of 1980, Ram Kumar Sharma v. Raghubar Dayal and Ors., pending in the Court of the Chief Judicial Magistrate, Ghaziabad, is hereby quashed.