
(1995) 04 RAJ CK 0015

In the Rajasthan High Court

Case No : Criminal Miscellaneous Petition No. 242 of 1992

Maresh Chandra Mehta

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 06-04-1995

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 182, 379, 447

Citation : (1995) 1 RLW 406 : (1996) 1 WLC 186 : (1995) 2 WLN 127

Hon'ble Judges : R.P. Saxena, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajendra Saxena, J.—The learned public Prosecutor has submitted the case diary and the record of the final report.

2. Heard. Perused the relevant record.

3. This petition filed u/s 482 Cr.P.C. has been preferred against the order dated 19.11.1990, whereby the learned Munsif and Judicial Magistrate, First Class, Mandal took cognizance against the petitioner for the offence u/s 182 IPC and issued summons to ensure his attendance.

4. It appears that the petitioner-Mahesh Chandra Mehta was posted as Tehsildar, Mandal. He sent a written letter dated 7/11th December, 1989 to the S.H.O., Bagaur alleging that as per the report of Patwari Halka, one dry babool tree and nine green trees, which were standing on the plot of "Bilanam Talab", khasra No. 250, village Samrathpara, have been cut and contractor Shakur Mohd. has taken away seven trees by cutting and felling them and that three trees were lying on the site. It was further mentioned that those trees were alleged to have been sold to Shakur Mohd. for Rs. 1600/- illegally. On that report, a case u/s 447 and 379 IPC was registered at Police Station, Bagaur. After investigation, it was found that the Government by its notification dated 27.6.1989 had authorised the

Gram Panchayats to take the natural produce of such ponds and that in pursuance thereof, Vikas Adhikari, Panchayat Samiti, Mandal by his letter dated 31.8.1989 authorised the Gram Panchayat to manage and take the natural produce of such ponds having an irrigation capacity less than 50 acres. The Gram Panchayat, Tahuka auctioned the dried trees of babool and accepted the highest bid of Shakur Mohd. for an amount of Rs. 1600/-, who was taking away those trees. The Investigation Officer submitted a final report holding that the report was lodged due to misunderstanding of facts and that at the most an offence for unlawful removal of trees was made out for which penalty u/s 86 of the Rajasthan Tenancy Act, 1955 could be imposed and that such an offence was not cognizable. The learned Magistrate by his order dated 5.11.1990 accepted the final report and held that since the petitioner had filed the report which was false and baseless and, as such, it was expected that necessary action against him will be taken. Thereupon, the S.H.O., Police Station, Bagaur submitted a criminal complaint u/s 182 IPC dated 19.11.1990 against the petitioner, on which the learned Magistrate took cognizance. Hence, this petition.

5. In my considered opinion, the basic ingredients of offence u/s 182 IPC are not made out in this case, even if the contents of the final report are taken to be correct. The petitioner in the capacity of Tehsildar, Mandal on the report of Patwari Halka had submitted the report dated 7/11th December, 1989 to the S.H.O., Police Station, Bagaur, wherein it was clearly mentioned that one dry tree of babool and nine green trees had been cut by Shakur Mohd., who allegedly purchased those trees for an amount of Rs. 1600/- This information was not false and was based on the report of Patwari Halka. During the investigation, it transpired that the Government had authorised the Gram Panchayats to manage and take the natural produce in respect of such village ponds, whose irrigation capacity was less than 50 acres. The "Bilanam Talab" of village Samrathpara admittedly does not have irrigation capacity of more than 50 acres. Therefore, the Gram Panchayat was authorised to manage and take the natural produce on the "Peta" of that "talab".

6. The S.H.O., in his final report, had also mentioned that the report was filed by the Tehsildar on the basis of mis-understanding of facts. From the evidence collected by the Investigation Officer, it cannot reasonably be inferred that the petitioner knew or believed to be false the information contained in his report dated 7/11.12.1989. There is also no evidence that the petitioner intended thereby to cause or knew it to be likely that he would thereby cause, the said S.H.O. to do or omit anything which the latter ought not to do or omit if the true state of facts respecting which such information was given were known him, or to use his lawful power to the injury or annoyance of Shakur Mohd. or any other person. As a matter of fact, from the investigation, it was fairly made out that Shakur Mohd had also cut green trees. It is another matter that such an offence was not cognizable. From the evidence collected by the Investigation Officer, it cannot be reasonably inferred that the petitioner had deliberately lodged a false information, which he knew or believed to be false.

7. In such circumstances, the ingredients of offence punishable u/s 182 IPC are clearly not made out. To my mind, the learned Magistrate was not justified in taking cognizance against the petitioner for the offence u/s 182 IPC and in initiating trial against him. The impugned order, therefore, amounts to abuse of the process of the court and to secure the ends of justice, it is necessary to quash the same.

8. Hence, for the reasons mentioned above, this petition is allowed and the order dated 19.11.1990 passed by the learned Munsiff and Judicial Magistrate, First Class, Mandal and further proceedings in this case against the petitioner are hereby quashed. The record of the lower court be sent back immediately.