
(2004) 05 RAJ CK 0061

In the Rajasthan High Court

Case No : Criminal Revision Petition No. 518 of 1999

O.P. Gupta

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 14-05-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 190, 197
Penal Code, 1860 (IPC) — Section 500, 504

Citation : (2004) CriLJ 3425

Hon'ble Judges : N.N. Mathur, J

Bench : Single Bench

Advocate : Suresh Kumbhat, for the Appellant; D.D. Kalla, Public Prosecutor and S.D. Vyas, for the Respondent

Final Decision : Allowed

Judgement

N.N. Mathur, J.—The instant revision u/s 397, Cr. P.C. is directed against the order of the Additional Chief Judicial Magistrate No. 2, Bikaner dated 22-6-1999 taking cognizance against the petitioner for offence under Sections 500 and 504, I.P.C.

2. Briefly stated the facts of the case are that the second respondent-Chand Ratan Garg an employee in the Telecommunication Department filed a complaint against the petitioner-Telecommunication District Manager, Telephone Department, Bikaner at the relevant time stating inter alia that while he was working in the power room, the petitioner abused him and scolded for negligence on his part which led to fire on 19-6-1997. It is not in dispute that though the alleged incident is of 11-7-1997, the complaint was filed as late as on 13-11-1998. At the initial stage the complaint was dismissed on the ground of delay but the said order was set aside in revision by the learned Sessions Judge. It was observed by the learned Judge that the delay alone could not be a good ground for refusing to take cognizance. The matter was remitted to the original Court. The learned Magistrate has taken cognizance against the petitioner for

offence under Sections 500 and 504, I.P.C. by the impugned order.

3. I have heard the learned counsel for the parties and perused the record. The delay in filing the complaint affect the credibility of the witnesses. It is of course true that the credibility cannot be looked into at the stage of taking cognizance but the such delay is required to be explained. There is no explanation as to why the complainant was not filed, just after the incident. The complainant is an employee of the Department, and a Union leader. He could have taken the matter to the higher authorities against the misconduct of his immediate senior officer; otherwise such sort of complaint can be filed any time to harass a higher officer. I have no doubt, in my mind, the proceedings against the petitioner at the instance of the complainant is abuse of process of the Court. Even, otherwise Section 197, Cr. P.C. prohibits cognizance against a public servant without sanction.

4. Consequently, the petition is allowed. The order of the Additional Chief Judicial Magistrate No. 2, Bikaner dated 22-6-1999 is quashed and set aside.