
(1978) 04 RAJ CK 0007

In the Rajasthan High Court

Case No : Criminal Miscellaneous Petition No. 163 of 1977

Paras Ram and Another

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 07-04-1978

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156, 482
Penal Code, 1860 (IPC) — Section 109, 139, 408, 420, 468

Citation : (1978) WLN 157

Hon'ble Judges : R.L. Gupta, J

Bench : Single Bench

Judgement

R.L. Gupta, J.—This is an application u/s 482 Cr.P.C. filed by Parasram and Tejumaal for quashing the criminal proceedings against the petitioners in criminal case No. 506/76 Under Sections 420, 468 and 109 I.P.C. pending in the court of Judicial Magistrate No. 1, Hanumangarh.

2. A complaint was filed by one Sushil Kumar against four persons including Parasram petitioner for the offences u/s 420 and 468 IPC in the court of first Class Judicial Magistrate No. 1, Hanumangarh, That complaint was sent by the learned Magistrate for investigation u/s 156(3) Cr.P.C. The police registered the case and after investigation it did not find sufficient ground for putting up a challan againsts Gopal. The other three including the petitioner Parasram were challaned but one Tojumaal petitioner No. 2 was included, whose name did not find in the complaint. Thus the challan was put up against Tirathdas, Narayan Das, Paras Ram Tejumaal. Tejumaal was charged for the offences u/s 420/109 and 408/109 I.P.C. Paras Ram was charged for the offence u/s 420 and 468 I.P.C. by the learned Magistrate vide his impugned order dated 25.8.77. It is against this order that the petitioners Paras Ram & Tejumaal have preferred this petition.

3. It is alleged by the prosecution that a partnership firm of which Tirathdas, Narayan Das, Paras Ram and Tejumaal were partners started its business at Hanumangarh. On behalf of this firm Tirathdas and Narayan Das purchased goods

worth Rs. 6000/- from the complainant Sushil Kumar against a cheque for Rs. 6,000/-. That cheque No. was 40298 It was alleged that this firm had no money with the bank. The cheque returned dishonoured. The goods were purchased on the misrepresentation and fraud played by Tirathdas and Narayan Das that they had enough money in the bank. The complainant was mislead and parted with goods worth Rs. 6000/-. It is further alleged that the firm of the accused has cheated other business concerns.

4. The contention of Mr. Singhvi is that Tejumal is neither the partner in the firm nor he had been with Tirathdas and Narayan Das at the time of the purchase of the goods and handing over the cheque. His name also does not appear in the complaint, He has taken me through the complaint, statement of Sushil Kumar recorded by the police during investigation and has urged that no case u/s 420/109 and 468/139 IPC was made against Tejumal and the court while framing the charge against him has abused the process of the court and in the interest of justice this order be quashed. So also he has submitted that Parasram was a partner in the firm but he was merely a sleeping partner and was not involved in the alleged incident.

5. It may be said that Tejumal is not a partner in the firm & he was not with Tirathdas & Narayan Das at the time of alleged occurrence of purchase of goods and handing over the cheque. The basis of the F.I R. was the complaint filed by Sushil Kumar before the learned Magistrate which was for investigation to the police In this complaint also the complainant has not named Tejumal as one of the accused Whatever evidence is said to be against this accused is that he assisted in rubbing out the board of the Firm and thus assisted in cheating. This can hardly be any incriminating circumstance against this petitioner. The learned Public Prosecutor has not been able to point out any sufficient incriminating evidence against Tejumal for having any prima facie case against him. He is said to be at present residing at Tonk and has to attend the court at Hanumangarh. In the circumstances it is a case of abuse of the process of the court to charge Tejumal and drag him for litigation. In the interest of justice the impugned order of the learned Magistrate for initiation and continuation of the proceeding against this petitioner is liable to be quashed and is hereby quashed. The above criminal proceedings pending against Tejumal are quashed.

6. As regards Paras Ram it is not proper to discuss the merits of the case at this stage. The petition u/s 482 is therefore, rejected so far as Parasram is concerned.

7. In the result the application is partly allowed. The above criminal proceedings pending against Tejumal in the court of Judicial Magistrate No. 1, Hanumangarh are hereby quashed and the petitioner Tejumal is discharged of the offences he is charged with in these proceedings.