

(2009) 01 AHC CK 0197
In the Allahabad High Court
Case No : Criminal M. W. P. No. 473 of 2009

Phool Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 30-01-2009

Acts Referred:

Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 323, 406, 420, 504, 506

Citation : (2009) 2 ACR 1214

Hon'ble Judges : R.N. Misra, J; Amar Saran, J

Bench : Division Bench

Advocate : Ramesh Kumar Shukla, for the Appellant; A.G.A., for the Respondent

Judgement

1. Heard learned Counsel for the Petitioner and the learned Additional Government Advocate.
2. By means of this writ petition, the Petitioner seeks to challenge an F.I.R. lodged by the Respondent No. 3, K. P. Singh, Kshetriya Prabandhak, U. P. State Agro Industrial Corporation Limited, district Moradabad, at Case Crime No. 1407A of 2008 under Sections 420 and 406, I.P.C. P.S. Kotwali City, district Bijnor.
3. The contention of the learned Counsel for the Petitioner was that there was an allegation against the Petitioner of having embezzled Rs. 2,84,400 of the Corporation money and report in respect of that incident was lodged on 8.4.2008 at Crime No. 673 of 2008 u/s 406, I.P.C. In the present case, the allegations were that the Petitioner had embezzled Rs. 1,16,257 which was the money sent by the District Agricultural Officer, Bijnor to the Petitioner's department where the Petitioner was the In-charge District Manager, Bijnor and instead of depositing the same, he embezzled the sum.
4. It was argued that if as this alleged embezzlement dated 5.4.2008 was prior to the earlier F.I.R. dated 8.4.2008 in which final report had also been submitted, which has been annexed as Annexure-3, hence non-mention of this

embezzlement of Rs. 1,16,257 in the first F.I.R., which was lodged on 8.4.2008 goes to show that this allegation is false. We, are not in a position to examine the circumstances in which this amount was not mentioned in the first F.I.R. dated 8.4.2008, however, the present impugned F.I.R. also mentions that the Petitioner in his capacity as In-charge Manager has removed the entire records, which included stock register, cash book, cash memo etc. In such circumstances, the second embezzlement not having been noted when the F.I.R. in respect of first embezzlement is lodged cannot be excluded. The Petitioner for some reasons best known to him has not filed the copy of the first F.I.R. dated 8.4.2008 with this writ petition. He has, however, filed a case under Sections 323, 504 and 506, I.P.C., 3(1)(x) of S.C./S.T. Act at Case Crime No. 1407 of 2008, which he had lodged on 5.7.2008 against the complainant Respondent No. 3 in respect of an incident dated 9.5.2008. Here he claims that the Respondent has removed certain cash etc., and also the check books which he had kept in an almirah and had used caste derogatory words. We think that at this stage, it cannot be ruled out that this F.I.R. was lodged by way of peshbandi because the allegations therein appear to be somewhat exaggerated. On the allegations in the F.I.R. against the Petitioner, it cannot be stated that no prima facie case is disclosed against him so as to call interference in writ jurisdiction by this Court. We, therefore, find no force in this petition. It is dismissed.

5. However, if the Petitioner surrenders in the aforesaid case before the Court concerned within three weeks and apply for bail, his prayer for bail shall be disposed of expeditiously in accordance with law.