
(2011) 08 RAJ CK 0046

In the Rajasthan High Court

Case No : Criminal Miscellaneous Petition No's. 394-401 of 2008

Ram Karan

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 02-08-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 197
Penal Code, 1860 (IPC) — Section 409, 420, 467, 468, 471

Citation : (2012) 2 RCR(Criminal) 116 : (2012) 1 RLW 451

Hon'ble Judges : Sandeep Mehta, J

Bench : Single Bench

Advocate : Ravindra Acharya, for the Appellant; A.R. Nikub, Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

Sandeep Mehta, J.—The present criminal misc. petitions have been filed by the petitioners Ram Karan who is facing trial in the trial Court for offence under Sections 467, 468, 471, 409 and 420 I.P.C. An application u/s 197 Cr.P.C. filed by the petitioner was rejected by the Court-below and the said order has been affirmed in the revision. The learned counsel for the petitioner submits that the petitioner was working as a Vyavasthapak in the Nagaur Aanchlik Gramin Bank and as such he is public servant. He further submits that the appointing authority of the petitioner was the Chairman. But since the Chairman is a person appointed under the Central Act, therefore, the nature of the appointment of the petitioner would be also covered under the definition of "public servant" as warranted u/s 197 Cr.P.C.

2. Per contra, the learned Public Prosecutor has submitted that the petitioner is not entitled to get the benefit of Section 197 Cr.P.C.

3. I have heard the learned counsel for the parties and perused the impugned orders.

4. Suffice it to say that the protection of Section 197 Cr.P.C., is available to a person "who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no court shall take cognizance of such offence except with the previous sanction."

5. Thus for the applicability of Section 197 Cr.P.C., it is necessary that the person who is seeking the protection of Section 197 Cr.P.C. should be removable by the State Government or by the Central Government as the case may be. In the present case, it is not in dispute that the petitioner's appointing authority is the chairman of the bank and not the government. As such the benefit of Section 197 Cr.P.C., cannot be given to the petitioner. The Hon"ble Apex Court in the Judgment rendered in the case of Rakesh Kumar Sharma vs. Central Bank of India (AIR 1987 SC 722) and M. Gopalakrishnan Vs. State by Addl. S.P. CBI, B.S. and F.C., Bangalore, has held that simply because the corporation in which the employee was working was constituted under a Central Act that by itself could not be a ground to take the benefit of Section 197 Cr.P.C. The applicability of Section 197 Cr.P.C. would arise only when the employee was removed by the State Government or by the Central Government as prescribed u/s 197 Cr.P.C. There is no force in the present petitions. The same are hereby, dismissed.

The stay petitions also stands dismissed.