
(1983) 05 RAJ CK 0005
In the Rajasthan High Court
Case No : Criminal Appeal No. 484 of 1978

State of Rajasthan

APPELLANT

Vs

Man Mal Kewal Chand Cotton Seed Merchants

RESPONDENT

Date of Decision : 20-05-1983

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 378

Citation : (1983) RLW 391 : (1983) WLN 393

Hon'ble Judges : G.M. Lodha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

G.M. Lodha, J.—The Secretary, Krishi Upaj Mandi Samiti, Pali has filed this appeal u/s 378 Cr. P.C. against the judgment of Munsif and Judicial Magistrate, Pali, dated 22.9.1978 passed in Criminal Case No. 205/75.

2. A complaint was filed against M/S Manmal Kewal Chand u/s 4(2) and 17 of the Rajasthan Agricultural Produce Market Act, 1961 (as amended by the Act of 1973) for contravening Section 28(1) and 28(2). The Trial Court acquitted the accused on 22.9.1978 after holding that the prosecution has failed to prove the offence u/s 28(1) and (2) of the Act.

3. In the Appeal before this court, the non-petitioner has been shown as M/s Manmal Kewal Chand. It has not been specified who is the accused and whether Manmal or Kewal Chand or both are accused or one of them is accused and in what capacity. In cases of Firms, in order to hold them liable under the criminal law, it is necessary that the person should be specified by name. A Firm can be sole proprietary Firm or a partnership Firm. In order to punish a person, he must be served in person, though it may be in the capacity of proprietor of the Firm or partner of the Firm or manager or employee of the firm, as the case may be.

4. I enquired from Mr. Mathur as to who is the accused and he was unable to point out anything about the accused. In the grounds of appeal it has not been

specified as to who is the person, who is to be prosecuted. It is not possible to mention as to the name of the person to whom the notice of appeal was served. In view of this no criminal liability can be fastened on a firm without specifying the name of the person, who is to be punished.

5. I have repeatedly enquired from Mr. Mathur if it is possible to mention the name of the person who is the accused in this case and in case conviction and sentence is to be imposed, who would undergo the sentence, but Mr. Mathur could not assist the court in this respect. On a study of the file of the trial court, it appears that neither Manmal nor Kewal Chand was the accused and one Paras Mai s/o Shri Mishri Mai was examined as an accused. This makes it clear that in this appeal before this court as Paras Mai has not been made accused in any capacity whatsoever nor he has been served in person and M/s Man Mai Kewal Chand can not be treated as the accused, therefore, no effective judgment can be given.

6. In view of the above, although on principle I have held in State v. Mool Chand, an identical case, that the acquittal was not justified, yet that question cannot be examined and decided in the absence of the accused.

7. It is unfortunate that the Krishi Upaj Mandi Samiti has filed this appeal in such an unsatisfactory manner and even when the office pointed out this defect on 1-12-1978, it was not removed. I may observe that in criminal cases, where the question arises as to who is liable for punishment, only an individual person can be punished, though punishment may be in various capacities as discussed above. It is, therefore, incumbent upon the prosecution to name that person in the complaint and consequently in the appeal. In the absence of mention of that name, the appeal cannot be entertained, as no effective judgment can be given without providing an opportunity of hearing.

6. In view of this as the appellant has mentioned only the name of the firm without mentioning the name of the person, who is to be made as the accused, as has been done in this appeal, this defect is fatal for the appellant and consequently, this appeal is dismissed.