

Mukesh Kumar and Others Vs. State of Madhya Pradesh and Another

Mukesh Kumar and Others Vs. State of Madhya Pradesh and Another

SooperKanoon Citation : sooperkanoon.com/1182321

Court : Madhya Pradesh

Decided On : Feb-05-2015

Judge : B.D. Rathi

Appeal No. : Misc. Criminal Case No. 2756 of 2010

Appellant : Mukesh Kumar and Others

Respondent : State of Madhya Pradesh and Another

Judgement :

1. This petition has been preferred under Section 482 of the Code of Criminal Procedure for the following relief:

By allowing this petition Crime No.265/2006 registered at Police Station Mungaoli, District Ashok Nagar and the entire proceedings of Criminal Case No.92/2007 arisen out of the aforesaid crime, pending in the court of JMFC, Mungaoli [State of M.P. Vs. Mukesh and others], be quashed.

2. Brief facts, giving rise to the present petition, are that one written complaint was filed by Jagram Singh (respondent No.2 herein) before the Station House Officer, Police Station Mukesh Kumar and Ors. Vs. State of M.P. and Anr. Mungaoli, District Ashok Nagar (M.P.) to the effect that he is an agriculturist having 40 Bighas of agricultural land. In the year 2002, 91 quintals of gram crop was kept in the godown of accused/petitioners from 03.05.2002 to 27.05.2002 and the rent of which was decided as Rs.Two per bag per month. After four months when the

aforesaid Gram Crop was demanded by him it was told by accused/applicant Rakesh that entire crop had already been sold at Delhi, therefore, either value of the crop would be paid or the crop would be returned after getting it purchased again. But till filing of the complaint i.e. on 10.09.2006 neither crop was returned nor was its value to the tune of Rs.1,55,000/- paid. On the basis of this FIR, Crime No.265/2006 was registered at Police Station Mungaoli, District Ashok Nagar (M.P.) for the offence punishable under Section 406 of IPC. After completion of investigation, charge-sheet has been filed under Sections 406, 407 and 420 of IPC.

3. It is submitted by the learned counsel appearing on behalf of the petitioners that as per the allegations entire crop was kept in the godown from 03.05.2002 to 27.05.2002 meaning thereby more than four years before, from the date of lodging the FIR. The offence under Section 406 of IPC is punishable with imprisonment of either description for a term which may extend to three years or with fine, or with both. As per the provisions of Section 468 of Cr.P.C., for such kind of offence which is punishable only with three years' imprisonment, cognizance cannot be taken by the Court after a prescribed period of limitation i.e. three years from the commission of the offence. Because the offence was committed in the year 2002 and the complaint was made after a period of four years i.e. in the year 2006, therefore, cognizance should not have been taken by the trial court. It is also submitted by Shri Soni, learned counsel, that one civil Mukesh Kumar and Ors. Vs. State of M.P. and Anr. suit was also filed by Jagram against the applicants/accused persons. It is also submitted by Shri Soni, learned counsel, that nowhere offence under Sections 407 and 420 of IPC is made out and for the offence punishable under Section 406 of IPC cognizance cannot be taken in view of the specific bar of limitation given under Section 468 Cr.P.C. It is also submitted that trial is still pending and charges have not been framed yet. Thus, by allowing the present petition, entire proceedings may be quashed.

4. Per contra, it is submitted by Shri Chaturvedi, learned counsel appearing on behalf of respondent No.2, that on perusal of the facts mentioned in the complaint it is evident that many times crop was demanded by the complainant but neither it was returned nor its value was paid by the accused/persons/petitioners, hence, it

is a case which may be treated under Section 472 Cr.P.C. Offence was committed continuously by the petitioners/accused persons, therefore, always a fresh period of limitation shall begin to run i.e. the moment whenever payment was denied or the return of crop by the applicant. It is also submitted by Shri Chaturvedi, learned counsel, that charge-sheet has been filed not only for the offence punishable under Section 406 of IPC but also under Sections 407 and 420 of IPC and the offence under Section 407 of IPC is punishable for a term which may be extended to seven years. Offence under Section 420 of IPC is punishable for a term which may be extended to seven years, therefore, the provisions contained under Section 468 of Cr.P.C. are not applicable.

5. Having regard to the arguments advanced by the learned counsel for the parties, entire record has been perused.

6. It would be fruitful to quote here the relevant provisions contained under Sections 468 and 472 of Cr.P.C.:

468. Bar to taking cognizance after lapse of the period of limitation.

(1) Except as otherwise provided elsewhere in this Code, no Court, shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.

(2) The period of limitation shall be

(a) six months, if the offence is punishable with fine only;

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

(3) For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.

472. Continuing offence. In the case of a continuing offence, a fresh period of limitation shall begin to run at every moment of the time during which the offence continues.

7. Admittedly, the offence was registered under Section 406 of IPC and the charge-sheet has been filed for the offence under Sections 406, 407 and 420 of IPC which are as under:

406. Punishment for criminal breach of trust.

Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

407. Criminal breach of trust by carrier, etc.

Whoever, being entrusted with property as a carrier, wharfinger or warehouse-keeper, commits criminal breach of trust, in respect of such property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

420. Cheating and dishonestly inducing delivery of property. Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

8. As per Section 468(2)(c) of Cr.P.C., no Court shall take cognizance of an offence after the expiry of the period of limitation i.e. three years if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years. In this case, registered offence under Section 406 of IPC is punishable for a term not exceeding three years.

9. Now, it is to be seen that whether it's case of continuing offence falling under Section 472 Cr.P.C. or not.

10. As per the written complaint it is evident that Gram crop was kept in the godown of the petitioners lastly on 27.05.2002. Then, after a period of four months said crop was demanded firstly, meaning thereby in the end of September, 2002 and since then within three years complaint had to be lodged i.e. on or before 27.09.2005 whereas it was made on 10.09.2006 i.e. near about 9-1/2 months belatedly. But on perusal of FIR, it seems that in such period of nine and a half months many times crop or its value was demanded and always accused/persons used to promise the complainant to fulfill the demand. Therefore, prima facie, it is a case of continuing offence committed under Section 406 of IPC and whenever demand was made, from that date a fresh period of limitation began to run and it would be a continuing offence under Section 472 of Cr.P.C. Same principal was laid down in the case of Bairo Prasad and another Vs. Smt. Laxmibai Pateria reported in 1991 Cri.L.J.2535.

11. Now, as per the second submission put forth by the petitioners' learned counsel, no offence is made out under Section 407 and 420 of IPC.

12. On perusal of the FIR, it clearly indicates that the entire crop of Gram was kept by the complainant in the godown of the petitioners, after entering into the contract to pay the rent but the same was not returned on demand. Prima facie, clearly it's a case of criminal breach of trust as defined under Section 405 of IPC and because the offence was committed by the warehouse keeper/petitioners, therefore, certainly prima facie ingredients of Section 407 of IPC are present.

13. Offence under Section 420 of IPC is certainly not made out because crop was kept in the warehouse/godown of the accused/petitioners, by the complainant voluntarily on the basis of payment of rent. Nowhere it is evident that the complainant was dishonestly induced to deliver his property by the accused persons/petitioners. The Kerala High Court in the case of K.C. Thomas Vs. Avirah Varghese reported in 1974 Cri.L.J. 207 has held that in case of cheating the dishonest intention starts with the very inception of the transaction. But in the case of criminal breach of trust, the person who comes into possession of the movable property receives it legally, but illegally retains it or converts it to his own use against the terms of the contract.

14. The difference between two crimes i.e. criminal breach of trust and cheating has been very well defined in the case of Vadivel Vs. Packialakshmi reported in 1996 Cri.L.J. 300 and in Narsinghdas Marwari Vs. Emperor reported in AIR 1928 Nagpur 113.

15. In the aforesaid premises, it is clear that prima facie case under Sections 406 and 407 of IPC is made out against the petitioners, however, no offence under Section 420 of IPC is made out.

16. Apart that, more than three years' imprisonment is prescribed for the offence punishable under Section 407 of IPC, therefore, as per the provisions contained under Section 468(3) of Cr.P.C. the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with more severe punishment. In this case, offence under Section 407 of IPC is punishable upto the extent of seven years, therefore, cognizance also taken for the offence punishable under Section 406 of IPC by the trial court was valid and no illegality was committed in doing so.

17. In view of the foregoing, by allowing this petition in part, all the accused/petitioners are hereby discharged of the offence punishable under Section 420 of IPC. Trial Court is directed to frame charges under Sections 406 and 407 of IPC against all the accused/petitioners and proceed accordingly.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com