

Damodar Kumar Kashera and ors. Vs. State of Jharkhand

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Court : Jharkhand

Decided On : Jul-01-2004

Reported in : 2004CriLJ4396; [2004(4)JCR519(Jhr)]

Judge : Vikramaditya Prasad, J.

Acts : Indian Penal Code (IPC) - Sections 34, 294A, 406 and 420

Appeal No. : ABA No. 239 of 2004

Appellant : Damodar Kumar Kashera and ors.

Respondent : State of Jharkhand

Advocate for Def. : APP

Advocate for Pet/Ap. : B.M. Tripathy, Adv.

Judgement :

ORDER

Vikramaditya Prasad, J.

1. Heard both the sides.

2. The petitioners were running an unauthorized and unregistered lottery house, functioning under the name and style of Gumla Enterprises. Annexure-1 shows the terms and conditions by which every member has to pay monthly Installments.

According to the informant, he was a member of the Enterprises and his son was also a member of that Enterprises who had paid two and three installments and thereafter had not made payment as per the scheme. The allegation was that the petitioners along with their partners were carrying illegal lottery and they were also given some awards but the amounts were misappropriate by them, therefore. FIR was lodged under Sections 294A, 406, 420/34 of the IPC. The learned Court below found that the petitioner's company collected Rs. 99 lakhs out of which Rs. 27 lakhs has been spent and rest amount i.e. Rs. 72 lakhs has not been deposited with the UCO Bank rather only two lakhs were deposited in the UCO Bank in the account of this Enterprises. Learned counsel for the petitioners heavily relied on supervision note of the Supdt. of Police annexed with the supplementary affidavit. As per the supervision note not a single witness has come before S.P. regarding misappropriation of fund and fraud on the part of the petitioner's Company. The Supdt. of Police further held that there was no intention on the part of the petitioners to misappropriate the amount and commit fraud. otherwise, even after closure of the institution. they would not have returned the amount, deposited by its members. The-Supdt. of Police also found that the accused persons have started unauthorized lottery business and they have committed the aforesaid offence along with offences under Section 34 of the IPC. On the strength of tills supervision note, the petitioners seek anticipatory bail.

3. Learned counsel for the State argued that the Dy. S.P. has earlier supervised the case and he found that a case under Section 420, IPC was also made out against the petitioners. His argument was that if it is held that this is not a case under Section 420, IPC as argued by the learned counsel for the petitioner then this case is under Section 294A of the IPC which is bailable and therefore, this anticipatory bail is not maintainable. One relevant thing is that after the case had been instituted, the amount has been calculated and the list for repayment of the amount had been prepared. Learned counsel for the petitioners says that after the institution of the case the amount has been calculated and the list for repayment of the amount has been prepared. If the intention of the petitioner would have been there to . misappropriate the amount then the calculation would not have been made for repayment of the amount and the S.P. did not consider this respect of the matter in his supervision note and held that the offence under the aforesaid

section has been made out against the petitioner.

4. Only after the institution of the case petitioners appear to have made calculation for repayment is a circumstance that shows their intention. Considering this aspect of the case and the supervision note of the S.P., the prayer for anticipatory bail of the petitioner is rejected and they are directed to surrender and pray for regular bail before the Court below within 21 days, If they surrender and pray for regular bail. the Court below will dispose of the same preferably on the same day on its own merit without being prejudiced by this order.

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