

Hariprasad Vs. State of Rajasthan

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Court : Rajasthan

Decided On : May-05-2005

Reported in : 2005CriLJ3762

Judge : H.R. Panwar, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 482; Indian Penal Code (IPC) - Sections 406 and 420

Appeal No. : Crl. Misc. Petn. No. 1054 of 2004

Appellant : Hariprasad

Respondent : State of Rajasthan

Advocate for Def. : J.P.S. Chaudhary, Public Prosecutor

Advocate for Pet/Ap. : G.R. Punia, Adv.

Disposition : Petition allowed

Judgement :

ORDER

H.R. Panwar, J.

1. By the instant miscellaneous petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'the Code'), the petitioner has challenged the order

dated 5-11-2004 passed by the Additional Sessions Judge, Parbatsar (for short, 'the Revisional Court' hereinafter) in Criminal Revision Petition No. 59/2003, by which the Revisional Court dismissed the revision petition filed by the accused-petitioner and maintained the Order dated 19-4-2003 passed by the Additional Chief Judicial Magistrate, Makrana (for short, 'the trial Court' hereinafter) in Criminal Case No. 119/98, by which the trial Court framed charge under Section 406, IPC against the petitioner.

2. Briefly recapitulated, the facts of the case are that a written report was lodged with Police Station, Makrana by one Brij Mohan Sharma, Branch Manager, State Bank of India, Makrana against the petitioner to the effect that the petitioner was granted loan of Rs. 34,673/- under the Unemployed Scheme. Out of this loan amount, Rs. 20,673/- were disbursed for purchasing the machinery and Rs. 5000/- towards working capital. It was further alleged in the FIR that the petitioner undertook to repay the loan amount within the stipulated period and till then the machinery shall remain hypothecated. It was alleged that the petitioner had not repaid the loan etc. and misappropriated the machinery. On this report, the police registered a case under Sections 420 and 406, IPC and after investigation, challan was filed against the petitioner for the aforesaid offences. The trial Court, vide order dated 19-4-2003, discharged the petitioner from the offence under Section 420, IPC; however, framed charge against him for the offence punishable under Section 406, IPC. The revision petition filed by the petitioner challenging the order of the trial Court stood dismissed vide impugned order dated 5-11-2004. Hence this criminal miscellaneous petition.

3. I have heard learned Counsel for the petitioner and the Public Prosecutor for the State. Perused the orders impugned passed by the Courts below and the challan papers.

4. In *S.N. Palanitkar v. State of Bihar*, 2001 Cr LR (SC) 751 : (2001 Cri LJ 4765), the Hon'ble Supreme Court held that every breach of trust may not result in a penal offence of criminal breach of trust unless there is evidence of a mental act of fraudulent misappropriation and an act of breach of trust involves a civil wrong in respect of which the person wronged may seek his redress for damages in a civil

Court but a breach of trust with mens rea gives rise to a criminal prosecution as well.

5. In the instant case, the petitioner was sanctioned and disbursed loan of Rs. 34,673/- under Unemployed Scheme for purchasing the machinery and towards working capital. There is statement of Ram Dutt that the petitioner took his plot on rent of Rs. 100/- per month and started his workshop for nearly 11 months. Ved Prakash, in his statement, has stated that petitioner had started the workshop on the plot of Ram Dutt by installing lathe and welding machines. The statement of these two witnesses is that after some time, the petitioner took away the machinery from that plot. Even the complainant himself has stated that the machinery was purchased by the petitioner; however, the complainant has stated that despite the fact that the machinery were hypothecated with the bank, the petitioner had hidden the machinery or sold the same. During the investigation, on site being inspected by investigating officer, the machinery were found installed at petitioner's house and the same have been recovered by the investigating officer from the house of the petitioner as is evident from the recovery memo. There is no evidence that the petitioner misappropriated or sold the machinery. Thus, there is no evidence of a mental act of fraudulent misappropriation, which is a condition precedent for constituting an offence punishable under Section 406, IPC. So far as failure on the part of the petitioner to repay the loan is concerned, remedy before civil Court is available to the bank for recovery of the loan along with interest. Both the Courts below erred in law and on facts in omitting to consider the material on record in right perspective and as such, the impugned orders cannot be sustained in the eye of law.

6. Consequently, the miscellaneous petition is allowed. The impugned orders passed by the Courts below are set-aside and the petitioner is discharged from the offence under Section 406, IPC. The stay petition also stands disposed of.