

Suresh Kumar Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Nov-20-1988

Reported in : 1988WLN(UC)466

Judge : J.R. Chopra, J.

Appeal No. : S.B. Cr. Misc. Petition No. 336 of 1987

Appellant : Suresh Kumar

Respondent : State of Rajasthan

Disposition : Petition allowed

Judgement :

J.R. Chopra, J.

1. This petition is directed against the order of the learned Munsif and Judicial Magistrate, Anoopgarh dated 20-12-1986 where by he has taken cognizance against the accused-petitioner Sureshkumar for the offence under Section 406 IPC.

2. The facts necessary to be noticed for the disposal of this petition briefly stated are: that petitioner Suresh Kumar is a partner in Firm M/s Anoopgarh Cotton Mills, Anoopgarh, which he owned jointly with the petitioner and Om Prakash, Kamlesh Kumar and Shivilal. It is alleged that a sum of Rs. 13,00,000/- was advanced as a

loan to the petitioner firm by the Rajasthan Financial Corporation and in order to ensure repayment of the loan amount, the entire plant and machinery were hypothecated with the Rajasthan Financial Corporation. It is alleged that the Mill later closed down because it was in heavy lossess. Thereafter, this mill was attached by the Rajasthan Financial Corporation, but at the time of attachment none of the partners of this partnership firm which owned this mill was present. At the time of attachment, it was found that one G.E.C. make 10 H.P. Motor and one G E.C. 1.5 HP Motor and some accessories of this plant were missing. No details of these accessory articles or electric fitting which were found missing from the premises of this Mill were given at any stage. It is alleged that as regards these two electric Meters, a notice was given to the partners of this partnership firm who are the owners of this Plant that two Meters be brought back to the Mill. How ever, when the partners of this mill failed to do so, a FIR was lodged in the Police against all the four partners of this firm but it is alleged that the Chowkidars who were employed by the partners of this mill brought these two meters and put them in the Mill in the presence of the Chowkidars deployed by the Rajasthan Financial Corporation. This fact later came to the notice of the Rajasthan Financial Corporation personnel and on enquiry it came to their notice that Shri Badrisingh and Harisingh Chowkidars who were employed by the partners of the Mill brought these meters and put them in the mill before 5-7 days. They told the Chowkidars deployed by the Rajasthan Financial Corporation that these Meters are the property of this mill and they be kept in the Mill. Later, when the Police went for site inspection, the meters were found in the mill. In this case cognizance has been taken on the basis of the correspondence that has taken place between the Rajasthan Financial Corporation and the partners of this Mill when the plant and machinery of a Mill/factory is hypothecated with the Rajasthan Financial Corporation to ensure the repayment of the loan, it is not expected of the proprietor/ partners of that Mill/factory that they will not take that machinery outside the premise of the Mill/factory for repairs or for any other reasonable purpose. They, how ever, cannot transfer or sell them. In this case, the possession of the mill/factory was not taken over by the Rajasthan Financial Corporation Officers in the presence of the partners. The machinery alleged to have been stolen has not been put in the Mill/factory premises by the partners of the Mill. The possession of

the Mill was taken over by the Rajasthan Financial Corporation Officers in the presence of the Chowkidars employed by the partners of this Mill and it is alleged that these very Chowkidars brought and put these Meters in the Mill/Factory. In such circumstances, if any offence is made out, it is made out against the Chowkidars employed by the partners of the Mill. Moreover, when the factory was taken into possession by the Rajasthan Financial Corporation then why its employees allowed Chowkidars employed by the partners of this Mill to introduce these two meters in the Mill without objection or without obtaining permission of concerned Officers and why they did not report the matter to their higher Officers immediately. Thus, for the reason aforesaid, in taking cognizance against the accused-petitioner for the offences under Section 406 IPC, the learned lower Court has abused the process of the Court.

3. In the result, I accept this petition and set aside the order of the learned Munsif and Judicial Magistrate, Anoopgarh dated 20 12-1986 taking cognizance against the accused-petitioner Suresh Kumar for the offence under Section 406 IPC.

4. Let the record of this case be transmitted to the learned lower court forthwith.