

**Rakesh Kumar Vs. the State of Rajasthan**

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**SooperKanoon Citation :** [sooperkanoon.com/768459](http://sooperkanoon.com/768459)

**Court :** Rajasthan

**Decided On :** Mar-05-1998

**Reported in :** 1998(3)WLC309; 1998WLC(Raj)UC571; 1998(1)WLN238

**Judge :** P.C. Jain, J.

**Appeal No. :** S.B Criminal Misc. Petition No. 665 of 1997

**Appellant :** Rakesh Kumar

**Respondent :** The State of Rajasthan

**Advocate for Pet/Ap. :** Mr. Ravi Kasliwal

**Disposition :** Petition dismissed

**Judgement :**

**P.C. Jain, J.**

1. This petition under Section 482 Cr. P.C. has been filed for quashing the FIR No. 107 of 1997 registered at Police Station, Sadar Kotwali against the accused-petitioner Rakesh Kumar for the offences under Sections 406 and 420 IPC.

2. The brief case is that respondent No. 2 lodged the above FIR No. 107 of 1997 on 8.5.1997 with the allegations that on 11.4.1997 at about 3.00 p.m. the accused-petitioners came to his shop and represented that they were badly in need of

money and so he requested complainant-respondent No. 2 to lend a sum of Rs. 1,15,000/- to them. They promised to return the same within two days. The respondent No. 2 was persuaded to part with the above money. The petitioners took the above money and also wrote a chit of having borrowed the above money. The petitioners have also pledged their scooter with respondent No. 2. However, the petitioners did not return the above money because they had no intention to do so even from the beginning. Thus, in this way, the petitioners deceived the respondent No. 2 and succeeded in obtaining the above money. On this report, the Police registered a case against the accused-petitioners under Sections 406 and 420 IPC and started investigation. The matter is under investigation.

3. I have heard Mr. Ravi Kasliwal the learned Counsel appearing for the petitioner. Mr. S.M. Podar, the learned Public Prosecutor for the State and Mr. Resham Bhargava for respondent No. 2 and have very carefully gone through the record of the case.

4. The learned Counsel appearing for the petitioner has referred to the impugned complaint and submitted that from the bare perusal of the complaint it would be clear that it was only a case of money transaction. The petitioners obtained a loan of Rs. 1,15,000/- from the respondent No. 2 with the promise to return the same but could not return the same. The failure of the petitioner to return the above money would give rise to a civil liability and respondent No. 2 could have availed the civil remedy. However, no criminal liability is made out against the petitioners. He has, therefore, prayed that the impugned FIR be quashed as no useful purpose would be served to continue criminal prosecution against the petitioners on the basis of the allegations made in the complaint.

5. On the other hand the learned Public Prosecutor as also the learned Counsel appearing for the respondent No. 2 have submitted that in the instant case, challan has been filed against the accused petitioners in the Trial Court and the learned Trial Court has already taken cognizance as would be clear from the order sheet dated 6.1.1998 of the learned Trial Court. One of the accused is absconding in the criminal case. The accused petitioner had an oblique motive in obtaining the above money from respondent No. 2 by making a false representation. They have

submitted that powers under Section 482 Cr. P.C. must be exercised in exceptional circumstances and when the Trial Magistrate has taken cognizance, the powers under Section 482 Cr. P.C. should not be exercised by this Court.

6. In support of their contention, the learned Public as well as the learned Counsel appearing for the accused-respondent placed reliance on a decision of their lordships of the Supreme Court in J.P. Sharma v. Vinod Kumar Jain : 1986 CriLJ917 and State of Bihar v. K.J.D.Singh 1993 Cr. L.J. 3537.

7. I have considered the rival submissions made at the bar. It may be stated here at the very outset that the Apex Court has cautioned in exercising powers under Section 482 Cr. P.C. and has remarked that powers under Section 482 Cr. P.C. should be exercised with due care and circumspection. In J.P. Sharma's case (supra), it has been held that the High Court has erred in quashing the criminal proceedings under Section 482 Cr. P.C. on an erroneous basis when on prima facie being satisfied, the Metropolitan Magistrate had taken cognizance of the alleged offences. It was further observed that the question at this stage is not whether there was any truth in the allegations made but it is whether on the basis of the allegations, a cognizable offence or offences had been alleged to have been committed. The facts subsequently found out to prove the truth or other wise on the allegation is not a ground on the basis of which the complaint can be quashed.

8. In the instant case, the learned Trial Magistrate has already taken cognizance against the petitioners vide his order dated 6.1.1998. Thus, the learned Trial Magistrate would have an occasion to scrutinise the allegations made in the case for finding out whether any prima facie case is made out for the offence under Sections 406 and 420 IPC against the accused-petitioners when the question for framing the charge would arise. The petitioners can avail an opportunity there. In these circumstances, I am not inclined to exercise the inherent powers of this Court under Section 482 Cr. P.C. Such powers should be exercised sparingly and not in a routine way.

9. For the above reasons, I find no force in this petition and it is hereby dismissed.

