
(1989) 11 AHC CK 0075

Allahabad High Court

Case No: Criminal Misc Application No. 72 of 1989

Anil Kumar alias Manna

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision: Nov. 27, 1989

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 202, 482
- Penal Code, 1860 (IPC) - Section 406

Citation: (1990) 14 ACR 154

Hon'ble Judges: Palok Basu, J

Bench: Single Bench

Advocate: A.D. Giri and S.K. Agarwal, for the Appellant; N.K. Roy and R.P. Tripathi, for the Respondent

Final Decision: Allowed

Judgement

Palok Basu, J.

This is a case u/s 482 Code of Criminal Procedure by Anil Kumar for quashing the complaint and further proceedings as against him pending as Criminal Case No. 1214/1988 Smt. Manju Goyal v. Lala Pooran Chand and others, before the Munsif Magistrate 1st Class Ferozabad, district Agra.

2. The complaint allegation in short is that at the time of solemnising of the marriage, some property and valuables were handed over to Lala Pooran Chand. Further allegations in the complaint was that the said property was carried to Aligarh with the help of applicant Anil Kumar and his brother (non-applicant) Sunil Kumar. This allegation was reiterated in the statement of the complainant Smt. Manju Goel where she has reiterated that all the valuables and property (detailed in paragraph 2 of her statement) were handed over to her father-in-law Lala Pooran Chand. Similar was the statement of the witnesses u/s 202 Code of Criminal Procedure. On these facts, it has been argued by the Learned Counsel for the

applicant that no offence of misappropriation or embezzlement whatsoever as against the applicant has been made. Hence, summoning order and the proceedings as against the applicant amounts to an abuse of process of the court and should be quashed.

3. Affidavits have been exchanged and Sri N.K. Chaturvedi has been heard at length who appears on behalf of the complainant. The main argument advanced on behalf of the complainant was that there are specific allegations concerning the partition of the property between her late husband Arun Kumar and his other two brothers i.e. Anil Kumar applicant and Sunil Kumar non-applicant. The share of late Arun Kumar which would have devolved upon the complainant has been divided by the other brothers and therefore, rightly a complaint u/s 406 IPC was made.

4. This argument is wholly misconceived. In a case u/s 406 IPC, the prosecution has to prove beyond doubt the fact that actual entrustment of the property in question was made to all the accused who are sought to be proceeded against. Definite allegations to that effect must exist in the complaint and also in the statement of the complainant and the witnesses so as to entitle the magistrate's court to summon the accused to face a charge u/s 406 IPC. In the absence of such allegations, it will not be open to the magistrate to issue process and if he orders so, the said order is liable to be interfered with.

5. The allegations as well as the statement in the instant case point out beyond any amount of doubt that the entrustment was made only to the father-in-law Lala Pooran Chand. Under the circumstances the question whether the other properties have been partitioned or not and whether the share, if any, of late Arun Kumar has not been earmarked for the complaint or not are wholly foreign to this case. If and when so advised, this matter may be appropriately agitated before the competent court.

6. There is another aspect which requires consideration. Allegations in the instant case as against Sunil Kumar non-applicant are the same which have been levelled against Anil Kumar the applicant. In exercise of the inherent powers vested in this Court it appears only fit and proper that the orders to be passed regarding Anil Kumar applicant should also be made applicable to Sunil Kumar, co-accused, -though not an applicant.

7. This application, therefore, succeeds and is allowed. The complaint and further proceedings therein as regards Anil Kumar applicant and Sunil Kumar the non-applicant are hereby quashed. It shall now proceed only against Lala Pooran Chand in accordance with law.