

HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Revision No.23 of 2001

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|---------------------------|--------|-------------------|
| 1. Ram Prakash | | |
| 2. Ajai Kumar | | |
| Both R/o General Marchant | | |
| & Commissioner Agent | | |
| P.S. Bahjoi | | |
| District Moradabad U.P. | | |
| 3. Bishambhar Dayal | | |
| S/o Sri Heera Lal | |Revisionists |
| | Versus | |
| 1. State | | |
| 2. Gyarsi Lal | | |
| 3. Ved Prakash | |Respondents |

Hon'ble J. C. S. Rawat, J.

This criminal revision has been directed against the judgment and order dated 10.1.2001 passed by Sri R. C. Gautam, the then learned Additional Sessions Judge, Kashipur in Criminal Revision No.51/2000, whereby the Addl. Sessions Judge has allowed the revision of respondent nos. 2-3 setting aside the order passed by the Judicial Magistrate, Kashipur, District U.S. Nagar in complaint case No.479/1998 under section 406 IPC.

Brief facts of the case are that an agreement took place between the revisionists and the respondent no.2 & 3 purchase the Bazra in Bajoi, Moradabad and the goods were stored in the same place. The goods were to be delivered by the revisionists-accused on the instructions of the respondent nos. 2 & 3. The respondent no.2 & 3 instructed the revisionists to deliver the goods at Bajpur. But the said goods (Bazra) was not delivered to respondent no.2 & 3 at Bajpur according to the agreement. In this way, criminal breach of trust was committed by the revisionists. The respondent no.2 & 3 filed a complaint before the learned Magistrate under section 406 IPC alleging that the

accused had to deliver the said Bazra at Bajpur and as such the revisionists committed the offence of breach of trust. The Magistrate took the cognizance of the offence and proceeded in accordance with law. The accused appeared before the court. The evidence was recorded before the framing of the charge under section 244 Cr.P.C. The revisionists challenged the jurisdiction of the court alleging that all the transactions took place at Moradabad, U.P. and as such the court of Udham Singh Nagar, Uttaranchal has no jurisdiction to try the case. The learned Magistrate after hearing the parties held that the court of Kashipur, Uttaranchal had no jurisdiction to entertain the complaint and the court of Moradabad, U.P. was competent to decide the matter.

Feeling aggrieved by this, a revision was preferred before the Sessions Judge by the respondent no.2-3 and it was held that the court of Kashipur has got the jurisdiction to try the case and set-aside the order of the learned Magistrate. Feeling aggrieved by this, the revisionists has come up before this court.

I have heard Sri A.K. Bisht i/b for Sri S. N. Babulkar learned counsel for the revisionists and Sri P.S. Saon learned A.G.A. and perused the record.

The learned counsel for the revisionists submitted that the transaction took place at Bajoi, District Moradabad and the goods were to be stored on the same place and it was not to be delivered at Bajpur and as such the court of Moradabad has only the jurisdiction to entertain the complaint. The learned counsel for the respondent refuted the contention. I have gone through the record. Perusal of the record reveals that it has been stated in the evidence of Gayasilal PW1 recorded under section 244 Cr.P.C before the charge that the Bazra was to be delivered at Bajpur. The learned

Sessions Judge has further observed that the revisionists had not put any suggestion to the complainant that the Bazra was not to be delivered at Bajpur. Meaning thereby, there is no serious challenge on this point. Section 181 Cr.P.C. sub-clause (4) reads as follows: -

"4. Any offence of criminal misappropriation or of criminal breach of trust may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or any part of the property which is the subject of the offence was received or retained, or was required to be returned or accounted for, by the accused person.

The prosecution evidence recorded under section 244 Cr.P.C. reveals that the Bazra was to be delivered at Bajpur, District Udham Singh Nagar. Therefore, the court of Kashipur, District Udham Singh Nagar was competent to try the case.

In view of the above discussion, I find myself in agreement with the finding of the learned Sessions Judge and I do not find any illegality in the order passed by the Sessions Judge. The revision lacks merit and is liable to be dismissed. The revision is dismissed accordingly.

(J. C. S. Rawat, J.)

Dated 30.10.2004

LSR