

A

## STATE OF WEST BENGAL

v.

RAJ KUMAR AGARWALLA

October 10, 1975

[H. R. KHANNA AND M. H. BEG, JJ.]

B

*Code of Criminal Procedure (Act 5 of 1898) s. 439—Quashing of charge by High Court—Charge of conspiracy to defraud and cheat—If could be framed against a person who appears on the scene after lodging of complaint to police.*

C

The complainant lodged a complaint to the police of a conspiracy to cheat and defraud him. That report did not mention the respondent's name, because, it was the case of the prosecution itself that the respondent appeared on the scene only subsequent to the lodging of the report. The part attributed to him was that he was present along with the person complained against when the latter came to the complainant to demand money. That circumstance alone would not warrant the inference that the respondent was also a party to any conspiracy to defraud or cheat the complainant. The High Court was, therefore, right in quashing the charges framed against the respondent. [279E-F]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 172 of 1971.

D

Appeal by Special Leave from the Judgment and Order dated the 7-5-70 of the Calcutta High Court in Criminal Revision No. 370 of 1970.

*M. M. Kshatriya and G. S. Chatterjee* for the Appellant.

*A. K. Sen, Mrs. Leila Seth, Mrs. Anjana Sen and O. P. Khaitan* for respondent.

E

The Judgment of the Court was delivered by

KHANNA, J.—This appeal by special leave is by the State of West Bengal against the judgment of the Calcutta High Court whereby the High Court in a revision petition under section 439 of the Code of Criminal Procedure quashed the charges framed by the Presidency Magistrate against Raj Kumar Agarwalla respondent.

F

The prosecution case is that on November 8, 1967 Shankerlal representing himself to be a broker of foreign machinery parts went to Ram Avtar Prasad complainant and told him that he (Shanker Lal) could arrange for a transaction of sale of foreign goods which would result in good profit to the complainant. The complainant agreed to the proposal and wanted to see the seller of the foreign goods in question. On the following day Shanker Lal came with another man named Pandey and told Ram Avtar complainant that Pandey was an agent of Shri Hanuman Agency and would supply the foreign goods known as washer plates. Pandey showed Ram Avtar the samples of those washer plates. One of those samples was kept by Ram Avtar. A day after that Shanker Lal brought one Saheb Jaman Khan along with him to Ram Avtar and introduced Saheb Jaman Khan as agent of M/s. Ashoke Trading Corporation of Indore. Ram Avtar then agreed to purchase 200 pieces of the washer plates at the rate of Rs. 38/- per piece. Formal order, it was then agreed, would be sent through Shanker Lal.

G

H

On November 15, 1967 Shanker Lal handed over the said formal order to Ram Avtar and stated that the goods would be supplied on the following day. Ram Avtar was also told that this transaction would fetch him a profit of Rs. 3200/-. On November 16, 1967 Ram Avtar lodged a report with the police against Shanker Lal after his suspicion had been aroused. Later on that day Shanker Lal and Raj Kumar Agarwalla came to the shop of Ram Avtar with washer plates in a taxi. Price of the said goods was then demanded from Ram Avtar. Shanker Lal and Raj Kumar Agarwalla were thereupon arrested by the police.

It appears that the police did not submit any charge sheet on the basis of the report which had been lodged by Ram Avtar and the accused were discharged. Subsequently, the proceedings were set in motion against Raj Kumar Agarwalla, Shanker Lal and Saheb Jaman Khan. Charge under sections 420, 468 and 471 Indian Penal Code read with section 120B Indian Penal Code was framed against all the three accused. Another charge under section 420 read with section 511 Indian Penal Code was framed against Raj Kumar Agarwalla and Shanker Lal. Raj Kumar Agarwalla thereafter filed a revision petition in the High Court for quashing the charge against him. The revision petition was allowed by the High Court on the ground that so far as Raj Kumar Agarwalla was concerned, no case had been made out against him. Charges framed against him were consequently quashed.

We have heard Mr. Kshatriya on behalf of the appellant-State, and are of the view that there is no cogent ground for interference with the judgment of the High Court. The report which was lodged by Ram Avtar in the very nature of things made no mention of the name of Raj Kumar Agarwalla respondent because it is the case of the prosecution itself that Raj Kumar appeared on the scene only subsequent to the lodging of the report. The part which is attributed to Raj Kumar is that he was present along with Shanker Lal, when the latter brought washer plates in a taxi and demanded the price of the washer plates from Ram Avtar. That circumstance, as pointed out by the High Court, would hardly warrant an inference that Raj Kumar respondent too was a party to any conspiracy to defraud or cheat Ram Avtar. We find no infirmity in the judgment of the High Court as might induce us to interfere.

The appeal fails and is dismissed.

V.P.S.

*Appeal dismissed:*