

Narender Kumar Jain

Vs

State of Gujarat

Criminal Appeal No. 843 of 1999

(K. Venkataswami, S. S. Mohammed Quadri JJ)

24.08.1999

JUDGMENT

Syed Shah Mohammad Quadri, J. –

1. Leave is granted.

2. The second respondent preferred a complaint against the appellant and three others on October 12, 1994. The appellant is accused No. 4 in Criminal Case No. 6096 of 1994 in the Court of Chief Judicial Magistrate, Jamnagar. Though the complaint was filed under Sections 406, 416, 120, 34 and 114 of IPC, the learned Chief Judicial Magistrate issued summoning order only under Section 406 IPC on October 17, 1994. That order required the appellant to be present in the Court on November 4, 1996. Two of the accused, No. 1 and No. 2 challenged the summoning order by filing Misc. Criminal Application No. 580 of 1995 before the High Court which was dismissed on February 28, 1995. Feeling aggrieved, they preferred Special Leave Petition No. 2145 of 1995. Thereafter, the appellant challenged the said summoning order of learned Chief Judicial Magistrate in revision in the Court of the learned Additional Sessions Judge, Jamnagar, in Criminal Revision Petition No. 10 of 1997. On dismissal of that petition, he filed Special Criminal Application No. 266 of 1998 in the High Court of Gujarat. By order under appeal, the High Court dismissed the petition. The appellant has thus challenged that order of the High Court in this appeal.

3. Mr. J.C. Gupta, learned counsel appearing for the appellant, submits that the appellant was only a General Power of Attorney holder of the partners who had become owner of the goods; there is no case against the appellant under Section 406, IPC so the High Court should have quashed the proceedings.

Heard learned counsel for the respondents.

4. On the facts of this case, in our view, no case is made out. The learned Additional Sessions Judge after examining the facts in detail and taking note of the fact that similar petition by accused Nos. 1 and 2 was dismissed by the High Court and the Special Leave Petition filed against that order of the High Court was also dismissed by this Court did not consider it appropriate to interfere in the order of issuing summons. The High Court in the order under appeal, noted that it was only after two years (in fact it was more than three years) of dismissal of challenge by accused Nos. 1 and 2 against the summoning order by this court, the appellant filed the revision before the Additional Sessions Judge. On considering all the facts and circumstances of the case the High Court found it inappropriate to interdict the proceedings. We do not consider it appropriate, at this stage, to examine the facts to find out whether *prima facie* case under Section 406 I.P.C. is made out to issue

a summon against the appellant. There is no illegality in the impugned order of the High Court.

5. The appeal is, therefore, dismissed.