

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

CRIMINAL APPEAL NO(s). 1354 OF 2004

RAKESH KUMAR KHARE & ANR.

Appellant (s)

VERSUS

STATE OF JHARKHAND

Respondent(s)

(With appln(s) for stay and office report)

Date: 19/02/2009 This Appeal was called on for hearing today.

CORAM :

HON'BLE Dr. JUSTICE ARIJIT PASAYAT
HON'BLE MR. JUSTICE LOKESHWAR SINGH PANTA
HON'BLE MR. JUSTICE P. SATHASIVAM

For Appellant(s) Mr. Sunil Kumar, Sr. Adv.
Ms. Sunita R. Singh, Adv.
Ms. Shefali Jain, Adv.
Mr. Rajesh Prasad Singh, Adv.

For Respondent(s)
Mr. Ratan Kumar Choudhuri, Adv.

UPON hearing counsel the Court made the following
ORDER

The appeal is disposed of.

[SUMAN WADHWA]
COURT MASTER

[SHASHI BALA VIJ]
COURT MASTER

Signed order is placed on the file.
IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1354 OF 2004

APPELLANTS RAKESH KUMAR KHARE & ANR. ..

vs.

RESPONDENT STATE OF JHARKHAND ..

ORDER

Heard learned counsel for the appellant and learned counsel for
the State of Jharkhand.

Challenge in this appeal is to the order passed by the learned

Single Judge of the Jharkhand High Court rejecting the application filed in terms of Sec.482 of the Code of Criminal Procedure, 1973 (in short 'the Code'). Challenge in the High Court was to the order dated 29/9/2000 taking cognizance of offences punishable under Sec.406, 420 and 120 of the Indian Penal Code 1860 (in short 'IPC') in connection with Nala P.S. case No. 106 of 1999 corresponding to G.R. No. 524/1999.

It is the case of the appellant that alleged non-supply for which criminal law was set on motion was because of the letter written by the Director Accounts Administration and

-2-

self-Investment, District Rural Development Agency, Dumka. In the said letter dated 12.12.1998 addressed to the Block Development Officers and Area Offices and Child Development Project Offices, a restraint was put on accepting supplies from the appellant until the sample of cement was drawn and tested. Appellant's case is that because of the restraint there was no supply. Till now, the appellant does not know whether there was any test conducted. That being so, it is submitted, the continuance of the proceedings would be abuse of process of Court. It is stated by learned counsel that without even initiation of civil proceedings the amount involved has been deposited with the authorities.

Learned counsel for the respondent State, with reference to the High Court's order, submitted that a bare reading of the complaint shows that there is a prima facie case, made out and therefore, there was no scope for interference in terms of Sec.482 of the Code.

We feel that at the present juncture the High Court was justified in not exercising power under sec. 482 of the Code.

-3-

If at all, the allegations are not borne out and/or the ingredients of the provisions are not in existence, that is an aspect which can be highlighted by the appellant when the question of framing charge arises. If any such petition for discharge is filed before the concerned court, needless to say

that the same shall be considered in its proper perspective and in accordance with law, uninfluenced by any observation made in the impugned order highlighting the non-desirability of exercise of power under Sec.482 of the Code at the present juncture. It is made clear that we have not expressed any opinion on the merits of the case.

The appeal is accordingly disposed of.

.....J.
(Dr. ARIJIT PASAYAT)

.....J.
(LOKESHWAR SINGH PANTA)

.....J.
(P. SATHASIVAM)

New Delhi,
February 19, 2009.