

## **Ram Avtar Gupta vs Gopal Das Taliwal And Ors. on 24 January, 1983**

**Equivalent citations: AIR1983SC1149, 1983(1)SCALE92, (1983)2SCC431, AIR 1983 SUPREME COURT 1149, 1983 ALL. L. J. 522, 1983 CRILR(SC MAH GUJ) 219, (1983) IJR 105 (SC), 1983 UJ (SC) 413, 1983 CRI APP R (SC) 217, 1983 SCC(CRI) 531, 1983 (2) SCC 431, (1983) SC CR R 222**

**Bench: V. Balakrishnan Eradi, V.D. Tulzapurkar**

### **JUDGMENT**

1. In this matter as far back as 28th of October, 1980 the respondents (the accused) were granted 4 weeks' time to Pay a sum of Rs. 19,407.46 paisa to the appellant (complainant) with a view to compound the matter and though further extensions of time were granted the respondents have not paid or deposited the said amount for being paid over to the appellant till this day. We therefore, reject a further request for extension to deposit the amount and proceed to deal with the matter on merits.

2. A complaint under Sections 420, 467, 468, 34 and 120B I.P.C. was filed by the appellant (Manager of Transport Corporation of India) against the respondents who are partners of M/s. Badridas Jagdish Kumar, of Hathras (the consignees), in the Court of Judicial Magistrate, Khair, Aligarh. It appears that a consignment of 101 bags of copra valued at Rs. 22,620 was despatched by M/s. Jagannath & Sons, Mysore (consignor) to M/s. Badridas Jagdish Kumar of Hathras (consignee) in respect whereof Transport Corporation of India were the carriers. The bill in respect of that consignment was negotiated by the State Bank of India, Mysore of payment at Hathras in favour of State Bank of India, Hathras and the consignee was supposed to retire the transport receipt and other documents from the State Bank of India, Hathras by making payments of the price of the goods enabling them to take delivery of the consignment. The case of the complainant (the carriers) was that by misrepresentation and deceit the respondents (partners of the consignee) induced the complainant to deliver the consignment to them without retiring the T.R. from the State Bank, Hathras and without making payment to the Bank. It appears that the respondents merely paid the freight (Rs. 1400) and later on made a part payment of Rs. 3,600/-towards the price of the consignment. So at the insistence of the consignors the complainant (the carriers) settled the dues of the consignors by paying to them Rs. 19,407 and odd. The learned Magistrate framed a charge against the respondents under Section 420 r/w 34, I.P.C. The respondents went in revision to the Court of Additional Sessions Judge, Aligarh for quashing the charge on the ground that no offence was disclosed, but learned Additional Sessions Judge dismissed the revision. The respondents invoked the inherent jurisdiction of the High Court under Section 482 Cr.P.C. by preferring Criminal Misc. Application No. 788/79 challenging the order of the Additional Sessions Judge and the High Court by its order dated 19-9-1979 quashed the criminal case. The appellant (complainant) has challenged the High Court's order in this appeal.

3. The principle reason why the High Court was inclined to quash the criminal proceedings was that it felt that after all in respect of the concerned consignment the respondents had paid three sums of Rs. 1400 (towards the freight), Rs. 6000 and Rs. 19000 and odd (the last 2 towards the price) and as such it was a case of mere delay on the part of the respondents in discharging their monetary liability and the High Court has observed thus: "the mere fact that there was delay on the part of the applicants (respondents) in paying the price of the goods will not necessarily amount to the dishonest intention on their part" and it quashed the charge under Section 420/34, I.P.C. on the ground that it would be sheer abuse of the process of the court if the trial were allowed to proceed.

4. On admitted facts as indicated earlier the respondents had merely paid a total sum of Rs. 5000 (Rs. 1400 towards freight and Rs. 3600 towards the price) and no further amount whatsoever was at all paid by them either to the complainant or to the consignors. In fact it was the complainant (carriers) who settled all the dues of the consignors by paying to them Rs. 19,400 and odd. In other words, the respondents even after getting delivery of the consignment from the carriers allegedly by making misrepresentation and practising deceit have failed to make good a substantial part of the price of the goods even up to this day. It is therefore, not a case of delayed payment at all but a case of no substantial payment. We are satisfied that if the High Court had not fallen into the error of thinking that the amount of Rs. 19,000 and odd had been paid by the respondents, it would not have reversed the Sessions Court's order. We accordingly set aside the High Court's order and direct that the learned Judicial Magistrate, Khair, Aligarh will proceed with a criminal case against the respondents and dispose it of according to law.