

2006 CCR 2 122 . 2006 SLT 3 405 . 2005 SCC 7 69 . 2005 SCC CRI 1600 .

**Vijaya Rao v. State Of Rajasthan And Another**

Supreme Court Of India (29 Jul, 2005)

**CASE NO.**

Criminal Appeal No. 944 of 2005, decided on July 29, 2005

**ADVOCATES****JUDGES**

P. Venkatarama Reddi

B.N Srikrishna, JJ.

**Important Paras**

1. 5. Except using the expressions fraudulent misappropriation and mala fide intention, the allegations in the complaint do not at all disclose as to how the appellant can be found guilty of the offence under Section 420 IPC. The ingredients constituting Section 420 are conspicuously lacking in the complaint. All the courts have failed to address themselves to the crucial question whether as far as the appellant is concerned any offence under Section 420 or for that matter any offence under Section 409 has been committed. Even going by the allegations in the complaint, allowing the criminal proceedings to go on against the appellant, would result in abuse of the process of the court. Hence, the proceedings in Complaint Case No. 10 of 2000 on the file of the Chief Judicial Magistrate, Sikar are quashed as against the appellant. The appeal is allowed accordingly.

**Summary**

1. The proceedings in Complaint Case No. 10 of 2000 on the file of the Chief Judicial Magistrate, Sikar are quashed as against the appellant.

2. The appeal is allowed .

## JUDGMENT

Order

1. Leave granted.

2. It is brought to our notice by the counsel for the State that the complainant has filed an application before the trial court i.e Additional Chief Judicial Magistrate, Sikar, Rajasthan to withdraw the complaint against the accused.

3. In this appeal we are concerned with the legality of the order taking cognizance of the offence under Section 420 IPC by the learned Chief Judicial Magistrate against the appellant (A-3). The revision to the Additional District and Sessions Judge and the petition filed under Section 482 CrPC in the High Court have been rejected on the ground of a prima facie case which was made out against the appellant, going by the complaint and the statement of the complainant.

4. We have gone through the complaint filed by Shri Maniram Sharma (R-2) in the Court of Additional Chief Judicial Magistrate, Sikar. The appellant in her capacity as the Vice-President of ICICI Ltd. had acted as a trustee on behalf of the debenture-holders of M/s Shreyans Industries Ltd., of which Accused 1 and 2 are said to be in charge of its business activities. The Company failed to pay interest due to the complainant. The relevant allegations against the appellant, who is Accused 3, read as follows:

Accused 3 being a trustee to safeguard the interests of debenture-holders and in case of any act adverse to the interests of the debenture-holders done by M/s Shreyans Industries Ltd., it is her duty to take necessary action, and if no step to safeguard the interest of the debenture-holders is taken by her, she is responsible.

By making no payment as per the terms of the debenture paper and by fraudulently misappropriating the capital amount and interest due on it and conspiring collusively to misuse this amount with criminal intent have collected this amount invested by the debenture-holders and have earned improper benefits by misappropriating the capital amount and interest, and thus have caused great loss to the debenture-holders, and thus the accused persons, their Company M/s Shreyans Industries Ltd. and M/s

ICICI Ltd. have committed serious crime under Sections 409 and 420 of the Penal Code.

5. Except using the expressions fraudulent misappropriation and mala fide intention, the allegations in the complaint do not at all disclose as to how the appellant can be found guilty of the offence under Section 420 IPC. The ingredients constituting Section 420 are conspicuously lacking in the complaint. All the courts have failed to address themselves to the crucial question whether as far as the appellant is concerned any offence under Section 420 or for that matter any offence under Section 409 has been committed. Even going by the allegations in the complaint, allowing the criminal proceedings to go on against the appellant, would result in abuse of the process of the court. Hence, the proceedings in Complaint Case No. 10 of 2000 on the file of the Chief Judicial Magistrate, Sikar are quashed as against the appellant. The appeal is allowed accordingly.