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Court : Mumbai Goa

Decided On : Jul-18-2014

Judge : A.R. Joshi

Appeal No. : Criminal Writ Petition No. 96 of 2013

Appellant : Ulhas Narayan Naik

Respondent : State Through P.P. and Another

Judgement :

Oral Judgment:

1. Rule made returnable forthwith with the consent of the parties.

2. Heard rival submissions on this Criminal Writ Petition preferred purported to be under Article 226 of the Constitution of India. What is challenged is the order passed by the Sessions Court dated 9/2/2010 in Criminal Revision Application No.165/2008. Said Criminal Revision was filed by the State challenging the order passed by the J.M.F.C discharging the present petitioner on 21/8/2008 in the police case for the offence punishable under sections 406, 420 of I.P.C. The said police case was filed on the initiation of the F.I.R lodged by the original complainant. Said F.I.R was lodged on 16/9/2005 for taking action against the present petitioner for offences punishable under sections 406 and 420 of I.P.C. On completion of the investigation charge sheet was filed on 27/12/2007. However, the accused was discharged by the J.M.F.C vide order dated 21/8/2008.

3. Again another factual position is required to be mentioned in order to ascertain whether the present criminal writ petition can be entertained or not. The said factual position is to the effect that after the criminal revision no.165/2008 challenging the discharge of the accused, preferred by the State was allowed, the said order was challenged but belatedly by the present petitioner and that proceeding was under Stamp No.954/2011 along with delay condonation application. Said proceeding remained before the Registrar (Judicial) for removing of office objections. Various dates were given for removal of the office objections but in vain. Ultimately on 23/9/2011 for want of removal of office objections the said proceeding under stamp no.954/2011 was dismissed. On this the present petitioner filed the proceeding under Stamp no.2922/2012 in which he preferred Criminal Misc. application 293/2012. Prayer in the said application was that delay of 457 days in preferring the revision on stamp no.2922/2012 is to be condoned. In fact the said revision on said stamp no.2922/2012 was challenging the order of the Registrar (Judicial) dated 23/9/2011. The said application was taken before this Court (Coram: Smt. R. P. Sondurbaldota, J) and was withdrawn on 8/4/2013. On the said Criminal Misc. application no.293/2012 in Stamp no.2922/2012 following order was passed:

Learned counsel appearing for the applicant seeks leave to withdraw the above application. The same is allowed to be withdrawn.

4. In view of the above, it is factual position that the matter rested then and there at the stage when the Registrar (J) passed the order on 23/9/2011 rejecting the proceeding under Stamp No.954/2011 which is for challenging the order of the Revisional Court dated 9/2/2010.

5. During the arguments learned Additional Public Prosecutor for the State submitted that there is no right available to the present petitioner in view of the earlier withdrawal of the application no.293/2012 in Stamp no.2922/12 and in fact that order of withdrawal is of 3/1/2012 i.e. one and half year prior.

6. On the above submissions it is vehemently argued on behalf of the present petitioner that the present being a writ petition there is nothing like application for condonation of delay to be filed for challenging the impugned order under the

revisional jurisdiction. This argument was advanced in the light of the factual position that earlier application under Stamp no.2922/2012 was for restoration of the earlier dismissed revision application. Now it is the argument on behalf of the petitioner that under Article 227 of the Constitution of India the petitioner has every right to challenge the order of the revisional Court by which the order of discharge of the petitioner was set aside. It is also alternatively argued that this is the writ petition also preferred under section 482 of Cr. P.C. though there is no specific mention to that effect in the present petition. On merits it is submitted by taking recourse to the various authorities of the Hon'ble Apex Court that the quashing of a complaint is permissible under section 482 of Cr.P.C if there are malafides, absurdity prima facie apparent on the face of the record and that there was no cause of action for lodging of the complaint and the allegations are per se baseless. The authorities cited on behalf of the petitioner are as under:

(i) (2010) 10 SCC 673 in the case of Manoj Mahavir Prasad Khaitan Vs. Ram Gopal Poddar and anr.

(ii) AIR 1997 SC 987 in the matter of Krishnan and anr. Vs. Krishnanveni and anr.

7. So far as merits of the matter to be considered to the limited extent as to whether the charge sheet filed by the police on the F.I.R lodged by the de facto/original complainant spell out the offences punishable under sections 406 and 420 of I.P.C. At this juncture it must be mentioned that there were allegations against the present petitioner that being a family friend the petitioner had dishonestly induced the complainant to hand over to him blank cheques and some blank papers duly signed and apparently there was some understanding arrived at between the parties that on some payment the present petitioner would purchase a flat on behalf of the de facto complainant. It is admitted position that the said three cheques were deposited with the bank and the amounts were withdrawn by the petitioner/accused to the tune of Rs.5,25,000/-. The flat was not purchased in the name of the complainant and the amount was utilized by the petitioner for his own use and thereby there was a criminal breach of trust and cheating practiced. The J.M.F.C. accepted the submissions on behalf of the present petitioner/accused and discharged the accused and the said order was challenged

before the Sessions Court by the State in Criminal revision. Said Criminal Revision application No.165/2008 was allowed by which the order of the J.M.F.C was quashed and set aside and the present petitioner was directed to appear before the Trial Court for charge and to face the trial.

8. This Court has gone through the reasoning given by the revisional Court and specifically the contents of paras 4 and 5 of the impugned order. Also the case of the prosecution is ascertained. In the opinion of this Court the intention of a party to deceive is to be gathered from the evidence which is to be led before the Court and as such at the threshold of the matter as to framing of the charge, it is not warranted that a clean chit is required to be given to the accused without putting him to the trial. In other words, the roving inquiry as to the material available during the investigation is not warranted. On plain reading of the charge sheet papers it can be said that the complaint lodged by the complainant before the police was not absurd and lacks bonafides or without basis. Hence, under the writ jurisdiction under the powers available under section 482 of Cr. P.C. which powers are admittedly to be used sparingly and in order to meet the ends of justice, it must be said that this not a case in which relief can be given to the petitioner under the writ jurisdiction and as such, on this count also the present petition must fail and the same is accordingly dismissed and disposed off.

9. Rule discharged. Directions are given to the petitioner to appear before the concerned J.M.F.C. Court to undergo the pending proceeding.

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