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Court : Mumbai Aurangabad

Decided On : Jul-17-2015

Judge : S.S. Shinde &Amp; a.I.S. Cheema

Appeal No. : Criminal Application No. 2219 of 2015

Appellant : Deelip

Respondent : The State of Maharashtra and Another

Judgement :

Oral Judgment: (S.S. Shinde, J.)

1. Rule. Rule made returnable forthwith and heard finally with the consent of learned counsel for the parties.

2. The applicant herein is arrayed as accused in Crime No.I-23/2015, registered with respondent No.1. The applicant is Government servant and working on the post of Assistant Registrar, Co-operative Societies, Sailu. It is the case of the applicant that the process of election of Nirwadi (Kh.), V.K.S.S. Society was set in motion and voting was scheduled to be held on 22.3.2015. The complainant was one of the contesting candidate in the said election.

3. The respondent No.2 filed complaint on 26.3.2015 before the Judicial Magistrate, First Class, Sailu bearing Criminal Misc. Application No.58/2015. It was alleged in the said complaint that though the person whose name is

appearing at Sr.No.327 namely Kiralkar Rambhau Tukar died on 11.12.2004, on the date of voting i.e. 22.3.2015 at about 2.00 p.m., one of the resident of Nirwadi (Bk.) namely Kale Rambhau Tukaram came at the polling station having forged identity card in the name of Kiralkar Rambhau Tukar and told the Presiding Officer that he is Kiralkar Rambhau Tukar, his name appears at Sr.No.327 of the voters list and he should be allowed to cast vote. The complainant objected for allowing said Kale Rambhau Tukaram to cast vote. However, the Returning Officer Mr. M.R. Rathod allowed the said Kale Rambhau Tukaram to vote. There was also allegation in the complaint that the polling agents acting for candidate belonging to opposite party also helped said Kale Rambhau Tukaram to cast his vote. So far the present applicant is concerned, it is alleged that, the present applicant who is working as Assistant Registrar, Cooperative Societies, helped said Kale Rambhau Tukaram to cast his vote. The said complaint filed by the complainant was entertained by the Magistrate and investigation under Section 156(3) of the Criminal Procedure Code was ordered. Hence this application for quashing the F.I.R.

4. The learned counsel appearing for the applicant submits that, the applicant was not present at the spot. His role was to appoint the Returning Officer for conducting the election of the said Society. When the applicant was not present on the election booth, there was no question of any overt act on his part in commission of alleged crime.

5. Learned counsel appearing for respondent No.2/original complainant vehemently opposes the application for quashing the F.I.R.

6. The learned A.P.P. has tendered across bar investigation papers for our perusal. Upon perusal of the investigation papers, we do not find involvement of the present applicant and presence of the applicant at the relevant time. Upon careful perusal of the allegations in the F.I.R., allegations so far present applicant is concerned, those are vague in nature and do not constitute any offence. Therefore, keeping in view the categories laid down by the Supreme Court in the case of Bhajan Lal Vs. State of Haryana, the F.I.R. qua applicant deserves to be quashed.

7. The Supreme Court, in the matter of State of Haryana Vs. Bhajan Lal and ors. (1992 Supp. (1) SCC 335, has laid down following categories of cases wherein the High Court can exercise jurisdiction under section 482 of the Code of Criminal Procedure to quash the F.I.R./ charge sheet/ proceedings :

(1) Where the allegations made in the first information report of the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with malafide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and

persona grudge.

8. The case in hand is covered in Category Nos.1, 5 of the guidelines laid down by the Supreme Court in Bhajan Lal's case (supra). The First Information Report bearing Cr.No.I-23/2015, registered with Charthana Police Station, District Parbhani is quashed qua the present applicant. Rule is made absolute in above terms. Criminal Application stands disposed of.

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