

Sh. S.K. Muttoo and Others Vs. State and Another

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Court : Delhi

Decided On : Sep-04-2001

Reported in : 95(2002)DLT394; 2002(61)DRJ146

Judge : Mr. K.S. Gupta, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 195(1) and 482; [Indian Penal Code \(IPC\), 1860](#) - Sections 21, 110, 120-B, 191, 192, 193, 211 and 465; [Societies Registration Act, 1860](#); CCS (CCA) Conduct Rules, 1956 - Rule 11; CCS (CCA) Rules, 1965 - Rule 11

Appeal No. : Crl. M. (M) 1892/2000

Appellant : Sh. S.K. Muttoo and Others

Respondent : State and Another

Advocate for Def. : Ms. Tejinder Kaur, Adv.

Advocate for Pet/Ap. : Sh. A.K. Singla, Adv

Disposition : Petition allowed

Judgement :

Held :

Coming to applicability of Section 211, it may be noticed that it would apply only when the injury intended to be caused, is by instituting or causing to be instituted criminal proceedings or by falsely charging a person with having committed an offence which is not the case here. Offence under Section 120--B is relateable to said two offences. Case of forgery punishable under Section 465 IPC is not made out. During the course of arguments the respondent No. 2--complainant was unable to point out as to which is the other offence(s) which can be said to have been prima facie made out against the petitioners on the facts disclosed in the complaint.

K.S. Gupta, J.

1. In this petition filed under section 482 Cr.P.C. the petitioners/accused who have been summoned to face trial for the offences under sections 193, 211 and 120B IPC by an order dated 11th May 2000 passed by a Metropolitan Magistrate, seek quashing of complaint (Annexure A) filed by respondent No.2-Complainant.

2. Submission advanced by Sh.A.K.Single for petitioners was that (i) taking the allegations in complaint as they are, offence either under section 193 or 211 or 120B IPC was prima facie not made out against the petitioners and (ii) the Metropolitan Magistrate while passing the order dated 11th May 2000 had ignored the provision of section 195(1)(b)(i) Cr. P.C. which creates legal bar to the filing of complaint for said offences by a private party.

3. To appreciate the said submission, reference to the allegations made in complaint has become necessary. It is, inter alia, alleged therein that National Institute of Public Cooperation and Child Development (for short 'Institute') is a Society registered under the Societies Registration Act, XXI of 1860 at Delhi. The Institute is run by its Executive Council through its director. Accused No.1/petitioner No.1 served Memorandum No.NI/III/20/90-Pers dated 27th December 1999 on the complainant falsely alleging that she had been neglecting the assignments and tasks given to her by her superiors and her contribution to the Resource Centre for Children was negligible; Complainant when spoken to by her superiors refused to perform the tasks assigned to her and replied in an

inappropriate manner; Accused No.6/ petitioner No.6 advised the complainant to concentrate on assignments given to her by her superiors and share the work load of Resource Centre for Children but even a month later there was no improvement in her attitude toward work and superiors; Complainant neglected to perform even the routine duties. It is alleged that in support of said false allegations the petitioner No.1 enclosed photostat copy of note sheet containing false and fabricated notes by petitioner No.6 dated 2nd September 1999 and 14th October 1999 which was forwarded by accused No.4/ petitioner No.4 and accepted by accused Nos.1,2, & 5/ petitioner Nos.1,2 and 5. In said memorandum the petitioner No.1 (Director) had declared his intention to impose minor penalty of censure under Rule 11 of CCS (CCA) Conduct Rules, 1956 while seeking Explanationn from the complainant. It is further alleged that petitioner No.6 was not the supervising officer of complainant and thus not competent to report on complainant's work and performance under the Rules. Said nothings were initiated by petitioner No.6 at the behest of petitioner No.4. In fact, petitioner No.6 had entered into a criminal conspiracy with the officials of Institute including petitioners 1,2, and 5 of spoil the officials record of complainant. It is stated that Complainant sent a reply dated 20th January 2000 to the said memorandum pointing out that petitioner No.6 was not her reporting officer and two nothings were falsely generated to cause injury to her at the behest of other petitioners. Petitioner No. 6 could not have first hand information about the output of complainant during the period March -September 1999 as she was on medical leave from 6th March 1999 to 8th August 1999. Petitioner No.2 had sought the report from petitioner No.3 but instead of waiting for the same, he accepted second set of noting from petitioner No.6 which was forwarded by petitioner No.4. It is further stated that the work assigned to complainant by petitioners 1,3 and 4 was different from the one quoted in the said nothings generated by petitioner No.6. There existed no official record to show that complainant either did not do any assignment or did not process any of the papers marked to her by petitioners 3 and 4. Petitioner Nos. 1 and 3 appreciated the work of complainant in writing done during the period under reference. The complainant had handled much higher quantum of work compared to others working in Resources Centre for Children. In addition to assignments in Resources Centre for Children the complainant was given several tasks by

petitioners 3 and 4 relating to other units of ME Division and Department of TC which she did not refuse to perform. It was claimed that as a result of generation of said two nothings containing false allegations all the six petitioners had committed offences sections 120B, 110, 211 and 193 IPC. It was prayed that petitioners be tried and punished in accordance with law for the said offences. Along with complaint the complainant also filed copies of aforesaid memorandum dated 27th December 1999, two nothings dated 2nd September 1999 and 14th October 1999 and reply dated 20th January 2000.

4. At the cost of repetition it may be mentioned that by the order dated 11th May 2000 the petitioners have been summoned to face trial for the offences punishable under sections 193, 211 and 120B IPC. Offences under sections 191 and 192 have been made punishable under section 193 and it being a case of alleged fabrication of false evidence only the ingredients of sections 192 and 211 need be noticed. Ingredients of section 192 are as under:-

'1(a) Causing any circumstance to exist, or

(b) making any false entry in a book or record, or

(c) making a document containing a false statement.

2. That such circumstance, false entry or false statement must have been intended to appear in

(i) a judicial proceeding, or

(ii) a proceeding taken by law before a public servant or an arbitrator.

3. That it was intended that such circumstance, false entry or false statement so appearing in evidence might cause any person, who in such proceeding, is to form an opinion upon the evidence, to entertain an erroneous opinion.

4. The formation of opinion should be touching any point material to the result of such proceeding'

5. Ingredients of section 211 are thus:-

'1) Any intention of cause injury to a particular person.

2) Such injury should have been intended

a)by instituting or causing to be instituted criminal proceedings against that person, or

b) by falsely charging him with having committed an offence.

c) knowledge that there is no just or lawful ground for such proceedings or charge against that person.'

6. It was not disputed before me that said National Institute of Public Cooperation and Child Development is registered under the Societies Registration Act, XXI of 1860 at Delhi. So, the petitioner who are its employees, cannot be said to be 'public servant' within the meaning of section 21 IPC.

7. In short, the case of respondent No.2 complainant in complaint is that two nothings dated 2nd September 1999 and 14th October 1999 initiated by petitioner No.6 and forwarded with memorandum dated 27th December 1999 contained false statement of facts which statement was intended to be used by petitioner No.1 for imposing minor penalty of censure under Rule 11 of CCS(CCA) Rules, 1965 as extended to the Institute, on her. It was pointed out on behalf of petitioners that penalty of censure had since been imposed and departmental appeal filed against imposition of said penalty by respondent No.2, also dismissed. The petitioner No.1 authority, obviously, does not fall in either of the categories enumerated in said ingredient No.2 of section 192. Thus, the provision of section 192 which has been made punishable under section 193, is not attracted in this case. However, submission advanced by respondent No.2 was that petitioner No.1 authority would fall in the category of 'any other case' occurring in later part of section 193. Submission is without merit. Bare reading of former part of this section would reveal that words 'any other case' occurring in later part of section refer to the proceeding taken by law before a public servant or an arbitrator only.

8. Coming to applicability of section 211, it may be noticed that it would apply only when the injury intended to be caused, is by instituting or causing to be instituted

criminal proceedings or by falsely charging a person with having committed an offence which is not the case here. Offence under section 120B is rebateable to said two offences. Case of forgery punishable under section 465 IPC is not made out. During the course of arguments the respondent No.2- complainant was unable to point out as to which is the other offence (s) which can be said to have been prima facie made out against the petitioners on the facts disclosed in the complaint. In the decision in State of Haryana and others vs . Ch. Bhajan Lal and others, : 1992 CriLJ527 one of the categories wherein power under section 482 Cr.P.C. to quash the complaint/FIR can be exercised is where the allegations made in complaint/FIR even if they are taken on their face value and accepted in their entirety, do not prima facie constitute any offence or make out the case against the accused. Taking note of the ratio in Ch. Bhajan Lal's case (supra) as also the foregoing discussion, the complaint deserves to be quashed under section 482 Cr. P.C. Decisions in Mushtaq Ahmad vs . Mohd. Habibur Rehman Faizi and others : 1996 CriLJ1877 ; State of UP vs . O.P.Sharma, : 1996 CriLJ1878 ; R.S.N4; 79H7m1m vs . A.R.Antulay and another : 1986 CriLJ1922 and J.P. Sharma vs . Vinod Kumar Jain and others : 1986 CriLJ917 relied upon by respondent No.2 are of no held in the matter.

9. Consequently, while allowing the petition, complaint case No.11/2000 -Tejinder Kaur vs. S.K.Muttoo and others together with order dated 11th may 2000, is quashed.