SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Surendra Kumar Sharma Vs. State of Rajasthan

Surendra Kumar Sharma Vs. State of Rajasthan

SooperKanoon Citation : sooperkanoon.com/771727

Court : Rajasthan

Decided On : Feb-07-2008

Reported in : 2008(2)WLN230

Judge : K.S. Rathore, J.

Appeal No. : S.B. Criminal Misc. Petition No. 1625/2007

Appellant : Surendra Kumar Sharma

Respondent : State of Rajasthan

Judgement :

K.S. Rathore, J.

1. Brief facts of the case are that the petitioner is the recruiting agent of M/s Sharma Manpower Service which is registered recruiting agency at Ministry of Overseas Indian Affairs/Pravasi Bhartiya Karya Mantralaya (Office of Protector General of Emigrants) and the petitioner's younger brother Ravindra Kumar running the trade inspection and coaching at M/s Sharma Travel and Trade Centre at National Highway Road, near Ashirvad Hotel, Fatehpur Shekhawati, District Sikar.

2. The Managing Director of M/s Airwings Services Private Limited authorised his employee Shri Nishant Saini for conducting interviews on his behalf at Sharma

Travel and Trade Test Centre, near Ashirvad Hotel, National Highway Road, Fatehpur Shekhawati, District Sikar and also authorised to carry passports and emigration papers on behalf of the aforesaid agency.

3. Vide letter dt. 14.08.2007, M/s Airwings Services Private Limited, Jhalandar intimated the Protector General of Emigrants, Chandigarh that it wants to conduct interview at Sharma Travel and Trade Centre, Fatehpur Shekhawati and one another centre on 18.08.2007.

4. The controversy arose when FIR No. 145/2007 came to be registered at Police Station Kotwali, Fatehpur Shekhawati, District Sikar for the offence under Section 10/24 of the Emigration Act, 1983 (for short 'the Act of 1983') against the petitioner and one Shri Nishant Saini.

5. Learned Counsel for the petitioner submits that the petitioner is registered agent and no offence under Section 10/24 of the Act is made out against him. He also referred Section 10 of the Emigration Act, 1983.

6. Section 10 of the Emigration Act, 1983 provides that no person to function as recruiting agent without a valid certificate and it is not disputed that the petitioner is given valid certificate under Section 10 of the Act.

7. As per Section 27 of the Emigration Act, 1983, to lodge the FIR against the petitioner as being registered agent, previous sanction of Central Government is necessary. It provides that no prosecution shall be instituted against any person in respect of any offence under this Act without the previous sanction of the Central Government or such officer or authority as may be authorised by that Government by order in writing in this behalf:

8. Provided that no sanction shall be required when an offence has been committed in respect of an emigrant or an intending emigrant and the complaint is filed by such emigrant or intending emigrant, or on behalf of such emigrant or intending emigrant, by the father, mother, husband, wife, son, daughter sister or guardian of such emigrant or intending emigrant or if such emigrant or intending emigrant is a member of a joint Hindu family, by the manager of that family.

9. After referring Section 27 of the Act of 1983, learned Counsel for the petitioner submits that no sanction in the case of the petitioner has been taken from the Central Government, therefore, the FIR which has been lodged against the petitioner without taking previous sanction, deserves to be quashed and set-aside.

10. He further submits that power to search, seize and detain persons, conveyance etc. as provided under Section 35 of the Emigration Act, 1983 are conferred by the Customs Act, 1962 (52 of 1962), on officers of customs with regard to the searching and detention of persons by (a) any such officer of customs, or (b) the Protector General of Emigrants or a Protector of Emigrants, or (c) an officer in charge of an emigration check-post, but in any case, the police officer has no authority to search, seize and detain the person.

11. Thus, search and seizure which has been made from the petitioner, is in contravention of the provisions of Section 35 of the Act.

12. Learned Counsel for the petitioner also referred the annexures which are annexed with the present criminal misc. petition, more particularly the letter dated 18.08.2007 written by the Protector of Emigrants, Chandigarh to the Superintendent of Police, Sikar, Rajasthan, by which the Superintendent of Police was informed that M/s Airwings Services Private Limited, Model Town Road, Near Hotel Skylark, Jalandhar City has given intimation to this office to conduct interview on the address of Sharma Travel and Trade Centre, Near Ashirwad Hotel, National Highway Road, Fatehpur Shekawati, Sikar (Rajasthan) on 18.08.2008.

13. Learned Public Prosecutor appearing for the State has strongly controverted the submissions made on behalf of the petitioner and referred the FIR lodged against the petitioner and others.

14. Having heard learned Counsel for the petitioner, learned Public Prosecutor for the State and upon careful perusal of the FIR as well as the documents annexed with the misc. petition as also the provisions of the Emigration Act, 1983 referred by the counsel for the petitioner, it is not disputed that the petitioner is a registered recruiting agent as per Section 10 of the Act of 1983, but to see whether any

offence under Section 10/24 of the Act of 1983 is made out or not, a bare perusal of Section 24 of the Act of 1983 which speaks about offences and penalties, FIR can be lodged against the petitioner under Section 24 of the Act of 1983 in contravention of the provisions of Section 10 of the Act of 1983 and the Act is found in contravention of Section 10 of the Act of 1983. If the petitioner cheats any emigrants, from perusal of the FIR, it cannot be said that FIR at its face value is false.

15. As per the proviso of Section 27 of the Act of 1983, the present case is not such a case where previous sanction is required for lodging the FIR against the petitioner.

16. Even otherwise also, the Hon'ble Supreme Court in the case of State of Bihar and Anr. v. Shri P.P. Sharma and Anr. : 1991 CriLJ1438 , has held that the appreciation of evidence is the function of the criminal Courts. The High Court, under the circumstances, could not have assumed jurisdiction and put an end to the process of investigation and trial provided under the law and mere allegations of mala fide against informant and investigating officer cannot be basis for quashing proceedings.

17. Similar view has been expressed by the Hon'ble Supreme Court in the case of Union of India and Ors. v. B.R. Bajaj and Ors. : 1994 CriLJ2086 , wherein it has been observed by the Hon'ble Supreme Court that FIR containing some important allegations which make out a cognizable offence at that stage and registration of FIR was only beginning of investigation and quashing of FIR by the High Court is not proper Treating whole matter as though it was an appeal against the order of conviction was not permissible in exercising inherent power under Section 482 particularly at stage of FIR when same discloses commission of cognizable offence which had still to be investigated thoroughly by police.

18. Therefore, in view of the ratio decided by the Hon'ble Supreme Court in the aforementioned cases as also in the case of State of Haryana and Ors. v. Bhajan Lal and Ors. : AIR 1992 SC81 and upon careful perusal of the relevant record made available by the learned Public Prosecutor, no case for quashing the FIR No. 145/2007 registered at Police Station Kotwali, Fatehpur Shekhawati, District

Sikar for the offence under Section 10/24 of the Emigration Act, 1983, is made out.

19. Consequently, the present criminal misc. petition fails being devoid of merit and the same is hereby dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com