Rakesh Kumar Vs. State of Jammu and Kashmir and ors.

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Court : Jammu and Kashmir

Decided On : Sep-10-1997

Reported in : 1998CriLJ1486

Judge : R.C. Gandhi, J.

Acts : Jammu and Kashmir Code of Criminal Procedure (CrPC) Smvt., 1989 - Sections 155(2), 156(1), 482 and 561A; ;Ranbir Penal Code (IPC) - Sections 409, 420 and 477; ;Constitution of India - Article 226

Appeal No. : Misc. Petition No. 116/1994

Appellant : Rakesh Kumar

Respondent : State of Jammu and Kashmir and ors.

Advocate for Def. : A. Kapoor, A.A.G.

Advocate for Pet/Ap. : Sunil Sethi, Adv.

Disposition : Petition dismissed

Judgement :
ORDER

R.C. Gandhi, J.

1. Petitioner has preferred this petition under Section 561-A, Cr. P. C. invoking inherent powers of this Court for quashing FIR No. 41/1994 registered with the Police Station Crime Branch, Jammu under Sections 409, 420 and 477, R.P.C. against the petitioner, on the ground that he has not misappropriated or embezzled the money and the allegations in the complaint do not constitute any cognizable offence justifying the registration or the F.I.R.

2. A brief resume of the case, as per the petition of the petitioner, is that the petitioner was recruited as Manager or Co-operative Marketing Society in the year 1982 and has been discharging his duties honestly and with full dedication which was a sore in the eyes of respondent No. 4, namely Mr. K. R. Pacha, Addl. Registrar Co-operative Society, Jammu and he placed the petitioner under suspension under his order No. Adm/247/51 dt. 16-6-1993 on the allegations that the petitioner has misappropriated the funds of the society which is reported by the respondent No. 5, Dy. Registrar Co-operative Societies, Rajouri. Petitioner has preferred a revision before the J. arid K. Special Tribunal against the order of suspension passed by the respondent No. 4 and the suspension order has been kept in abeyance by the Tribunal by an order dt. 25-6-1993 and ultimately the petitioner was reinstated by the intervention of the Tribunal in a contempt petition. The petitioner has alleged that because of his reinstatement, respondents Nos. 4 and 5 were frustrated and with mala fide intention involved him in a false and frivolous case wherein FIR No. 41 of 1995 came to be registered against him on 31-10-1994.

3. I have heard the learned counsel for the parties and perused the record of the file.

4. The learned counsel for the petitioner submits that the petitioner's alleged involvement in FIR No. 41 of 1995 is mala fide as nothing is proved outstanding or misappropriated by the petitioner. The Audit party of the Department of the respondents has audited the account of the society and nothing is found wrong against the petitioner.

5. The learned A.A.G., Mr. Kapoor, appearing for the respondents, has stated that the accounts of the Society were audited by the Audit party and only those

accounts were audited which were made available to the audit party. However, the record of the Society reveals that w.e.f. 1-7-1982 to 30-6-1993 the JAKFED supplied fertiliser worth Rs. 62,96,995.25 np to the Co-operative Society headed by the petitioner and remitance of Rs. 21,99,229.34 np has only been made to JAKFED, resultantly a sum of Rs. 40,97,765.91 is outstanding against the society which has been misappropriated and accounts also not submitted by the society which is the sole responsibility of the petitioner.

6. The contention of the learned counsel for the petitioner that the Audit party had not pointed out any misappropriation or short fall, cannot be taken as true unless petitioner makes out that he has accounted for all the material received and against the material, money is remitted back with the JAKFED with permissible marginal losses. He has placed on the record the audit report also by means or a supplementary affidavit, which does not reveal the remitance made by the petitioner in full.

7. Mr. Kapoor, learned AAG has invited the attention of the Court on the scope of interference of the Court under Section 561-A, Cr. P. C, for quashing the FIR, relying upon the judgment of Hon'ble Supreme Court delivered in a case titled State of Haryana v. Ch. Bhajan Lal and reported in AIR 1992 SC 604 : 1992 Cri LJ 527, where the Hon'ble Supreme Court has observed as under:

In following categories of cases, the High Court may in exercise of powers under Article 226 or under Section 482 of Cr. P. C. may interfere in proceedings relating to cognizable offences to prevent abuse of the process of any Court or otherwise to secure the ends of justice. However, power should be exercised sparingly and that too in the rarest of rare cases.

(1) Where the allegations made in the First Information Report or 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 grievances of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide 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 personal grudge.

Where allegations in the complaint did constitute a cognizable offence' justifying registration of a case and investigation thereon and did not fall in any of the, categories of cases enumerated above, calling for exercise of extraordinary powers or inherent powers, quashing of FIR was not justified.

8. The Hon'ble Supreme Court further in a case titled The Janta Dal v. H.S. Chowdhary and Other coupled with batch of other cases, reported in AIR 1993 SC 892 : 1993 Cri LI 600 reiterated its earlier view taken in AIR 1992 in the case cited supra. For convenience paras 30 and 135 of the judgment reported in AIR 1993 are extracted as :

130. The Criminal Courts are clothed with inherent power to make such orders as may be necessary for the ends of justice. Such power though unrestricted and undefined should not be capriciously or arbitrarily exercised, but should be exercised in appropriate cases, ex debito justitiae to do real and substantial justice for the administration or which alone the Courts exist. The powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Courts must be careful to see that its decision in exercise of this power is based on sound principles.

135. This inherent power conferred by Section 482 of the Code should not be exercised to stirle a legitimate prosecution. The High Court being the highest Court of a State should normally refrain from giving a premature decision in a case wherein the entire facts are extremely incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved whether factual or legal are of great magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard and fast rule can be laid down in regard to the Cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceedings at any stage. This Court in State of Haryana v. Ch. Bhajan Lal 1990 (3) Supp SCR 259 to which both of us were parties have dealt with this question at length and enunciated the law listing out the circumstances under which the High Court can exercise its jurisdiction in quashing proceedings....

9. Viewed thus, a bare reading of the FIR discloses the involvement of the petitioner in a cognizable case and therefore the perusal of the FIR reveals that an inquiry needs to be conducted and the audit report cannot be a substitute of investigation, required to be conducted by the police, as the allegations contained in the FIR prima facie do constitute the commission of cognizable offences, particularly when the allegations levelled in the FIR have not been controverted by the learned counsel seeking interference of the Court for quashing the FIR. The Law laid down by the Hon'ble Supreme Court (supra) is fully applicable to the facts of the present case which warrants no interference.

10. For the aforesaid reasons, the petition is dismissed. Interim direction dt. 20-12-1994 is vacated.