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Dr.Md.Yahiya, and ors. Vs. State of Bihar, and anr.

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Court : Patna

Decided On : Sep-16-2010

Judge : Akhilesh Chandra, J.

Acts : Code of Criminal Procedure (CrPC) - Sections 482, 156(3); Indian Penal Code (IPC) - Sections 182, 211, 406, 420, 465, 386, 564, 120B

Appeal No. : CRIMINAL MISCELLANIOUS No.6915 OF 2005

Appellant : Dr.Md.Yahiya, and ors.

Respondent : State of Bihar, and anr.

Advocate for Def. : Mr. Damodar Pd. Tiwary, Adv.

Advocate for Pet/Ap. : M/S Y.C. VERMA; REKHA PRASAD; Mr. SAJID SALIM KHAN, Advs.

Judgement :

1. Heard learned counsel for the petitioners, learned Additional Public Prosecutor for the State and Sri Sajid Salim Khan for the opposite party.

2. This is an application under Section 482 of the Code of Criminal Procedure seeking quashing of order dated 27th November, 2004 passed by Sri Vikash Chandra Shukla, Additional District and Sessions Judge, Fast Track Court no.V, Aurangabad in Cr.Rev. no. 10 of 2003 / 20 of 2004 setting aside the order dated 03rd January, 2003 passed by Chief Judicial Magistrate, Aurangabad, in Dhibra

P.S. Case no. 14 of 2002 accepting the final form submitted by the Police and proceeding against opposite party no.2 for the offences under Sections 182/211 of the Indian Penal Code.

3. Relevant facts of this case is that opposite party no.2 filed Complaint Case no. 1036 of 2001 against the petitioners for the offences under Sections 406, 420, 465, 386, 564 and 120B of the Indian Penal Code stating therein that there was an Organization named as Anjuman Niyamat Pur for the benefits of minorities and initially membership fee was Rs.2/- only and the petitioners are Office bearers of the Executive Committee created in the year 1987 having one more branch at Kolkata and since after 1987 the petitioners started realizing membership fee Rs.25/- and also Rs.50/- from some persons and in the year 1992 in the name of special subscription Rs.2 lacs were also realized and account used to be furnished to Kolkata branch. It is also alleged that at some occasions late fine has also been realized at the rate of twenty per cent and in this way Rs.7 lacs were collected but neither the petitioners discharged their duties towards society or religion nor furnished any account inspite of joint demand made by the villagers. It is further alleged that on one fine morning the petitioners went to the mosque to commit murder of Pesh Imam, Hafiz Masihuddin but due to his absence nothing could be done. Ultimately, the petitioners refused to furnish any account and threatened the complainant to do whatever he can. On receipt of the complaint petition which was sent before Police under Section 156 (3) of the Code of Criminal Procedure on the basis whereof Deo(Dhibra) P.S. Case no. 14 of 2002 under Section 406 of the Indian Penal Code was instituted wherein after investigation Police submitted final form no.8 dated 30.5.2002 finding the case false and simultaneously recommended for action against complainant-informant for the offences under Sections 182/211 of the Indian Penal Code.

4. Prior to submission of final form on behalf of opposite party no.2 one protest petition was filed but as it appears from order of the Chief Judicial Magistrate dated 3rd January, 2003 passed after hearing all the sides that learned counsel representing informant did not chose to press protest petition on the ground that materials collected during investigation as contained in case diary are sufficient for taking cognizance and falsify the recommendation of the Police. Accordingly,

protest petition was dismissed as not pressed by same order after perusing the materials, as contained in the case diary, Chief Judicial Magistrate accepted the recommendations of the Investigating Agency and ordered to proceed against the informant for which case was to be recorded as Complaint Case giving rise to Cr. Rev. no. 10 of 2003 before the learned Sessions Judge which was, ultimately, heard and disposed of by learned 5th Additional Sessions Judge, Fast Track Court-V, who, after hearing the parties, set aside the order passed by Chief Judicial Magistrate and remitted the matter for fresh order.

5. Learned counsel for the petitioners submits that there is nothing attracting the offence committed by the petitioners and learned Revisional Court, without any substance arrived at the conclusion that protest complaint petition was wrongly dismissed and inspite of materials available cognizance was not taken for the offence and remitted all case whereas the case itself not maintainable inasmuch as that even if there is any dispute it is nothing but only accounting and prosecution case is based on completely fake and false allegation. On the other hand, learned counsel for opposite party no.2 submits that, in fact, protest complaint was pressed before the learned Chief Judicial Magistrate who has wrongly mentioned in the order that it was not pressed. At the same time learned counsel fairly concedes that at no stage any written objection as regards to above part of the order of learned Chief Judicial Magistrate has been furnished though he is still ready to file an affidavit to this effect that protest complaint was pressed. But, since even counter affidavit has not been filed inspite of appearance in the year 2006 I do not find any justification in granting time, as prayed, to learned counsel for opposite party to file affidavit, if any.

6. It is also contended by learned counsel for opposite party no.2 that whether it is a dispute relating to accounting or not it can be decided by the trial court. Learned Additional Public Prosecutor also joined hands with learned counsel for opposite party no.2 and submits that no illegality had been committed by the revisional court, who on perusal of the case diary, found some materials sufficient to proceed as appears from his order, it needs no interference.

7. From the plain reading of the complaint petition which forms basis of the Dhibra P.S. Case no. 14 of 2002. It appears that though it is averred in the complaint petition that initially the monthly subscription was Rs.2/- which was arbitrarily enhanced and realized at the rate of Rs.25/- or Rs.50/- but without mentioning name of even one single person who had to pay such amount it is alleged that rupees two lacs were also collected by way of specially subscribed but again not even a single name appears disclosed as subscriber of fraction of the alleged amount. At last in paragraph 13 it was mentioned that on 04th December, 2001 the complainant went for accounting to the petitioners who refused to do so. This alone is sufficient to show that grievance of the complainant informant against the petitioners of the Society is of non-accounting and only for the dispute relating to accounting no criminal offence appears to have been committed.

8. It is also not the case of the complainant informant that he himself has attributed or subscribed even one single penny or there is any document to support any such subscription made by him. Further, the petitioners in paragraph 23 at page 11 of this application has clearly averred that realizing the fate of the case instituted by the opposite party no.2, he has already filed Complaint Case no. 1138 of 2004. Learned counsel for opposite party no.2 is not in a position to rebut this statement or even made this Court aware of its present status.

9. In view of the finding that averments made in the complaint petition which framed basis of Police case not sufficient to attract any criminal offence rather dispute, if any, is for accounting only.

10. In view of the above, order of the revisional court is not sustainable. Accordingly, it is quashed and order of the Chief Judicial Magistrate is restored. Consequently, this application stands allowed.

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