

NavIn I. Harison and Others Vs. State of U.P. and Another

NavIn I. Harison and Others Vs. State of U.P. and Another

SooperKanoon Citation : sooperkanoon.com/918212

Court : Allahabad

Decided On : Nov-10-2010

Judge : Ravindra Singh, J.

Appeal No. : Criminal Misc. Application No. 32908 of 2010

Appellant : NavIn I. Harison and Others

Respondent : State of U.P. and Another

Advocate for Pet/Ap. : Sri. Jitendra Kumar Singh

Judgement :

1. This application has been filed by the applicants Navin I. Harison, S.S.No. Stephen, and H.R.Mall with a prayer to quash the summoning order dated 31.3.2010 passed by the learned A.C.J.M. VII, Jhansi, in complaint case no. 299 of 2009 whereby the applicants have been summoned to face the trial for the offence punishable under sections 420,467,468,120-B,504 and 506 I.P.C. and to quash the proceedings of complaint case no. 299 of 2009 pending in the court of learned A.C.J.M. Room no. 7, Jhansi.

2. The facts of the case in brief are that an application under section 156(3) Cr.P.C. has been filed by Sri Stephen Singh, O.P. No.2 the same was treated as a complaint by the learned C.J.M. Jhansi vide order dated 30.5.2008, thereafter, the statement of O.P.No.2 was recorded under section 200 Cr.P.C. and statement of Harlet and Naresh Rai Kavar, has been recorded under section 202 Cr.P.C., after

considering the same the learned A.C.J.M., Court No. 7, Jhansi has taken cognizance and summoned the applicants and other co-accused to face the trial for the offence punishable under sections 420,467,468,120-B, 504 and 506 I.P.C.

3. It is alleged that O.P. No. 2 was the Secretary/Attorney of Bundelkhand Church Counsel of North India Synod of United Church of Northern India, whose branch office is situated at C.I.C. Campus Jokhan Bagh, P.S. Navabad district Jhansi, its affiliated body was the management committee of Christian Intermediate College, its registration no. was 139/69-70, which was being misused by Navin I. Harison, S.S.Noxx, A.R.Stephen, and H.R.Mall, all the members of the managing committee of Church of Northern India (C.N.I) who by concocting/fabricating and forging the papers were misguiding the people. It was further alleged that Deepakdas and Solomon Vikram Singh are forging the papers and by committing the forgery got mentioned the name of Abdul Kareem in the management committee of Board of Education and unlimited powers have been given to the co-accused Jeoram James, who are causing financial loss to the committee and defaming it. All the accused persons are very powerful persons, they are having the association with the persons of criminal back grounds, when the complainant O.P. No.2 discussed this issue with the co-accused Sanjeet Lal, Abdul Kareem, and Jeoram James, they hurled abuses and extended life threat to the complainants.

4. Heard Sri Brijesh Sahai, and Sri Jitendra Kumar Singh, learned counsel for the applicants, learned A.G.A. for the State of U.P. and Sri A.B.L.Gaur, Senior Advocate, assisted by Sri Vishwa Ratan Dwivedi, learned counsel for O.P.No.2.

5. It is contended by the learned counsel for the applicants that the impugned order dated 31.3.2010 by which the learned magistrate concerned has taken cognizance and summoned the applicants to face the trial, is illegal because even on the basis of the allegations made in the complaint and statement recorded under sections 200 and 202 Cr.P.C. no offence under sections 420,467,468,120-B 504 and 506 I.P.C., is made out. The learned magistrate concerned has passed the impugned order without going through the allegations made against the applicants and the provisions of law, the impugned order has been passed in a routine manner, no such documents has been filed by O.P. No.2 in support of the

allegations of preparing the forged documents, even reference of such document has not been given, no specific allegation has been made with regard to the financial loss caused by the applicants, even the details of unlimited power given to Jeoram James has not been given, general allegation has been made, which has not been substantiated by any documents, the allegation are vague in nature, there is a dispute of the committee of management for which a civil suit is pending and the allegation made against the applicants are purely of civil nature. The learned magistrate concerned has committed manifest error by taking cognizance and summoning the applicants. The summoning order dated 31.3.2010 as well as the proceedings of the above mentioned complaint are illegal, which are liable to be quashed. In respect of the co-accused Sunjeet Lal, the proceedings of the above mentioned case have been stayed by the Hon'ble S.K. Tripathi, J. vide order dated 23.9.2010 in criminal misc. application no. 30377 of 2010, in such circumstances, the impugned order dated 31.3.2010 as well as the proceedings of the above mentioned complaint case no. 299 of 2009 pending in the Court of learned A.C.J.M. Room no. 7, Jhansi, may be quashed.

6. In reply to the above contention, it is submitted by the learned A.G.A. and the learned counsel for O.P. No.2 that on the basis of the allegations made in the complaint and in the statement recorded under sections 200 and 202 Cr.P.C. a prima facie offence under sections 420, 467, 468, 120-B 504 and 506 I.P.C. is made out. The learned magistrate concerned has not committed any error in passing the impugned order dated 31.3.2010. There is no procedural mistake also, at the stage of taking the cognizance and summoning the applicants, it has to be considered whether the allegations made are prima facie disclosing the commission of any offence or not, at this stage meticulous analysis, as of a trial court, when the evidence is adduced, may not be done, it is not the stage of ascertaining the truth. The appreciation of the evidence cannot be done at this stage. There is no illegality in the impugned order, it is a case in which constitution of the criminal offence is made out. The complaint is not of purely civil nature, the pendency of the civil suit may not effect, the criminal proceedings pending against the applicants, there is no good ground for quashing the impugned order dated 31.3.2010 and for quashing the proceedings of the complaint case no. 299 of 2009.

7. It is further submitted that other co-accused Abdul Kareem and Jeoram James challenged the proceedings of the present complaint case before this court by way of filing the criminal misc. application No. 24434 of 2010 under section 482 Cr.P.C., the same has been dismissed by Hon'ble Vinod Prasad,J. on 5.8.2010 by observing that "looking into the entire fact and circumstances, it cannot be said that no offence is disclosed against the applicants and there is no reason to interfere and quash the prosecution of complaint case no. 299 of 2009 under sections 420,467,468,120-B and 504 and 506 I.P.C. P.S. Navabad district Jhan5310si," His Lordship has directed that the bail prayer be considered expeditiously, if possible, on the same day.

8. The prayer sought in the present application has been considered in respect of other co-accused persons by another bench of this court by dismissing the criminal misc. application no. 24434 of 2010 filed under section 482 Cr.P.C. final order in respect of the same prayer shall prevail upon the interim order dated 23.9.2010 passed by the another bench of this court in misc. application no. 30327 of 2010, the present application is devoid of merits, the same may be dismissed.

9. Considering the facts and circumstances of the case, submission made by the learned counsel for the applicants, the learned A.G.A., learned counsel for O.P. No.2 and from the perusal of the records it appears that in the present case the learned magistrate concerned has treated the application filed under section 156(3) Cr.P.C. as a complaint, thereafter statement under sections 200 and 202 Cr.P.C. have been recorded, after considering the same the learned magistrate concerned has taken cognizance and summoned the applicants and other co-accused persons by passing the impugned order dated 31.3.2010, the learned magistrate concerned has not committed any procedural error, the learned magistrate concerned after perusing the complaint and the statement recorded under sections 200 and 202 Cr.P.C. was of the opinion that a prima facie offence is made out as against the applicants therefore, he has summoned the applicants and the co-accused persons for the offence punishable under sections 420,467,468,120-B 504 and 506 I.P.C., the learned magistrate concerned has not committed any error in passing the impugned order because at the stage of taking cognizance and summoning the accused, meticulous analysis of the material

available on record for the purposes of ascertaining the truth, may not be done, at this stage the allegations made, taking it as true, if are disclosing the offence, the magistrate concerned, may take the cognizance and summon the accused, the appreciation of the evidence is done at the stage of the trial, when the evidence is adduced. The allegations are prima facie disclosing the aforesaid offence, the fabric of the present complaint is not purely of the civil nature, because it is constituting an offence, therefore, pendency of the proceedings of the civil court shall not affect the prosecution of the applicants and on account of the pendency of the proceedings of civil court, the proceedings of the present case may not be quashed. The another bench of this court has considered and refused the prayer for quashing the proceedings in respect of the other co-accused persons and their application has been dismissed on 5.8.2010 in criminal misc. application no. 24434 of 2010. it is a final order, on this order, interim order dated 23.9.2010 passed by the another bench in criminal misc. application no. 303771 of 2010, proceedings of the above mentioned case have been stayed in respect of the co-accused Sanjeet Lal, is not having overriding effect. It also appears that the fact that the applications in respect of the co-accused Abdul Kareem and other having the same prayer have already been dismissed on 5.8.2010, has not been brought to the notice of the another bench of this court at the time of passing the order dated 23.9.2010. There is no reason to interfere in the impugned order dated 31.3.2010 and the prayer for quashing the proceedings of the complaint case no. 299 of 2009 under sections 420,467,468, 120-B 504 and 506 I.P.C. pending in the court of learned A.C.J.M. Court No. 7, Jhansi, is refused.

10. However, it is directed that in case the applicants appear before the court concerned within 30 days from today and apply for bail, the same shall be heard and disposed of expeditiously, if possible on the same day.

11. With this direction this application is finally disposed of.

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