

Nishar Ahmed Vs. State and ors

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Court : Rajasthan

Decided On : Jun-30-2011

Judge : Mahesh Bhagwati, J.

Acts : Indian Penal Code (IPC) - Sections 420, 467, 468, 471 RW 120B; Code Of Criminal Procedure (CRPC) - Section 197, 482

Appeal No. : Case No. CRLMP - 1230 of 2006

Appellant : Nishar Ahmed

Respondent : State and ors

Advocate for Def. : Mr. G.S. Fauzdar, Adv

Advocate for Pet/Ap. : Mr. Anoop Dhand, Adv

Judgement :

1. By way of the instant criminal misc. petition, the petitioner has impugned the order dated 19th April, 2006, whereby Additional Sessions Judge No.1, Sikar dismissed the revision petition as also the order dated 19th October, 2002, whereby the Judicial Magistrate (First Class) No.2, Sikar took cognizance of the offences under Section 420, 467, 468, 471 readwith 120B of IPC and ordered to summon the accused persons including the petitioner through aailable warrant of Rs. 2000/-.

2. Learned counsel for the petitioner canvassed that the mutation are fiscal proceedings, which are always subject to correction and whatever the act is alleged to have been done by the petitioner, has been done by him in discharge of his official duties. He further canvassed that prior to passing the impugned orders, no prosecution sanction had been obtained. However, the learned courts below sans taking into consideration these aspects of the matter, passed the impugned orders arbitrarily, which deserve to be set-aside.

3. E Converso, the learned PP appearing for the State defended the impugned orders and stated the same to be just and proper.

4. Having heard the learned counsel for the parties and carefully perused the relevant material on record including the impugned orders, it is noticed that the petitioner is alleged to have forged the revenue record and in place of Chhoti Devi W/o Banna Ram entered the name of Mana W/o Ratna Ram therein. The act of committing forgery in the revenue record sans there being any authoritative order in this regard cannot be said to be an act having committed in the lawful discharge of official duties. Since the act was not done by the petitioner in the lawful discharge of his official duties, it was not under any obligation to obtain prosecution sanction under Section 197 of Cr PC for the prosecution of the accused.

5. If the facts as enumerated in the complaint do constitute the commission of an offence, the Magistrate having jurisdiction can take cognizance of the said offence.

6. There does not appear to be any illegality or perversity in the impugned orders of the courts below. The order of taking cognizance of the said offences is found to be perfectly just and proper in the facts and circumstances of the case and the same warrants no intervention.

7. In view of above, the Criminal Misc. Petition filed by the petitioner under Section 482 of Cr PC fails and the same being bereft of any merit deserves to be dismissed, which stands dismissed accordingly.