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Court : Mumbai

Decided On : Apr-18-2012

Judge : A.B.Bhangale, J.

Acts : [Prevention of Corruption Act , 1988](#) - Sections 13(1)(e), 13(2), 2(c)(12);
[Code Of Criminal Procedure \(Cr.P.C\) 1973](#) - Section 482

Appeal No. : CRIMINAL APPLICATION NO.45 OF 2012

Appellant : Abdul Hakim Son of. Abdul Rahim

Respondent : The State of Maharashtra

Advocate for Pet/Ap. : Mr. F.T.Mirza, Adv.

Judgement :

1. By this application, the applicants have prayed for quashing of F.I.R. No.3009 of 2011, dt.8.11.2011 reported to Police Station, Aheri, District Gadchiroli u/s.13(1)(e) and 13(2) of the Prevention of Corruption Act, 1988 r/w. Section 109 of the Indian Penal Code.

2. It is the contention of the applicants that he is a recipient of "Adivasi Sevak Puraskar" and Secretary/Member of Van Vaibhav Shikshan Mandal, while his wife/applicant no.2 was a Nurse serving from December, 1962 to January, 1977 at Public Health Centre in erstwhile Chandrapur and now Gadchiroli District. She had resigned due to domestic compulsions. It is submitted that poor children of the

applicants are also happy and well placed in their respective occupations. According to the applicants, an offence punishable u/s. 13 of the Prevention of Corruption Act can be registered only on account of criminal misconduct by a public servant, but none of the applicants is a public servant. Furthermore, there is no reference as to why Section 109 of the Indian Penal Code is invoked against the applicants. It is, therefore, submitted that continuance of proceedings against the applicants is nothing but abuse of process of law and therefore, inherent powers be used to quash the F.I.R. No.3009 of 2011, dt.8.11.2011 lodged at Police Station, Aheri, District Gadchiroli.

3. Mr.F.T.Mirza, Adv. for the applicants placed reliance on the ruling in the case of Ashok Tshering Bhutia vs. State of Sikkim reported in (2011) 4 SCC 402. In the said case, the Apex Court held that the unexplained income of the appellant therein was merely a paltry sum which any government employee could save every year. According to the Apex Court, the High Court erred in not placing reliance on the evidence contained in the document therein i.e. Exh.D-4. Finding of High Court that the appellant was in possession of assets amounting to Rs.18.25 crores for which he could not account for was found erroneous and hence, the impugned judgment was held to be unsustainable and the appellant was acquitted.

4. The learned A.P.P., on the other hand, has submitted that a complaint was lodged by Shaikh Farid Shaikh Suleman with Anti- Corruption Bureau on 27.12.2008 regarding illegal acquisition of properties by the applicants much more than their known sources of income and therefore, the offence was registered under Section 13(1) (e) and 13 (2) of the Prevention of Corruption Act as also 109 of the Indian Penal Code considering the report. It is further submitted that the applicants never co-operated with the investigation and therefore, material documentary evidence could not be seized about assets of the applicants. Regarding the submission that applicant no.1 is not a public servant, the learned A.P.P. contended that he is President of Van Vaibhav Shikshan Mandal at Atapalli, which is grant-in-aid Society, while applicant no.2 is a member of that Society which is running on grant-in- aid basis. Therefore, both these applicants are squarely covered u/s.2(c) (12) of the Prevention of Corruption Act within the

definition of public servant. It is also contended that the applicant/Society is running 23 Schools in Gadchiroli district and there is strong possibility of irregularities in the appointment of teachers in those schools. Investigation is in progress in respect of serious accusations made against the applicants.

5. Mr.D.B.Patel, learned A.P.P. placed reliance on the ruling in the case of Central Bureau of Investigation .vs. Ravi Shankar Srivastava reported in 2006 Cri.L.J. 4050, wherein the High Court held that the inherent powers u/s.482 of the Code of Criminal Procedure should not be exercised to stifle a legitimate prosecution. The High Court being the highest Court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are 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 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 cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceedings at any stage. It is further held that when exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it, accusation would not be sustained. That is the function of the trial Judge.

6. The learned A.P.P. also placed reliance on the ruling in the case of State of Madhya Pradesh .vs. Awadh Kishore Gupta and Ors. reported in 2004 ALL MR (Cri) 824 (S.C.). In the said case, there was a complaint about acquisition of disproportionate assets by a public servant and the investigation was in progress. The Apex Court held that the High Court cannot act as if it was a trial Judge. It cannot appreciate evidence, it can only evaluate material and documents on record for its prima facie satisfaction. The High Court cannot act on annexures to the petition under Section 482 which cannot be termed as evidence without being tested and proved. It is further held by the Apex Court that when a complaint is lodged at police station and an offence is registered, mala fides of informant would be of secondary importance.

7. On hearing the contentions made by the learned Advocates for the respective parties and after going through the rulings cited by the respective parties and bearing in mind that extraordinary powers u/s.482 of the Code of Criminal Procedure can be used in exceptional cases with caution and circumspection, I think that the inherent powers ought not to be used in a case where investigation into serious accusations is still at its preliminary stage, particularly when it is alleged that the applicants have not co-operated in the ongoing investigation. Thus, considering the submissions at the bar, for all the above reasons, I am not inclined to exercise inherent powers u/s.482 of the Code of Criminal Procedure in the present case. Hence, the instant Criminal Application is dismissed.

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