(2012) 07 AHC CK 0099

In the Allahabad High Court

Case No : Criminal Miscellaneous W.P. No. 8126 of 2012

Akhouri Rajendra Prasad Singh APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 10-07-2012

Acts Referred:
Penal Code, 1860 (IPC) — Section 406, 409, 419, 420, 465

Citation : (2012) 3 ACR 2982

Hon'ble Judges : Anurag Kumar, J;Amar Saran, J

Bench : Division Bench

Advocate : C.P. Upadhyay, for the Appellant; Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Amar Saran and Anurag Kumar, JJ.—Heard learned counsel for the petitioner and the learned A.G.A. An F.I.R. was lodged by Sri Vinod Kumar Yadav, Supervisor, Social Welfare Office, Ballia on 9.9.2005 at 2.10 p.m. which was registered as Case Crime No. 102 of 2005, under Sections 419, 420, 465, 468, 471, 406, 409, I.P.C. at Police Station Rewati, district Ballia alleging that between 24.3.2004 and 24.5.2004 one Gopal Singh son of Jai Prakash Singh, Branch Manager, Regional Gramin Bank, Branch Jataha Rewati district Ballia and Basic Shiksha Adhikari opened an account in the said bank in the name of one Akhilesh Kumar Singh, who was shown as Principal Maharana Pratap Junior High School Reoti with the assistance of Basic Shiksha Adhikari. On several dates between 24.3.2004 to 24.5.2004, a sum of money totalling 14.4 lacs was deposited towards minority scholarship amounts, and fictitiously withdrawn by Akhilesh Kumar Singh. Inquiries revealed that the photograph on the account was of the co-accused Gopal Singh, and that Akhilesh Kumar Singh as well as the college were in fact non-existent. The role of the Bank was also doubtful as minority scholarship amounts are to be held under a joint account, but this was a single operating account.

2. This offence was further investigated by Economic Offences Wing, who also found the complicity of the petitioner, who was not named in the F.I.R. but was working as a clerk in the District Social Welfare Office, Ballia at the material time and other persons.

3. Learned counsel for the petitioner submitted that the arrest of co-accused Manoj Kumar Srivastava had been stayed till submission of charge-sheet whilst disposing of the matter by another bench in Crl. Writ Petition No. 11405 of 2011 by order dated 27.6.2011. The said co-accused was also not named in the F.I.R. like the petitioner against whom a departmental enquiry had been conducted and charge-sheet was filed. Further, the main accused Ganesh Prakash had been dismissed from service and another co-accused Keshav Giri had initially been given protection by this Court in Crl. Writ Petition No. 10180 of 2005. Although, learned counsel for the petitioner admitted that Keshav Giri''s services had also been terminated, and there was no subsisting order granting protection from arrest to him.

4. So far as the petitioner was concerned, it was contended that in the enquiry conducted by Sri Sunil Kumar Bisen, Deputy Director, Social Welfare, Varanasi Division. (Annexure-6 to the writ petition) on 19.1.2011 it has been observed that the petitioner, who was a senior clerk had only issued a cheque of Rs. 39,360 bearing the forged signature of Minority Welfare Officer, Ballia in favour of the non-existent institution, which had been deposited in the Dataha Revati branch of the Regional Co-operative Bank, Ballia by means of a forged bank invoice. The charge had only been found to be partially proved but as the petitioner had permitted the said amount to be withdrawn from his salary account, his suspension order was revoked and he was reinstated in service. Learned counsel for the petitioner also argued that a greater and direct liability has been imposed on M.K. Srivastava, whose arrest had been stayed by the earlier order of the Division Bench.

5. Learned A.G.A. opposed the prayer for any relief to the petitioner.

6. It may be mentioned that in the order dated 27.6.2011 passed in Crl. Writ Petition No. 11405 of 2011 disposing of the writ petition while staying the arrest of co-accused till submission of charge-sheet the bench had observed that at the time of issuance of the initial three cheques, the accused M. K. Srivastava was not posted in the concerned Bank and at the time of preparation of the later three cheques, he was on sanctioned leave and that he should therefore, be held guilty for slackness in maintaining the records.

7. In our view, though reference has been made to departmental proceedings, but it is the investigation by the investigating agency and not the fate of the departmental proceedings which is determinative of the complicity of an alleged offender. Also the fact that an amount of Rs. 39,360 was deducted from the petitioner''s salary for having wrongly misappropriated the same in collusion with the co-accused persons is itself indicative of complicity of the petitioner in this

offence.

8. In this view of the matter, we see no good ground to interfere with the F.I.R. or to grant any relief to the petitioner. The writ petition is accordingly dismissed.

9. We may however observe that this case appears to be in the nature of a scam, where a large number of accused persons from various governmental departments are involved in disbursing scholarship cheques in favour of a non-existent institution, and to non-existent persons and the entire activities were fraudulent. We are also surprised at the mildness of the punishment by the departmental authorities and the slowness of the investigation as the charge-sheet does not pear to have been submitted, even though the crime relates to two months in 2004 and even the F.I.R. was lodged on 9.9.2005. The Investigating Officer is now directed to conclude the investigation against all the accused of the present case preferably within two months.

10. We also direct that this matter be now registered as a criminal P.I.L. under the heading, RE: In the Matter of illegal payments to non-existent schools.

11. We direct the D.G.P. (U.P.) to ensure that the investigation of this case is now concluded preferably within two months, and also to go into the reasons for the seven years delay in the conduct of the Investigation as it is not understandable what could cause such inordinate delay in the conclusion of the investigation by a specialized agency, except extraneous pressure wielded by one or the other accused. In case some accused have been spared, because they were in higher positions in the concerned departments, or for other reasons, they should also be booked for this crime.

12. We would also like a report from the D.G.P., U.P. about all the other similar cases under the education department where payments under the minority scholarship quota or other heads are being paid to non-existent institutions. The dates when knowledge about the setting up and payments being made to each of the fictitious non-existent institutions came to light, whether F.I.Rs. were lodged, date of lodging of F.I.Rs., whether the accused have been arrested, and dates of arrest, whether bailed out and dates of bails being granted, progress of investigation, whether investigation is pending or charge-sheets have been submitted, reasons for delay in progress of the Investigations, whether any action has been taken or is proposed to be taken against investigating agencies which Inordinately delay the conduct of the investigation or fail to book some of the accused persons. Let a counter-affidavit be filed by the D.G.P., U.P. on all the aforesaid points within six weeks.

13. We would also like a response from the Principal Secretaries, Primary and Secondary Education, U.P. within 6 weeks about the steps being taken for rooting out the menace of non-existent paper schools. What steps have been taken In the past against concerned officials and others when the fact about the existence of such schools and the dishonest disbursement of payments to them, on one or the other ground have come to light, so that there could be a deterrent effect on

other intending offenders? What future strategy for eliminating this menace is being worked out?

14. List this case on 10.10.2012 before the bench hearing Criminal P.I.Ls. We appoint Sri Vinay Saran, advocate as amicus curiae to assist this Court in this matter. Copy of the order may be forwarded/handed over within a week by the Registry to the D.G.P., U.P., Investigating Officer of the present case through D.G.P., U.P., Principal Secretaries, Primary and Secondary Education, U.P., Sri Vinay Saran, learned amicus curiae, learned A.G.A. and District Judge Ballia for communication to the concerned Court in case charge-sheet has been submitted against any of the accused for ensuring compliance of this order.