(2012) 07 RAJ CK 0019

In the Rajasthan High Court

Case No : Criminal Miscellaneous Petition No. 2762 of 2011

Amita Trivedi and Another — APPELLANT

Vs

State of Rajasthan and Another — RESPONDENT

Date of Decision : 30-07-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 195(1)(a), 206, 207, 208
Penal Code, 1860 (IPC) — Section 120B, 172, 173, 174, 175

Citation : (2013) 1 Crimes 141 : (2013) 2 RLW 1313 : (2013) 2 RLW 1252

Hon'ble Judges : Sandeep Mehta, J

Bench : Single Bench

Advocate : Mahesh Bora, assisted by Mr. Nishant Bora, for the Appellant; K.K. Rawal, Public Prosecutor and Mr. Manish Vyas, for the Respondent

Final Decision : Allowed

Judgement

Sandeep Mehta, J.—The instant misc. petition has been preferred by the petitioners seeking quashing of the F.I.R. No. 13/2011 registered at Police Station Udaimandir, District Jodhpur for the offences under Sections 406, 420, 467 and 120B IPC on the basis of a complaint filed by the respondent No. 2 complainant as forwarded to the police u/s 156(3) Cr.P.C. Succinctly stated the facts of the case are that the respondent No. 2 complainant filed a complaint in the court of the learned Judicial Magistrate alleging inter alia that the petitioner No. 1 filed a nomination for contesting the elections for the post of a member of the Muncipal Corporation in the year 2009 and after elections, was declared elected from the Ward No. 14. It was further alleged that the petitioner No. 1 contested the election on behalf of the BJP, whereas the respondent No. 2 contested the elections on behalf of the Congress Party and lost the same. The respondent No. 2 filed the instant complaint with the allegation that the petitioner No. 1 Smt. Amita Trivedi conspired with the petitioner No. 2 her husband Shri Rajesh Trivedi and for the purpose of contesting the election deliberately disclosed false facts in the nomination papers. It was alleged that the petitioner No. 1 fraudulently mentioned the name of her father-in-law in the column set apart in the nomination paper for the husband''s name. It was further stated that the petitioners committed the offences of cheating, forgery and breach of trust.

2. The compliant thus filed by the respondent No. 2 was forwarded to the Police Station Udaimandir, Jodhpur for investigation u/s 156(3) Cr.P.C., where F.I.R. No. 13/11 has been registered for the aforesaid offences. The petitioners have now approached this Court seeking quashing of the F.I.R. registered against them.

3. Shri Mahesh Bora, learned senior counsel assisted by Shri Nishant Bora, argued on behalf of the petitioners that ex facie, the allegations, which have been made the foundation of the F.I.R. do not disclose any cognizable offence whatsoever. It was submitted that even if the allegations set out in the F.I.R. are considered to be true at their highest also then too, the remedy available to the complainant was to challenge the petitioner No: 1''s election by film an election petition. It was submitted that merely by the act of mentioning allegedly wrong facts in the nomination papers, it cannot be concluded that the petitioners have committed the offence of cheating, breach of trust or forgery. It was further submitted that the complainant cannot be said to be the person, who was cheated in this case. Shri Bora further urged that for the sake of arguments even if the allegations of the complainant are accepted to be true then too, the offence, which at best can be said to be committed by the accused would be covered by Section 177 of the IPC i.e. furnishing false information to a public servant. It is contended that even if the said offence is made out, the prosecution of the petitioners is barred by Section 195(1)(a) of the Cr.P.C. because no complaint has been filed by the concerned public servant in this case. It was, then fore urged that ex-facie, the F.I.R. impugned does not disclose any cognizable offence whatsoever so as to permit the continuance of investigation by the investigating agency in this case.

4. Per contra, the learned Public Prosecutor and the learned counsel appearing for the complainant Shri Manish Vyas vehemently opposed the arguments advanced on behalf of the petitioners and submitted that the petitioner No. 1 deliberately and fraudulently mentioned the name of her father-in-law in place of the name of her husband in the nomination paper. It was submitted that the petitioner No. 1''s husband i.e. petitioner No. 2 Shri Rajesh Trivedi is employed in the Dainik Bhaskar newspaper. It was strenuously contended that the employer of the petitioner No. 2 has barred relatives of its employees from contesting elections as per the restrictions imposed by the Press Council Act and that is why, deliberately substituted with the father-in-law''s name by the petitioner No. 1 in the nomination form. They submitted that no interference is called for in the impugned F.I.R. whilst exercising the inherent jurisdiction of this Court u/s 482 Cr.P.C.

5. Upon a consideration of the arguments advanced at the bar and after going through the F.I.R. impugned and the case diary, it is apparent that the highest allegation of the complainant in this case is that the petitioner No. 1 whilst filling

up the nomination form deliberately mentioned the name of her father-in-law in the column where her husband''s name was required to be mentioned. This is the highest case of the prosecution as per the FIR registered for the offences under Sections 406, 420, 467 and 120B IPC.

6. For the offence of preparing a forged document, which is punishable u/s 467 IPC, the document in issue should be a false document as defined u/s 464 IPC, which reads as below:

464. Making a false document- A person is said to make a false document or false electronic record:

First--who dishonestly or fraudulently-

(a) makes, signs, seals or executes a document or part of a document:

(b) makes or transmits any electronic record or part of any electronic record;

(c) affixes any electronic signature on any electronic record;

(d) makes any mark denoting the execution of a document or the authenticity of the electronic signature;

with the intention of causing it to be believed that such document or part of document, electronic record or electronic signature was made, signed, sealed, executed, transmitted or affixed by or lay the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or

Secondly--who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with electronic signature either by himself or by any other person, whether such person be living or dead at the time of such alteration; or

Thirdly-who dishonesty or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his electronic signature on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or electronic record of the nature of the alteration.

7. For the offence of cheating, there should be an Averment of the prosecution that the accused by using fraudulent means induced the person so cheated to deliver some valuable security etc.

8. Hon''ble the Apex Court in the case of Mohammed Ibrahim v. State of Bihar (2009) 8 SCC 75 whilst dealing with the offences of cheating and forgery held as below:

7. The question that therefore, arises for consideration is whether the material

on prima facie constitutes any offence against the accused. The contention of the appellant is that if the allegations made in the complainant and FIR. even if accepted to be true in entirety did not disclose the ingredients of any offence of forgery (Sections 467 and, 471) or cheating (Section 420) or insult (Section 504) or wrongful restraint (Section 341) or causing hurt (Section 323) and there was no other material to show any offence and therefore their application ought to have been accepted.

8. This Court has time and again drawn attention to the growing tendency of the complainants attempting to give the cloak of a criminal offence to matters which are essentially and purely civil in nature, obviously either to apply pressure on the accused, or out of enmity towards the accused or to subject the accused to harassment. Criminal Courts should ensure that proceedings before it are not used for setting scores or to pressurise parties to settle civil disputes. But at the same time, it should be noted that several disputes of a civil nature may also contain the ingredients of criminal offences and if so, will have to be tried as criminal offences, even if they also amount to civil disputes. Let us examine the matter keeping said principles in mind.

16. There is a fundamental difference between a person executing a sale deed claiming that the property conveyed is his property, and a person executing a sale deed by impersonating the owner or falsely claiming to be authorised or empowered by the owner, to execute the deed on owner''s behalf. When a person executes a document conveying a property describing it as his, there are two possibilities. The first is that he bona fide belies that the property actually belongs to him. The second is that he may be dishonestly or fraudulently claiming it to be his even though he knows that it is not his property. But to fall under first category of "false documents", it is not sufficient that a document has been made or executed dishonestly or fraudulently. There is a further requirement that it should have been made with the intention of causing it to be believed that such document was made or executed by or by the authority of a person, by whom or by whose authority he knows that it was not made or executed.

17. When a document is executed by a person claiming a property which is not his, he is not claiming that he is someone else nor is he claiming that he is authorised by someone else. Therefore, execution of such document (purporting to convey some property of which he is not the owner) is not execution of a false document as defined u/s 464 of the Code. If what is executed is not a false document, there is no forgery. If there is no forgery, then neither Section 467 nor Section 471 of the Code are attracted.

26. The Penal Code however defines ''fraudulently'', an adjective form of the word ''fraud'', in Section 25, as follows:

25. ''Fraudulently''.--A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise.

27. The term "fraudulently" is mostly used with the term "dishonestly'' which is defined in Section 24 as follows,

24 ''Dishonestly'',- whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person is said to do that thing "dishonestly,

28. To ''defraud'' or do something fraudulently is not by itself made an offence under the Penal Code, but various acts when done fraudulently (or fraudulently and dishonesty) are made offences. These include:

(i) Fraudulent removal or concealment of property (Sections 206, 421, 424)

(ii) Fraudulent claim to property to prevent seizure (Sec. 207)

(iii) Fraudulent suffering or obtaining a decree (Sections 208 and 210)

(iv) Fraudulent possession/delivery of counterfeit coin (Sections 239, 240, 242 and 243),

(v) Fraudulent alteration/diminishing weight of coin (sections 246 to 253)

(vi) Fraudulent acts relating to stamps (Sections 255-261)

(vii) Fraudulent use of false instruments/weight measure (Sections 264 to 266)

(viii) Cheating (sections 415 to 420)

(ix) Fraudulent prevention of debt being available to creditors (sec. 422)

(x) Fraudulent execution of deed of transfer containing false statement of consideration (Sec. 423).

(xi) Forgery making or executing a false document (Sections 463 to 471 and 474)

(xii) Fraudulent cancellation/destruction of valuable security etc. (Sec. 477)

(xiii) Fraudulently going, through marriage ceremony (Sec. 496).

It follows therefore that by merely alleging or showing that a person acted fraudulently, it cannot be assumed that he committed an offence punishable under the Code or any other law, unless that fraudulent act is specified to be an offence under the Code or other law.

9. Thus from the admitted allegations of the prosecution there is no such material on the strength whereof it can be concluded that the petitioners committed any of the acts mentioned in Section 463 or 464 IPC so as to invoke the offence u/s 467 IPC in this case.

10. So far as the offence of cheating (Section 420 IPC) is concerned, it is no case of the prosecution that the petitioners induced anybody dishonestly and thereby deceived such person to deliver any property or to make, alter or destroy the whole or any part of the valuable security, therefore, ex-facie, the offence of

cheating is not made out against the petitioners from the admitted allegations of the prosecution.

11. As regards the offence u/s 406 IPC, there has to be an allegation that accused were entrusted with some valuable security, which was subsequently misappropriated. Admittedly, there is no such allegation of the prosecution in the instant case. Therefore, none of the offences as set out in the F.I.R. can be said to be made out against the accused in this case.

12. Considering the allegations of the prosecution to be true at the highest, the offence, in any, which can be said to be made out against the accused would be the offence u/s 177 of the IPC. which reads as under:

177. Furnishing false information.--Whoever, being legally bound to furnish information on any subject to any public servant, as such, furnishes as true, information on the subject which he knows or has reason to believe to be false, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both;

or, if the information which he is legally bound to give respects the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

13. For the purpose launching a prosecution for the offence u/s 177 IPC. the prosecution can only be launched as per Section 195 (1) (a) Cr.P.C. which reads as under:

195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.--(1) No Court shall take cognizance--

(a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code. (45 of 1860) or

(ii) of any abetment of, attempt to commit, such offence, or

(iii) of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate.

14. Thus, before the prosecution for the offence u/s 177 IPC can be initiated. It is mandatory that the public servant before whom the alleged false information has been furnished, should file a complaint then only the court can take cognizance of the offence. Obviously, the returning officer before whom the nomination form was furnished has not filed any complaint against the petitioners, therefore, permitting continuance of investigation of the impugned F.I.R. in this case cannot be said to be anything but an abuse of process of law. Resultantly the misc. petition succeeds and is allowed and the F.I.R. No. 13/11

registered at Police Station Udaimandir, District Jodhpur and all proceedings subsequent thereto, are herby quashed.

