
(2006) 01 AHC CK 0047

In the Allahabad High Court

Case No : Criminal Miscellaneous Writ Petition No. 24 of 2006

Brahma Pal Singh

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 12-01-2006

Acts Referred:

Constitution of India, 1950 — Article 226

Penal Code, 1860 (IPC) — Section 409, 420, 467, 468, 471

Citation : (2006) 01 AHC CK 0047

Hon'ble Judges : Vinod Prasad, J;M.C. Jain, J

Bench : Division Bench

Advocate : B. Malik, for the Appellant; A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

Vinod Prasad, J.—The present writ petition has been filed by the petitioner for the relief of quashing of FIR of case crime number 564 of 2005 under Sections 409, 420, 467, 468, 471" IPC, Police Station Chhaprauli District Baghpat through a writ order for direction in the nature of Certiorari along with the prayer in the nature of mandamus for stay of his arrest in the aforesaid crime number.

2. We have heard Sri B. Mallik, learned Counsel for the petitioner at a great length and the learned AGA in opposition and have gone through the writ petition and annexures appended thereto.

3. The impugned FIR in this case was lodged on 7.12.2005 at police station Chhaprauli District Baghpat by Harendra Singh Pangai. Assistant Block Development Officer Co- Operative) Chhaprauli District Baghpat with the allegations inter alia, that Krishak Sewa Sahkri samu Limited Adarsh Nagala is a registered society under the Co- Operative "Societies Act 1965 with it's office at Adarsha Nagala within the police circle of PS Chhaprauli district Baghpat. The said society is manning a Mini Bank since 1988 Richpal Singh is the incharge of the said bank since 1993. Vide letter dated 2.3,2005 a committee was

constituted by Secretary/ Managing Director District Co-Operative Bank Limited Meerut to inquire into the working irregularities of the bank as the balance sheet and other important documents were not being prepared ignoring the departmental instructions. The report of the said inquiry committee dated 22.11.2005 indicated that, prima facie, Rich Pal Singh , Incharge Mini bank has embezzled, from various head of accounts, an amount to tune of Rs. 1809445/- (Rs. "Eighteen Lac nine thousand four hundred and forty five) till 22.11.2005 under the patronage of different Secretaries including the petitioner who is presently working as Secretary/ Managing Director, Co-Operative Societies, Barauli, Baghpat. The said Rich pal Singh has absconded with the record of squandered money. The fraud and fabrication of documents have been committed inter alia by preparation of forged fixed term deposits by forging the signature of the secretary, by tampering with the savings bank accounts of account holders, by forged grant of loans etc After the inquiry report the impugned FIR was lodged, the quashing of which is sought, through this writ petition.

4. It was contended by the counsel for the petitioner on the strength of annexure 2 to the writ petition that that the petitioner was given the additional charge of Managing Director of Kisan Sahkari Samiti, Adarsh Nagala and that from 17.4.2001 that of CSS Chhaprauli also We fail to understand how this additional charge to the petitioner is relevant for not making out any offence against the petitioner and how does this fact dents the prosecution allegations in making out cognizable offence through the impugned FIR. The submission is only to confuse the matter and is without any merit and is hereby rejected.

5. It was next contended by petitioner's counsel that the inquiry report appended as annexure no. 3 to the petition does not indict the petitioner and there is no allegation against him instead the allegations are against Rich Pal Singh alone, Suffice it to say that para 17 of the said report specifically names the petitioner and anoints him with embezzlement of at least of Rs. 140;)0/= on 14 8.96.Hence this submission of the petitioner is also devoid of substance and is rejected. As discussed above the FIR unerringly makes out cognizable offences against the petitioner for offences under Sections 409, 420, 467. 468, and 471 IPC, Mini bank had got the deposits of public at large. Embezzled amount belongs to various depositors both rich and poor. Officer's of the bank and it's employees can not be allowed to fiddle with the said money and betray the trust reposed by the depositor's in them. The medium of embezzlement and fraud by the employees of the bank can not be allowed to go un- investigated when the amount involved and admitted by the petitioner run into lacs of rupees (Para 11 of the writ petition). The petitioner further has admitted "misappropriation of public fund/ money" vide para 9 of the writ petition by the impugned FIR. Para 10 and 11 of the writ petition enumerates the details of the embezzled amount from various heads of accounts. Thus we find that the petitioner himself has admitted commission of cognizable offence by the impugned FIR. Counsel for the petitioner lastly contended that some orders had been passed in respect of other

accused but there is no such averment in the writ petition. Under Article 226 of The Constitution Of India this court is not required to thoroughly and meticulously examine the averments made in the FIR in all it's pros and cons like the trial court This court does not hold the trial under the said Article. Under this extra ordinary jurisdiction what is required by this court to examine is as to whether any cognizable offence is disclosed or not on the bare reading of the FIR without addition or subtraction of facts. At this stage, the investigation cannot be nip into the bud by entering into the niceties of allegations and looking into the defence of the accused petitioner. It is not, the correct exercise of power by the High Court to fetch out the defence of the accused by thrashing out defence documents. They are in the realm of investigation and the trial court according to law. We don't hold trial under Article 226 of the Constitution Of India. Thus we find no merit in this writ petition, which is liable to be dismissed. It is hereby dismissed.