(2012) 02 JH CK 0080

In the Jharkhand High Court

Case No : Criminal M.P. No. 1218 of 2006

Brijendra Kumar APPELLANT

Vs

State of Jharkhand and others RESPONDENT

Date of Decision : 22-02-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 120B, 166, 171, 197, 341

Citation : (2012) 02 JH CK 0080

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.R. Prasad

1. Heard learned counsel appearing for the petitioner and learned counsel appearing for the opposite party No. 2.

2. This application has been filed for quashing of the entire criminal proceeding of Complaint case bearing C/1 case No. 9 of 2001 including the order dated 7.1.2006 whereby and whereunder cognizance of the offences under Sections 409, 418 and 197 of the Indian Penal Code has been taken against the petitioner.

3. The complainant since died (his legal heir has been made as opposite party No. 2) lodged a complaint case alleging therein that accused was appointed as Election Officer for conducting election of the Managing Committee of Adityapur Udyami Grih Nirman Samity Limited and the petitioner conducted the election of the Managing Committee of the said Samity on 12.9.2000 but he allowed some of the candidates to fight election, though they were defaulters and as per the provision of the Bihar Cooperative Societies Act, member of the society if is defaulter, he would not be eligible to contest the election of the Managing Committee of the Society. In spite of that, this petitioner being Election Officer declared the nomination filed by the said defaulter members as valid by realizing

the amount which were due to be paid from the defaulter to the extent of Rs. 6,91,401/- but the petitioner did not deposit the amount to the newly elected committee of the Society and thereby it has been alleged that the petitioner has committed offences punishable under Sections 120B, 166, 171, 197, 341, 409 and 418 of the Indian Penal Code. On holding enquiry cognizance of the offences was taken under Sections 409, 418 and 197 of the Indian Penal Code which order is under challenge.

4. Learned counsel appearing for the petitioner submits that though allegation has been there in the complaint that the petitioner having realized a sum of Rs. 6,91,401/- did not deposit it with the newly elected committee of the Society but those allegations have been made without there being any basis and that the petitioner did allow all the participants to contest the election as in the nomination form, they have declared that they are not defaulter and if they were not the defaulter, question of realizing the amount which was due to him does not arise and moreover, when the matter was raised before the Joint Registrar, Co-operative Society, he made an enquiry on the allegation and did find the petitioner to be innocent which would be evident from Annexure 6 and that document being impeachable in character can be looked into even at this stage, in view of the decision rendered in a case of All Cargo Movers (I) Pvt. Ltd. and others vs. Dhanesh Badarmal Jain and another [2008 (1) JLJR (SC) 51] and under this situation, the instant prosecution including the order taking cognizance is fit to be quashed.

5. However, learned counsel appearing for the opposite party No. 2 submits that there has been allegation of misappropriation of a sum of Rs. 6,91,401/- and therefore, whether that allegation is false or true, that cannot be looked into at this stage, rather falsity or the truthfulness of the allegation can be thrashed at the time of trial and therefore, the impugned order never warrants to be quashed.

6. Having heard learned counsel appearing for the parties and on perusal of the record, it does appear that the petitioner is being prosecuted on the allegation that the petitioner being Election Officer did allow participants to contest the election, though, according to the complainant, they were not eligible to contest the election as they were the defaulters.

7. Further it has been alleged that the amount realized from them were not deposited, but that allegation, according to leaned counsel appearing for the petitioner, is unfounded for the reason that all the candidates who were allowed to contest were not the defaulters which would be evident from the nomination form wherein they have declared that they are not the defaulters. Furthermore, on the allegation made in the complaint, an enquiry was conducted wherein enquiry officer found the allegation to be baseless. Normally, the court at the stage of exercising power u/s 482 of the Code of Criminal Procedure refrain itself from looking to the document of the defence but if the document is of such nature which is impeachable in character can be relied upon.

8. In this respect, I may refer to a decision in a case of All Cargo Movers (I) Pvt. Ltd. and others vs. Dhanesh Badarmal Jain and another (supra) wherein the court has laid down the law which is as follows:

It is one thing to say that the Court at this juncture would not consider the defence of the accused but it is another thing to say that for exercising the inherent jurisdiction of this Court, it is impermissible also to look to the admitted documents. Criminal proceedings should not be encouraged, when it is found to be mala fide or otherwise an abuse of the process of the Court. Superior Courts while exercising this power should also strive to serve the ends of justice.

9. Besides the aforesaid documents as contained in Annexure 6 showing innocence, statement has also been made by the petitioner in the petition that the petitioner had never realized the amount as disclosed in the complaint but that fact has never been denied in the counter affidavit filed on behalf of the complainant.

10. Under this situation, it would be abuse of the process of the court if the petitioner is allowed tobe prosecuted. Hence, the entire criminal proceeding including the order taking cognizance is hereby quashed.

11. In the result, this application stands allowed.

