

(2003) 04 GAU CK 0035

In the Gauhati High Court

Case No : Criminal Revision (P) No. 286 of 2002

Col. (Retd.) Jasbir Singh Virk

APPELLANT

Vs

Kishore Kr. Bhattacharjee

RESPONDENT

Date of Decision : 10-04-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (2003) 3 GLR 18 : (2003) 3 GLT 256

Hon'ble Judges : P.G. Agarwal, J

Bench : Single Bench

Advocate : N. Islam and B.K. Kar, for the Appellant; N. Dhar, P. Dutta and D. Roy Choudhury, for the Respondent

Final Decision : Dismissed

Judgement

P.G. Agarwal, J.—Heard Mr. N. Islam, learned counsel for the petitioner and Mr. N. Dhar, learned counsel for the respondents.

2. In this application u/s 282 Cr.PC the petitioner has prayed for quashing of the complaint in Criminal Case No. 100 of 2002 pending in the Court of the learned Chief Judicial Magistrate, Cachar, Silchar. The respondent complainant Kishore Kumar Bhattacharjee filed a complaint against the petitioner Col. (Retd.) Jasbir Singh Virk alleging, inter alia, that the petitioner by filing a false application with false statement has obtained the appointment to the post of principal, Regional Engineers College, Silchar and thereafter he has committed certain acts of misappropriation etc., etc. The trial Court vide the order dated 24.4.2002 took cognizance of the offence under Sections 153A, 409, 417, 420, 463, 468, 477A of the IPC and issued process. Hence, the present application for quashing.

3. The first statement of the learned counsel for the petitioner is that the respondent complainant has no locus to file the present complaint. The complainant claims that a public committee was constituted in a public meeting, wherein he was appointed as a Secretary and on examination of the entire

matter he has filed the present application in public interest. On perusal of the impugned order we find that the learned trial Magistrate has examined the question of locus and relying on the decision of the Apex Court in the case of A.R. Antulay Vs. Ramdas Srinivas Nayak and Another, and in the case of Sheonandan Paswan Vs. State of Bihar and Others, the Apex Court held that the complaint cannot be thrown out on the ground of locus. In the case of A.R. Antulay (supra) the Apex Court held :

"It is well recognised principle of criminal jurisprudence that anyone can set or put the criminal law into motion except where the statute enacting or creating an offence indicates to the contrary. Locus standi of the complainant is a concept foreign to criminal jurisprudence save and except that where the statute creating an offence provides for the eligibility of the complainant by necessary implication the general principle gets excluded by such statutory provision. Punishment of the offender in the interest of the society being one of the objects behind penal statutes enacted for larger good of the society, right to initiate proceedings cannot be wittled down, circumscribed or fettered by putting it into a strait-jacket formula of locus standi unknown to criminal jurisprudence, save and except specific statutory exception."

4. The above decision was reiterated and approved by another Constitution Bench in the case of Shew Paswan (supra). The offences under which the process was issued by the Court are all under the Indian Penal Code and there is no statutory bar that the complaint is to be filed by a particular person. In view of the above we find that the complaint case cannot be quashed on the ground of locus.

5. The next submission of the learned counsel for the petitioner is that the petitioner was a public servant and as such sanction u/s 197 Cr.PC was called for. In the complaint petition there is a specific allegation against the petitioner that the petitioner had given false information to the effect that he was serving as a Professor at Sant Longowal at the time of making the application. Copy of the said application has been filed by the respondent which shows that the petitioner had enclosed a draft for Rs. 100 and the said draft was dated 14th January, 2000, which means that the application was filed on or after 15th January, 2000. The respondents have also produced a copy of the document received from the Sant Longowal Institute of Engineering & Technology to the effect that the petitioner had never served as a Professor but he was serving as an Asstt. Professor only, hence his services were terminated with effect from 10.12.1999, which shows that as on 15th January, 2000 the petitioner was not working there even. The trial Court held that the provision of Section 197 Cr.PC are not attracted as at the relevant time the petitioner was not a public servant or there is no nexus between the duties of the public servant to the alleged offences. We concur with the above finding and held that at this stage the complaint cannot be thrown out on the above ground. In view of the above, the revision petition stands dismissed. Sent down the records. The petitioner shall appear before the

Chief Judicial Magistrate, Cachar, Silchar on 28th May, 2003.