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(2019) 09 MP CK 0023

In the Madhya Pradesh High Court

Case No : Miscellaneous Criminal Case No. 8759 Of 2017, Miscellaneous Criminal Case No. 8813 Of 2017

Dilip And Usha And Ors — APPELLANT

Vs

State Of Madhya Pradesh And Ors — RESPONDENT

Date of Decision : 16-09-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 155(2), 156(1), 161, 482
Indian Penal Code, 1860 — Section 21, 120B, 409, 420, 467, 468, 471
Cooperative Societies Act, 1960 — Section 74, 75, 76, 87
Constitution Of India, 1950 — Article 226

Citation : (2019) 09 MP CK 0023

Hon'ble Judges : Virender Singh, J

Bench : Single Bench

Advocate : P.C. Vaya, S.C. Garg, Rs Darbar

Final Decision : Dismissed

Judgement

1. All the petitioners of both these petitions have preferred these petitions challenging the order of framing charges against them under section 409, 420, 467, 468 471 IPC vide order dated 1st of May 2017 passed by the Chief Judicial Magistrate, Ratlam in criminal case No. 26/2002. Revision preferred by them is also dismissed by Sessions Judge, Ratlam vide order dated 12th July 2017 passed in Criminal Revision number 51/2017.

2. Facts giving rise to the present petitions in brief are that the petitioners were Member/Office Bearer of Ratlam Credit Co-operative Society; 53, Station Road, Ratlam. Vide order No. 454 dated 20/05/1999, the Dyputy Registrar, Co-operative Societies directed auditor Shri R. K. Soni to conduct audit of the Society for the year 1998-99. Shri Soni conducted audit and submitted report inter alia; stating that there were several irregularities worth Rs. 25,38,590/- in sanctioning and disbursing loan, there were no signatures of the borrowers for several disbursement and record of many other disbursement involving disbursement worth Rs.4,48,543/- was not produced for audit. Similarly,

signatures of receiving were not found in disbursement of many term deposits involving Rs.6, 34,780/-. Shri Soni found that in the year 1998-99, serious financial irregularities were committed in respect of total Rs.36,21,915/-. As per report, this amount was misappropriated by the Office Bearers and Members of the Society. Further, it was alleged that cash book of audit year 1999-2000 was also not maintained. Shri Soni named several Office Bearers/Members of the Society, who were, according to him, responsible for alleged misappropriation/ embezzlement, including the names of all the petitioners. Assistant Registrar, Co-operative Societies, Ratlam sent this audit report to the Police Station-Station Road, Ratlam with request to register crime and investigate the same. The police investigated the crime and find evidence to support the allegation made in the audit report and filed charge-sheet before the Court.

3. After hearing the parties, the trial Court found that there was sufficient prima facie evidence to frame the charges under Sections 409, 420, 467, 468 & 471 of IPC against all three petitioners along with some other co-accused persons. The revision preferred by the petitioners was also dismissed. The Revision Court was also of the view that there is sufficient prima facie evidence available on record to frame the charges and the trial Court has not committed any error in doing so and dismissed the petition.

4. The petitioners Dilip and Usha have preferred this petition on the grounds that there is no evidence to show that they were involved in any alleged money transaction. Neither any document is produced showing their involvement nor they are named by any of the witness in their police statement recorded under Section 161 Cr.P.C. Auditor Shri Soni has not pointed out any record to show that the petitioners were involved in fabrication of any document which were allegedly prepared by the Director of the Society or that they were involved, cooperated or fabricated any forged document. It is also asserted by them that they do not fall within the ambit of 'Public Servant' as defined in Section 21 of the IPC, therefore, charge under Section 409 of IPC cannot be framed against them and the trial Court has committed error in framing charges against them.

5. Petitioner Chandra Bhusan Rawat has approached this Court on the grounds that he was made Director only for the name sake. He was never involved in any substantial activity of the Society, never participated in the meetings of the Society, had not taken any loan from the Society and had even resigned from the post of Director of the Society in the year 1998-99. He sent his resignation first by U.P.C. and later tendered it by hand to the President of the Society on 30/09/1998 which was accepted by the Society on the same day, while the report of Shri Soni was submitted on 30/05/2000. The trial Court has not passed any reasoned order while framing the charges. There is no progress in the trial since last 17 years. There is no justification that after keeping the trial pending for last 17 years; suddenly, the trial Court has framed the charges without assigning any reason. The Revision Court has also not considered the grounds raised by him, therefore, it is submitted that charges framed against him

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deserves to be dismissed.

6. The learned Public Prosecutor has opposed the prayer. He has stated that the audit was conducted by an Authorized Officer of the Co-operative Department following the due process of law. Several specific irregularities showing misappropriation of lacs of rupees have been highlighted in the audit report. Auditor Shri Soni has specifically named the petitioners as the persons found involved in the irregularities. Nothing specific is pointed out to show that conclusions arrived at by the auditor were erroneous or were against the record. The petitioner Chandra Bhusan has admitted that he was director of the Society at the relevant point of time. The plea that he did not actively or substantially participated in any of the transactions or alleged irregularities is a matter of fact, which has to be appreciated. Without granting opportunity to the prosecution to establish the allegation against the petitioners, it would not be appropriate to consider their pleas as true. The trial of the accused persons was pending, as many of them have not cooperated with the trial and still some of them are absconding, therefore, the prosecution cannot be blamed for their own fault. On the aforesaid grounds, the prosecution has prayed for dismissal of both the petitions.

7. The power under section 482 Cr.P.C. is extraordinary in nature and it is settled proposition of law that this power has to be exercised sparingly and only in the cases where attaining facts and circumstances satisfy that possibilities of miscarriage of justice will arise in case of non-use of power. The Court can interfere in such exceptional cases where it appears from the face of the record that the prosecution is totally unwarranted for. There has to be a material error manifest from the record that results in miscarriage of justice. At this stage sifting and weighing of the evidence is neither permitted nor expected and the Court need not enter into meticulous consideration of evidence and materials at this stage.

8. In Bhajan Lal's case (State of Haryana Vs. Ch. Bhajan Lal and others AIR 1992 SC 604) Hon'ble the Supreme Court has laid down the guideline principles in this regard. Para 108 of the judgment reads thus:

108. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

1. Where the allegations made in the First Information Report or the complaint,

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even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

2. Where the allegations in the First Information Report and other materials, if any, accompanying the F. I. R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156 (1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

4. Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

5. Where the allegations made in the F.I.R. or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/ or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly attended with mala fide and/ or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

9. After going through the record available before this Court particularly, the report of the auditor Shri R.K. Soni, it appears that prima facie evidence is available against the petitioners, who are named by Shri Soni in his audit report. In his statement recorded under Section 161 Cr.P.C. he and Assistant Registrar, Cooperative Societies, Bhanwarsingh Kothari have supported the allegations. Numerous documents have been seized by the police during the investigation prima facie indicating involvement of the petitioners in the allegations made by auditor Shri Soni and these documents cannot be brushed aside at the threshold. Nothing could be pointed out against the irregularities found in the audit report. It is not disputed by the petitioners that at the relevant point of time; they were Office Bearer/Member of the Society. As per allegation, they have misappropriated the funds of the Society.

10. Learned counsels for the petitioners Dilip and Usha have placed reliance on S.S. Dhanoa vs. Municipal Corporation of Delhi reported in LAWS (SC) 1981 5 12, State of Maharashtra vs. Laljit Rajshi Shah reported in LAWS (SC) 2000 2 159 and State of Uttar Pradesh vs. Vishwanath Kapoor reported in LAWS

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(Allahabad) 1980 1 20 to show that the members or office bearers of the Co-operative Society are not public servant as mentioned in Section 21 of IPC or under the provisions of Prevention of Corruption Act, therefore, they cannot be prosecuted under Section 409 of IPC, but refuting their plea, the revision Court had observed that it is not necessary to be a public servant to frame charge under Section 409 IPC. Such charge can be framed if a person is entrusted with property or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent. The petitioners were Office Bearer of the Society, therefore, it can be presumed that they were entrusted with the property or were having dominion over the property of the Society in their capacity as the agent of the Society. Nothing contrary is on the record to take it otherwise; therefore, the judgment cited by the petitioners Deepak and Usha do not favour their plea. Otherwise also this is not a case with regard to any charge under Prevention of Corruption Act, 1947, Laljit case (supra) is distinguished by the Hon'ble Supreme Court in the case of State of M.P. Vs. Rameshwar and others (2009) 11 SCC 424 and Section 87 of the Co-operative Societies Act, 1960 says that every officer or person as well as employee of a Co-operative Bank or a co-operative society or an authority exercising or authorised to exercise the powers under this Act or the Rules or by-laws made thereunder shall be deemed to be a public servant within the meaning of section 21 of the IPC, 1860. Therefore, also the plea of the petitioners is not tenable.

11. Further, reliance is placed by the petitioners on the judgment of Avdhesh Raghuwanshi vs. State of MP reported in 2013 (3) MPHT 116, wherein the charges under Section 420, 467, 468, 471 r/w Section 120-B of the IPC have been quashed by this Court inter alia; stating that there was a dispute in respect of allotment of a plot of the Society to an unauthorized persons, which is an offence under Section 74 of the Cooperative Societies Act, 1960 and is punishable under Section 75 of the Act following the specific procedure for trial of such offences under Section 75 of the Act of 1960, but the present case is related to the misappropriation or embezzlement of the funds of the Society, therefore, the judgments cited by the petitioners is distinguishable on facts and is not applicable in the present case. Otherwise also, provisions of Section 74-76 do not bar the trial of the accused persons for the offences defined and punishable under Indian Penal Code. In the case of State of M.P. v. Rameshwar, (2009) 11 SCC 424 : (2009) 3 SCC (Cri) 1421 at page 434 the Apex Court has held that:

48. Mr Tankha's submissions, which were echoed by Mr Jain, that the M.P. Cooperative Societies Act, 1960 was a complete code in itself and the remedy of the prosecuting agency lay not under the criminal process but within the ambit of Sections 74 to 76 thereof, cannot also be accepted in view of the fact that there is no bar under the M.P. Cooperative Societies Act, 1960, to take resort to the provisions of the general criminal law, particularly when charges under the Prevention of Corruption Act, 1988, are involved.

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12. Petitioners are aggrieved on one other ground also. Their grievance is that while framing the charges, the trial Court has not passed reasoned order. Reliance is placed on Pankaj Garg vs. Minu Garg, reported in 2013(ii) MPWN 18 where the Hon'ble Apex Court has held that any judicial order must contain reasons, order without reason is no order in the eyes of law. In this judgement, the Hon'ble Supreme Court observed that while reversing the findings of the trial Court, High Court has not assigned any reason and remanded the case by a cryptic order, but the question in the present case is relating to framing of the charges. The learned trial Court itself has dealt with this issue. Referring the judgments passed in Kampi Bhadresha vs. State of West Bengal reported in AIR 2000 (SC) 522 and State of MP vs. SB Johari reported in AIR 2000 (SC) 665, the learned trial Court has rightly declined the plea stating that at the stage of framing of charge, no detailed and reasoned order is necessary as it may prejudice the case of the either party.

13. The audit report and statement of auditor Shri RK Soni corroborated by several documents seized during investigation are prima facie sufficient to show availability of the evidence adequate to prosecute the petitioners. Having regard to the guiding principles to be kept in mind while considering the petition against framing of charges under Section 482 Cr.P.C., I do not find any merits in the pleas taken by the petitioners; therefore, being sans merits, both these petitions are dismissed hereby.

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