(2015) 09 BOM CK 0210

In the Bombay High Court

Case No : Criminal Application No. 2328 of 2014

Khanderao and Others APPELLANT

Vs

State of Maharashtra and Others RESPONDENT

Date of Decision : 23-09-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156 [3], 156(3), 173(8), 482
Penal Code, 1860 (IPC) — Section 34, 420, 467, 470, 471

Citation : (2015) 09 BOM CK 0210

Hon'ble Judges : S.S. Shinde and A.I.S. Cheema, JJ.

Bench : Division Bench

Advocate : S.S. Rathi, Advocate, for the Appellant; V.B. Anjanwatikar, APP, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Shinde, J.—This is an application filed under Section 482 of Cr.P.C. with the following prayer:

"(c) By issuing appropriate orders Charge Sheet bearing No. 213/2013 and Criminal proceedings initiated in pursuance to First Information Report in Crime No. 147/2013 registered with Jintur Police Station, Jintur Dist. Parbhani for the offences punishable under Section 420, 467, 470, 471, 34 of Indian Penal Code may kindly be quashed and set aside;"

2. The learned Counsel for the applicants submitted that, one Dadarao Watane i.e. father of applicants as well as respondent No. 2 i.e. original complainant, had established one trust called as "Marathwada Marathi Bhamti Samaj, Wazar (bk) Tq. Jintur Dist. Parbhani". Under the said trust, one school namely Jawahar Vidyalaya and one hostel is being run. That, the present applicant No. 1 Khanderao is working as Secretary of the said Trust and other applicants are members of the trust as well as members of Managing Committee. It is further submitted that in past, the complainant i.e. present respondent No. 2, was also member of Managing Committee of the trust. It is submitted that, as per the

then prevailing constitution of the trust, elections for Managing Committee were to be held after every three years. Accordingly, annual general body meeting of the members of the trust was called on 5.10.2002. That, the said meeting was called after following due procedure and giving proper notice to all members of the trust. It is further submitted that, in the said meeting new managing committee for further period was to be elected. It is submitted that, though the complainant was member of managing committee for the earlier term, in the meeting dated 5.10.2002, he was not elected as was absent and since then, he is not member of the managing committee.

3. It is submitted by the learned Counsel for the applicants that, change report was submitted to the office of Asstt. Charity Commissioner. From 5.10.2002 the complainant / respondent No. 2 was not member of the managing committee of the trust. It is submitted that, during inquiry before the Asstt. Charity Commissioner, necessary affidavit was also submitted by the original complainant thereby deposing that, he has no objection for proposed change, and accordingly, in the meeting dated 5.10.2002 by election, Managing Committee came to be constituted.

4. It is further submitted that, again in the year, 2013, the complainant had approached to the applicant No. 1, and threatened him to make him President of the trust as he is elder brother in the family. It was contention of the complainant that, he stands retired from his service, and has no other work to do. The applicant No. 1 told him that, unless and until there is vacancy in the managing committee and election is due, it is not possible to appoint him as President and, therefore, the complainant threatened applicants of dire consequences.

5. It is submitted that, on 10.6.2013 the respondent No. 2 -original complainant had lodged the private complaint with the J.M.F.C., Jintur against the present applicants for the offences punishable under Sections 420, 467, 470, 471 r.w. 34 of IPC. In the said complaint, the J.M.F.C., was pleased direct the inquiry u/s 156(3) of the Code of Criminal Procedure and accordingly, crime bearing No. 14/2013 was registered against all the applicants for the offences punishable under Sections 420, 467, 470, 471 r.w. 34 of IPC.

6. It is submitted that the complainant -respondent No. 2 has alleged that, the complainant was residing at Manwat for his service and as such present applicant no. 1 used to look after the affairs of the trust and ancestral properties. He further alleged that applicant No. 1 Khanderao had removed him from the managing committee of the trust in the year, 2002 without his consent. The complainant also alleged that, on 6.4.2010 a false affidavit of the complainant was filed before the Assistant Charity Commissioner. The complainant has further alleged that, his father had died on 18.12.2006 and thereafter, one succession certificate was to be obtained from the court as an amount of Rs. 73,623/- was lying in the name of father of the complainant and accused persons. It was alleged that, in the said proceedings also, false and forged signature of the

complainant was made over the application as well as on the Vakilpatra. It was allegation of the complainant that, at the relevant time he was not present in Jintur. Accordingly, offence vide Crime No. 147/2013 was registered against the applicants u/s 420, 467, 470, 471, 34 of IPC.

7. It is submitted that the applicants were released on anticipatory bail by the Sessions Court at Parbhani.

8. Learned Counsel for the applicants submits that the FIR did not make out any offence against the applicants and the same is filed with mala fide intention. An application for quashing for FIR was filed and during pendency of the same, charge-sheet came to be filed and therefore, application challenging the FIR was withdrawn with liberty. Hence, this application has been filed.

9. The learned Counsel for the applicants submits that the complaint as well as charge-sheet do not attract any offence against the applicants, especially when there are no allegations of wrongful loss and gain against the applicants. It is submitted that, the dispute between members of the trust cannot be dragged in criminal court, especially when the same is pending before the Joint Charity Commissioner. It is further submitted that, in the light of this, the applicants cannot be forced to face criminal case when there is nothing alleged against them. He, therefore, submits that the application deserves to be allowed.

10. The learned Counsel for the respondent No. 2 -complainant, relying upon the affidavit filed by the respondent No. 2, submitted that the application is devoid of any merits and deserves to be dismissed. He further submitted that the applicants have suppressed material facts and documents. The applicants have purposely not filed whole copy of the charge-sheet with the application and by suppressing material documents forming part of the charge-sheet, obtained interim relief. He submitted that there are allegations regarding fabrication of documents regarding trust proceeding and also withdrawal of the amount from the account of their deceased father. The learned Counsel for respondent No. 2 further submitted that, the applicants have removed respondent No. 2 from the managing committee without his consent. It is submitted that the respondent No. 2 had never given consent nor filed any affidavit before the Asstt. Charity Commissioner and his signature thereon is bogus and false one. He, therefore, prayed that the application may be dismissed.

11. The learned APP appearing for the State submitted that, after due inquiry and investigation, charge-sheet has been filed. There are serious allegations against the applicants and the applicants are liable to face trial.

12. We have heard learned Counsel for the parties, perused the contents of the application, grounds taken therein and also the annexures thereto including the affidavit filed by respondent No. 2.

13. We have carefully perused the material placed on record and in particular allegations in the complaint. There are serious allegations in the complaint that,

the present applicant No. 1 submitted a false and bogus affidavit before the Assistant Charity Commissioner, Parbhani, District Parbhani at Exhibit-9. According to the complainant, the said affidavit was not signed by him, and the photographs on the said affidavit are not of the complainant. According to the complainant, he was not present in the meeting and alleged meeting was not held on 5th October, 2002, he was shown present in the said meeting. The complainant was not aware about the alleged meeting dated 5th October, 2002 and only after his retirement from service on 30th September, 2011, he came to know about such alleged meeting. Then the complainant inquired about the record of the trust in the office of the Assistant Charity Commissioner in the month of June, 2012 and he came to know about the illegalities committed by the applicant No. 1 herein i.e. Khanderao Dadaraoji Watane. Then, the complainant applied for the certified copies of the documents and then he came to know that the said Khanderao has prepared false and bogus documents with an intention to remove the complainant from the trust and thereafter, the complainant approached the concerned Police Station by submitting a complaint against the said Khanderao Watane and others. However, since the Police Station did not take cognizance of the said complaint, the complainant filed Misc. Criminal Application No. 142/2013 before the Judicial Magistrate First Class, Jintur for the offences punishable under Section 420, 467, 470, 471 r/w. 34 of Indian Penal Code against the applicants. It appears that, the Judicial Magistrate First Class, Jintur passed an order directing the investigation under Section 156 [3] of Criminal Procedure Code, and accordingly, the investigation was complete and charge-sheet came to be filed.

14. Upon careful perusal of the material placed on record, it appears that, there are allegations of preparation of false affidavit of the complainant by giving impression that the complainant has consented for preparation and filing of such affidavit. In fact, the complainant was not aware about the preparation and filing of such affidavit, wherein it is shown that, the complainant has given consent for certain things. There is also allegation about the forged signature of the complainant. Therefore, there are specific allegations against applicant No. 1 Khanderao Dadaraoji Watane. There is also allegation that, the false affidavit of the complainant which was filed in the record, the stamp paper was not purchased by the complainant, and even he has not signed the said affidavit. There is also allegation that in family dispute i.e. Misc. Application No. 09/2008 [Smt. Gopabai Dadarao Watane Vs. Nil], though the complainant was not aware about the said proceedings, in order to receive an amount of Rs. 73,623/- from the Marathwada Gramin Bank, Branch Wazar [Bk.], Taluka Jintur from Saving Account No. 1362 i.e. the account of the deceased father of the complainant and the applicant No. 1, the applicant No. 1 Khanderao Dadaraoji Watane filed application as legal heirs, and in the said proceedings, Vakalatnama of Advocate Mr. R.A. Sharam was filed to represent the complainant. In fact, the complainant has not signed the said Vakalatnama or application. However, accused Khanderao and others have cheated the complainant and also misled Advocate Shri Sharma.

15. There are allegations in the complaint about affidavit dated 6th April 2010 to be forged, which was produced before Charity Commissioner. If the signatures of the complainant in other records are perused, there is apparent difference and thus there is prima facie case. According to the complainant, such acts were committed by the Accused No. 1 with the help of other accused persons to help him. Apart from affidavit dated 6th April 2010, complaint refers to documents in Misc. Application No. 9 of 2008 for withdrawal of money. There is Vakalatnama of Advocate Rameshwar Sharma with signatures purporting to be of accused persons within which the complainant claims that his signature was forged. Similar is the condition with Misc. Application where also all the accused appear to have signed and the document purports to be having signature of the complainant which he is denying. It appears, Investigating Officers have taken sample signatures of the accused persons under Panchnamas. Report of the handwriting expert is awaited. Although charge-sheet has been filed, it does not appear that the statement of Advocate Sharma was recorded though his statement appears to be necessary to record, in view of the allegations in the complaint. As charge-sheet has been filed, action under Section 173(8) of Cr.P.C. would remain for the prosecution. In the circumstances, it would not be appropriate to interfere in the matter to quash the proceedings.

16. For the above reasons, the Criminal Application is rejected.

