(2019) 02 RAJ CK 0131

In the Rajasthan High Court

Case No : Criminal Misc(Pet.) No. 827, 829, 832 Of 2019

Narendra Kumar Rawal And Ors — APPELLANT

Vs

State Of Rajasthan And Ors — RESPONDENT

Date of Decision : 18-02-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 156(3), 482
Indian Penal Code, 1860 — Section 120B, 406, 420
Banking Regulation Act, 1949 — Section 22

Citation : (2019) 02 RAJ CK 0131

Hon'ble Judges : Pushpendra Singh Bhati, J

Bench : Single Bench

Advocate : Rajiv Bishnoi, M.S. Panwar

Final Decision : Disposed Off

Judgement

1. The petitioner(s) have preferred this petition for sum and substance claiming following relief: -

SBCr. Misc. Petition No. 827/2019

'It is, therefore, most humbly and respectfully prayed that the Misc. Petition may kindly be allowed and the FIR NO. 184/2017 dated 08.9.2017, Police Station Sirohi, District Sirohi may kindly be quashed and set aside qua the petitioners. "

2. The complainant filed a complaint stating that the petitioners are office-bearers of the Cooperative Society indulging in banking activity by providing loan on interest basis. The complaint alleged that the Cooperative Society invited people through advertisement and pamphlets. The complainant deposited the amount on assurance of safe returns but since the same is not being paid, the present FIR is lodged.

3. Learned counsel for the petitioners makes a limited submission that from record it is clear that vide order dated 7.9.2018, the process of liquidator being adopted and the Liquidator disbursed the amount due to the persons like the

complainant by adopting proper process of law.

4. Learned counsel for the petitioners also shows a public notice given by the Liquidator on 15.10.2018 by which claims of the persons like the petitioners have been called for by the Liquidator to be settled.

5. Learned counsel for the petitioners further submits that claims are likely to be settled as the Liquidator has already started functioning. He has relied upon the judgment passed by this Court in the matter of Purshottamdas Vaishnav Vs. State of Raj. & Anr. passed in SB Cr. Misc Petition No. 2524/2016 decided on 13.9.2017 which was decided as follows:-

1. The petitioner has preferred this criminal misc. petition under Section 482 Cr.P.C. for quashing of FIR No.11/2016 dated 12.01.2016 registered at Police Station Kotwali, Sirohi and all the proceedings pursuant to the FIR for the alleged offences under Sections 420 & 406 of IPC.

2. Learned counsel for the petitioner states that same controversy has been settled by a coordinate Bench of this Court in S.B. Criminal Misc. Petition No.2708/2016 Purshottamdas Vaishnav Vs. State of Rajasthan & Anr. vide order dated 13.04.2017. The judgment read as under:

"By the instant misc. petition under Section 482 Cr.P.C. accused-petitioner is imploring annulment of FIR No.59/2016, registered at Police Station Kotwali, Distirct Sirohi. In the impugned FIR, respondent-complainant has alleged that petitioner has committed offences punishable under Section 420, 406 & 120- B IPC.

The facts, apposite for the purpose of this petition, are that a complaint, laid by second respondent before the Chief Judicial Magistrate, Sirohi (for short, 'learned trial Court') attributing offences aforesaid against petitioner, is forwarded to Police Station Kotwali, District Sirohi under Section 156(3) Cr.P.C. for investigation. In the complaint, it is alleged by the complainant that petitioner, Purshottam Das, the Chairman of Argosy Credit Co-operative Society, Sirohi (for short, 'Society') in connivance with other elected members and officials of Society, has cheated him. As per version of the complainant, he opened a fixed deposit on 07.02.2014 in which he deposited Rs.30,000/- for a fixed term of twenty four months which was matured on 07.02.2016 with maturity amount of Rs.41,419/- but on maturity of his account, the amount aforesaid is not paid to him despite his repeated requests and persuasions. It is in that background, the complainant alleged that the petitioner in connivance with other officials of the Society has misappropriated the amount of public constituting aforesaid offences against him and other accused.

In order to lay challenge to the FIR, petitioner has taken shelter of order dated 14.05.2015, passed by this Court in D.B. Civil Writ Petition(PIL) No.26/2013 (Sajjan Singh Bhati Vs. State of Rajasthan & Ors.), wherein Court passed following order:-

"The writ petition is partly allowed with a direction that respondents 9 to 12 or any other co-operative society or the multi-state co-operative societies registered under the Rajasthan State Cooperative Societies Act, 2001 and Multi-State Cooperative Act, 2002, shall not accept the deposit of any kind and under any scheme from the public including, nominal members ordinary members of the members of any category of these societies, except after obtaining licence under Section 22 of the Banking Regulation Act, 1949."

The positive assertion of the petitioner is that due to the order passed in aforesaid PIL, all the banking activities of the Cooperative Societies within the State of Rajasthan completely closed and made inoperative and that being so the amount deposited by the complainant and other incumbents could not be paid to them by the Society. The petitioner has also made sincere endeavor to apprise the Court that there is no ill-intention on his part to misappropriate the amount of the complainant and the Society is ready and willing to pay requisite amount to the complainant in part as per availability of cash and in ratio of entitlement of its member/customer.

The petition came up before the Court on 03.10.2016 when notices were issued and learned Public Prosecutor accepted notices for the State. Pursuant to the notices issued to respondent-complainant nobody has appeared on his behalf.

I have heard learned for the petitioner, learned Public Prosecutor and perused the materials available on record.

At the outset, it is observed that being in helm of affairs of the Society as its Chairman the petitioner was under an obligation to pay requisite amount to the complainant upon maturity of his Fixed Deposit Account. Thus, dilly-dallying and reluctance on the part of petitioner to pay requisite amount of the complainant has rightly prompted him to initiate action against him. While, it is true that decision rendered by the Division Bench in PIL aforesaid has forced the Society to stop its banking activities but then a legitimate amount, which the Society owes to its member/account holder, cannot be denied to him on that pretext. However, in the backdrop of hampering of banking activities as a consequence of judicial intervention, it is rather difficult to fathom that gravamen of the charge attributed to him is prima facie made out. Moreover, factum of acknowledgment by the petitioner to pay requisite amount to the complainant has also persuaded this Court to believe that prima facie criminal delinquency of the petitioner for the aforesaid offences is under serious cloud. Although, factual report submitted by learned Public Prosecutor indicates that charge-sheet against one of accused, named in the FIR, Nagendra Rawal, has been filed for the aforesaid offences but then, this sort of development itself cannot be a decisive factor to decline interference in the matter at this stage. It is also brought to notice of the Court by learned counsel for the petitioner that entire amount, deposited by the complainant under Fixed Deposit Account of the Society, has been paid to the complainant, cannot be eschewed by the Court for appreciating his afflictions. Concurrence of the learned Public Prosecutor aforesaid submission of learned counsel for the petitioner is also significant in the light of allegations made in FIR. That apart, nonappearance of the complainant, despite service of notice, also strengthens belief of the Court that after receiving his requisite due amount he too is not interested to pursue the matter against the petitioner. Therefore, taking into account peculiar facts and circumstances of the instant case, I feel persuaded to exercise inherent jurisdiction ex debito justitiae to do real and substantial justice for the administration of which alone Courts exist. In my considered opinion, it would be an abuse of the process of the Court to allow any action which would result in injustice and prevent promotion of justice.

The upshot of the above discussion is that instant criminal misc. petition is allowed and the impugned FIR and further proceedings pursuant thereto are hereby quashed and set aside."

3. Learned counsel for the petitioners states that the amount due to the complainants shall be paid in phased manner and the closure of the FIRs shall be sought after clearing of such payments. Learned counsel for the petitioners states that in this regard, they shall submit necessary details before the concerned investigating officer alongwith their representation and after the payments are made, the investigating officer may complete the investigation strictly in accordance with judgment passed by a coordinate Bench of this Court, which is already reproduced above.

4. In view of the above, it is directed that till conclusion of the investigation, the petitioners shall not be arrested and in case need arises, either of the parties shall be at liberty to approach this Court again. Further, it is expected that the entire due payment shall be settled in an expeditious manner, preferably within a period of six months from today. It is needless to say that for closure of the FIR, the pre-requisite would be that the entire outstanding payment shall be settled between the parties, as indicated above.

5. With the aforesaid observation and direction, the present misc. petition is disposed of."

Learned counsel for the petitioner assures the court that the payment in the phase manner has already been started and the grievance of the complainant shall be sorted out very soon.

Learned Public Prosecutor has vehemently opposed any indulgence in the matter as the payments to the complainant and other persons is still due. "

6. After hearing learned counsel for the parties, it is directed that the petitioners shall submit all necessary details of the functioning of the Liquidator and the funds being disbursed to the aggrieved persons like the complainant before the IO. The IO shall verify the process of disbursement. In case the IO is satisfied that the disbursement is being taken place in accordance with law and the entire due payment is being settled between the parties then, he may complete the investigation accordingly. The I.O. shall be required to arrive at such satisfaction

within a period of three months from today. However, in case the IO after thorough investigation finds that the amounts taken from the complainant is not being disbursed to him by any means of making legal payment then he shall be free to arrest the petitioners after giving them 15 days previous notice. This court records the assurance given by learned counsel for the petitioners that the outstanding payment is being settled between the parties.

7. The misc. petitions are accordingly disposed of.

