(2010) 04 P&H CK 0454

In the Punjab And Haryana At Chandigarh

R. William Anand and Another — APPELLANT

Vs

State of Haryana and Another — RESPONDENT

Date of Decision : 27-04-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 155, 156, 482
Penal Code, 1860 (IPC) — Section 120B, 204, 406, 408, 409

Citation : (2010) 04 P&H CK 0454

Hon'ble Judges : Sabina, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sabina, J.—Petitioners have filed this petition u/s 482 of the Code of Criminal Procedure for quashing FIR No. 27 dated 25.11.2009, under Sections 204, 408, 409, 420 and 120B of the Indian Penal Code (''IPC'' for short), registered at Police Station State Vigilance Gurgaon, Haryana.

2. The contents of the FIR (Annexure P-4) reads as under:

It is stated that inquiry report No. 8 dated 1.7.2008 was received from the Chief Secretary, Haryana Government, Haryana vide letter No. 63/47/2007-Vig.II dated 12.6.2008 along with letter of Director General of Police, State Vigilance Bureau, Haryana, Panchkula bearing No. 11113/1-2/SVB (Haryana dated 2.7.2008 in the office of SP, State Vigilance Bureau, Haryana, Gurgaon. This was earlier investigate by Shri Ramesh Pal, Deputy Superintendent of Police, SVB Unit, Faridabad and thereafter Sh. Manbir Singh, Inspector, SVB, Haryana, Mewat in which in addition to other allegations there were allegations under charge No. 1 and charge No. 4. There were allegations of misappropriation of grants received from DPS, Mewat and the funds collected by DPS, Mewat. On inquiry of allegation No. 1, it was found that Mewat Development Authority entered into an agreement with DPS Society for upgrading the educational standard of DPS Schools in the year 1997. Mewat Development Authority gave a grant of Rs.

4,10,55,558/- between the year 1997-98 to 2004-05 to the Director, DPS, Nuh, Distt. Mewat. As per the balancesheet, Director, DPS Society between the period 1997-98 to 2004-05 out of the total grant of Rs. 4,10,55,558/- spent an amount of Rs. 2,80,95,557/- of salary and provident fund of teachers and other staff of three schools functioning in Nuh, Tauru and Ferozepur Zirka. An amount of Rs. 76,00,802/- was spent on the office, on the vehicles, printing stationery, maintenance of telephone, advertisement of the DPS Society and Rs. 55,27,905/- was spent on school buses, staff cars, computers, furniture, library books and construction of building and total amount of Rs. 4,12,24,264/- was spent. In this expenditure Rs. 1,68,716/- was spent in excess which was received as interest from the banks. Complete details of the account are available in account No. 14735/-being maintained in Canara Bank, Gurgaon. In addition an amount of Rs. 2,80,95,557/- which was received as grant was deposited in the Bank accounts. The complete details of the income and expenditure of the school is available in cash book, salary register, vouchers of the expenditures etc. in the records of the school. Even school prepares year wise balance sheet every year and sent the same to DPS Society, Mewat. In this way, the total amount of Rs. 2,80,95,557/- spent on the school by the DPS Society was fund to be in order. But Mrs. R. William and Sh. Narinder Kumar, Chairman, DPS Society, Delhi and Sh. Ravinder Kumar, Accountant currently working as MDA, Nuh spent Rs. 76,00,802/- between the period of 1997-98 to 2004-05 in their office and Rs. 55,27,905/- on capital and in this way did not produce the cash book, ledger, voucher bill etc. of total expenditure of Rs. 1,31,29,707/-. In this way, the account by not coordinating with the investigation and with the intention of misappropriating the funds have not produced the connected records. Under charge No. 4, it was found that DPS, Mewat, collected donations through account No. 21040 in the name of EMC in Canara Bank, Gurgaon between the period 1998 to 8.2.2004, an amount of Rs. 1,18,43,549/- in account No. 15371 DPS Pupils Fund in Canara Bank, Gurgaon between the period 1998 to 19.6.2000 an amount of Rs. 10,59,068/- in account No. 250101, DPS, Mewat in the name of EMC Punjab National Bank, Gurgaon between the period 8.1.2002 to 28.9.2005, an amount of Rs. 79,66,737/- were deposited. Similarly, in account No. 15808 DPS Vocational (Sewing Centre) being operated in Canara Bank, Gurgaon between the period 1.8.1998 to 25.3.2003 an amount of Rs. 2,21,310/- was deposited. In this way an amount of Rs. 2,11,00,644/- was deposited and withdrawn in all the four accounts mentioned above. Regarding expenditure of this amount Smt. R. William, Ex. Director, DPS Mewat, Sh. Narinder Kumar, Chairman, DPS Society, New Delhi did not produce cash book, voucher, bill etc. During inquiry and the said record is also not available in DPS Society, Mewat. In this way, Mrs. R. William, Ex. Director, DPS, Mewat, Sh. Narinder Kumar, Ex. Chairman, DPS Society, East of Kailash, New Delhi and Sh. Ravinder Kumar, Ex-Accountant, DPS, Mewat currently accountant MDA, Nuh Distt. Mewat by not cooperating in investigation and by destroying the record are guilty of misappropriating an amount of Rs. 2,11,00,644/-. In this way, the accused mentioned above, as per charge No. 1 destroying the record have misappropriated Rs. 1,31,28,707/- out of grant and as per charge No. 4 an amount of Rs. 2,11,00,644/- out of the donations received and finding a prima facie case u/s 204, 406, 409, 420, 120B IPC directions were issued to reduce an FIR. An FIR u/s 204, 406, 409, 420, 120B IPC be registered against Mrs. R. William, Ex. Director, DPS, Mewat. Sh. Narinder Kumar, ex-Chairman, DPS Society, East of Kailash, New Delhi and Sh. Ravinder Kumar, Ex-Accountant, DPS, Mewat currently accountant MDA, Mewat and in case during investigation the connivance of the other people is found, the same may also be included. The requisite record is enclosed.

3. Learned Counsel for the petitioners has submitted that as per Clause 15 of the agreement (Annexure P-1), all questions relating to the interpretation and meaning of this agreement and any other dispute and differences arising between the parties were liable to be referred to the Arbitrator. The petitioners had no concern with the amount in question. No amount had been misappropriated by the petitioners. The annual balance sheets were duly audited by the DPS society Mewat, as well as the Internal Auditors sent by the Government of Haryana and the Auditors of the Accountant General, Haryana.

4. After hearing learned Counsel for the petitioners, I am of the opinion that this petition deserves dismissal.

5. In the case of State of Haryana and others Vs. Ch. Bhajan Lal and others, , the Apex Court has held as under:

The following categories of cases can be stated by way of illustration wherein the extraordinary power under Article 226 or the inherent powers u/s 482, Cr.P.C. Can be exercised by the High Court 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 chennelised 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 complainant/ respondent No. 2, 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 FIR do not disclose a cognizable offence, justifying an investigation by police officers u/s 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 no disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR 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 Magistrate as contemplated u/s 155(2) of the Code.

(5) Where the allegations made in the FIR 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 specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of aggrieved party.

7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceedings 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.

We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.

6. There are serious allegations levelled in the FIR against the petitioners qua misappropriation of the grant. As per the allegations Rs. 76,00,802/- had been spent between the period 1997-98 to 2004-05 in the office of the petitioners and Rs. 55,27,905/- on the capital. The petitioners had failed to produce cash book, ledger, voucher bill etc. qua expenditure of Rs. 1,31,28,707/-. The arbitration clause relates to the interpretation and meaning of the agreement and other differences arising between the parties either during the subsistence of the agreement or upon termination thereof. However, FIR had been lodged qua misappropriation of the grant. No ground for scuttling the criminal proceedings at the very threshold is made out.

7. Accordingly, this petition is dismissed.

