
(2010) 02 RAJ CK 0114

In the Rajasthan High Court

Case No : Criminal Miscellaneous Petition No. 2362 of 2009

Raghuraj Rathore and Another

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 15-02-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 155(2), 156(1), 173, 173(2), 482
Penal Code, 1860 (IPC) — Section 120B, 420, 468

Citation : (2011) 1 RLW 582

Hon'ble Judges : Mahesh Chandra Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mahesh Chandra Sharma, J.—Heard learned Counsel for the Petitioners, learned Counsel for the complainants and the learned Public Prosecutor.

2. Misc. Petitioners Nos. 2362/2009, 2358/2009, 2359/2009 and 2360/2009 respectively have been filed by the Petitioners Raghuraj and J.S. Rathore for quashing the FIR No. 204/2009 lodged by Dr. Radhey Shyam Gupta, FIR No. 200/2009 lodged by Rajkumar Mehandirata, FIR No. 206/2009 lodged by Govind Kumar Ghiya and FIR No. 198/2009 lodged by Dr. Jogendrapal Dua, and Misc. Petition No. 2361 has been filed by the Petitioners Raghuraj, J.S. Rathore and C.K. Singh for quashing the FIR No. 205/2009 lodged by Suresh Pareek. All these FI Rs. have been registered at Police Station Jyoti Nagar, Jaipur City (South) for the offence under Sections 420, 468 and 120B IPC. Since the Petitioners have prayed for quashing of the FI Rs in all these five misc. petitions in the matter of cheating the complainants for admission in MBA in K.J. Somaiya Institute of Management Studies and Research, Vidya Nagar, Vidhya Vihar (East) Mumbai, they are being disposed by this common order.

3. It may be mentioned that earlier the Petitioners presented writ petitions and by the order of this Court dated October 20, 2009 the writ Petitioners were converted into criminal miscellaneous petitions. Notices in all these petitions

were issued to the complainants and after service of notice on them, Mr. Suresh Shahni puts in appearance on behalf of the complainants in all these matters.

4. Facts in Misc. Petition No. 2362 of 2009 are taken into consideration. In the petition it has been submitted that the Petitioner No. 1 Raghuraj Rathore wanted admission in M.B.A. Course in Mumbai and his father Petitioner No. 2 came in contact with Mahaveer Sarang and Sushil Bishnoi. They assured them that they can arrange the admission in K.J. Somaiya Institute of Management Studies and Research, Vidya Nagar, Vidya Vihar (East) Mumbai. They confirmed that they have to make payment of Rs. 7,50,000/- as donation and it is an additional amount. The Petitioners were directed to prepare a draft of Rs. 1,10,000/- in the name of SIMSR, Mumbai. The Petitioner No. 2 along with his son went to Mumbai. At Mumbai they were introduced to Dr. Shreenivasan as admission and management committee member. The formalities were completed in connection with admission and amount was paid along with demand draft. Further a demand draft of Rs. 25,000 was also asked, which was prepared and given to Mr. Shashi Shekhar Sharma. The Petitioner No. 2 J.S. Rathore received admission letter and receipts of demand draft. They also collected Rs. 7,50,000/- cash from the Petitioners. When they went to Mumbai to join the institute they came to know that no such admission letter or demand draft has been received by the institute. Along with petition, the Petitioners filed following documents:

(1) Photostat copy of letter issued by Prof P.V. Narsimham, Director General, K.J. Somaiya Institute of Management Studies and Research Mumbai.

(2) Photocopy of receipt of Rs. 25,000 and Rs. 1,10,000 by the Management Institute, Mumbai.

(3) Photostat copy of schedule of fees for PGDM Programme.

(4) Photostat copy of confirmation letter for admission of Raghu Raj Singh dated 2.2.2009.

5. In the petition, it has been stated that on coming to know that they have been cheated at Mumbai, the Petitioner Jogendra Singh immediately lodged complaint against Mr. Shashi Shekhar Sharma, Mahavir Sarang and Mr. Sushil Bishnoi, with the Deputy Commissioner of Police Zone VI, 4th Floor New Administration Building, GM Marg, Mumbai. The Police at Tilak Nagar, Police Station registered the FIR No. 159 of 2009. It has been stated in the petition that the complainant Dr. Radhey Shyam Gupta came to know about the admission of the Petitioner Raghuraj Rathore in K.J. Somaiya Institute of Management Studies Mumbai he contacted the Petitioner No. 2 J.S. Rathore, who stated the facts about admission of his son. The complainant Radhey Shyam Gupta himself went to Mumbai, met with those persons and paid the amount at Mumbai. It has been stated in the petition that when the Petitioners were cheated at Mumbai and stated about lodging of the FIR, the complainant Radhey Shyam was also told to lodge the report at Mumbai. A sum of Rs. 3,50,000/- cash and two drafts of 2,85,000 and 35,000 were returned to the complainant by the accused Sumit Sharma. When full

amount was not received by the complainant Radhey Shyam Gupta then instead of lodging report at Mumbai lodged the report at Jaipur implicating the Petitioners. The occurrence took place on 15.4.2009 and the FIR was lodged on 23.8.2009 at 6.50 p.m. on the basis of complaint submitted by Dr. Radhey Shyam Gupta before the Addl. Chief Judicial Magistrate No. 8 Jaipur City on 19.8.2009 FIR No. 204/2009 was registered.

6. The Petitioners submitted that in order to humiliate and pressurize them the complainants filed the FIR against them, hence they made prayer for quashing the same. The learned Counsel for the Petitioners argued that the FI Rs. lodged against the Petitioners are unconstitutional. The criminal proceeding is manifestly initiated with malafide intention and the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance and with a view to spite him to private and personal grudge, which is clear from the facts of the case. The Petitioners stated that the cases of the Petitioners are squarely covered by the judgment delivered by the Apex Court in State of Haryana v. Chaudhary Bhajan Lal AIR 1982 SC 604 . There was no intention of the Petitioners to cheat the complainants. From perusal of the FI Rs. it is clear that the dispute is between complainants and other persons Shashi Shekhar Sharma and Sumit Sharma to whom the complainants made payment and the complaints received back some amount from them. The learned Counsel for the Petitioners also placed reliance on the case of T.T. Antony Vs. State of Kerala and Others,

7. Mr. Suresh Shahni, learned Counsel for the complainants and Mr. Peeyush Kumar, learned Public Prosecutor argued that the FI Rs completely disclosed the commission of offence by the accused Petitioners and the accused Petitioners cheated the complainants and in the garb of giving admission to the complainants sons in MBA course at Mumbai stated them to make payments and they have introduced some persons at Mumbai. The complainants made payment but did not get admissions and on being cheated by the Petitioners filed the complaints before the Addl. Chief Judicial Magistrate, who forwarded them to the Police Station, Jyoti Nagar, where the same were registered as FI Rs. as mentioned above. The FI Rs. completely disclosed that the accused Petitioners and other accused cheated the complainants. The FI Rs. were rightly registered against them. The learned Public Prosecutor argued that the money taken from the complainants has to be recovered by the investigating agency. Thus it is a clear case of cheating the complainants and their sons. The Petitioners have filed these misc. petitions for getting the FI Rs. quashed. The matter has to be investigated and without investigation in the matter, the truth cannot be found out. In these circumstances the learned Counsel for the complainants and the learned Public Prosecutor argued that the petitions filed by the accused Petitioners are an abuse of process of law. Both the counsel argued that the petitions filed by the Petitioners are liable to be rejected. The learned Counsel for the complainants and the learned Public Prosecutor in support of their arguments placed reliance on State of Haryana and others Vs. Ch. Bhajan Lal and others, and State of Karnataka and Another Vs. Pastor P. Raju,

8. Before proceeding further it would be necessary to have a look at the provisions of Section 482 Code of Criminal Procedure, which reads as under:

482. Saving of inherent powers of High Court. 482. Saving of inherent powers of High Court. Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

9. It is also necessary to have a look at the principles enunciated by the Apex Court in which are as under:

(a) where the allegations made in the First information Report or the complaint, 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;

(b) 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;

(c) where the uncontroverted allegations made in the FIR or "complaint and the evidence collected in support of the same do not disclose 265 the commission of any offence and make out a case against the accused;

(d) 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 a Magistrate as contemplated u/s 155(2) of the Code;

(e) 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;

(f) 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;

(g) 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. [305 D-H; 306 A-E]

10. In the Apex Court in para 11 observed as" under:

11. There is another aspect of the matter which deserves notice. The FIR in the case was lodged on 15.1.2005 and the petition u/s 482 Code of Criminal Procedure was filed within 12 days on 27.1.2005 when the investigation had just commenced. The petition was allowed by the High Court on 23.2.2005 when the

investigation was still under progress. No report as contemplated by Section 173 Code of Criminal Procedure had been submitted by the incharge of the police station concerned to the Magistrate empowered to take cognizance of the offence. Section 482 Code of Criminal Procedure saves inherent powers of the High Court and such a power can be exercised to prevent abuse of the process of any Court or otherwise to secure the ends of justice. This power can be exercised to quash the criminal proceedings pending in any Court but the power cannot be exercised to interfere with the statutory power of the police to conduct investigation in a cognizable offence. This question has been examined in detail in Union of India (UOI) Vs. Prakash P. Hinduja and Another, where after referring to AIR 1945 18 (Privy Council) , H.N. Rishbud and Inder Singh Vs. The State of Delhi, ; State of West Bengal Vs. S.N. Basak, Abhinandan Jha and Others Vs. Dinesh Mishra, and State of Bihar and Another Vs. J.A.C. Saldanha and Others, it was observed as under in para 20 of the reports:

20. Thus the legal position is absolutely clear and also settled by judicial authorities that the Court would not interfere with the investigation or during the course of investigation which would mean from the time of the lodging of the First Information Report till the submission of the report by the officer in charge of police station in court u/s 173(2) Code of Criminal Procedure, this field being exclusively reserved for the investigating agency.

This being the settled legal position, the High Court ought not to have interfered with and quashed the entire proceedings in exercise of power conferred by Section 482 Code of Criminal Procedure when the matter was still at the investigation stage.

11. I have gone through the FI Rs. , particularly the documents enclosed with the petitions and the arguments submitted by both the parties and cases relied upon by them and the principles enunciated above in the cases of (supra) and (supra), in my considered opinion at this stage in the instant cases, the allegations made in the FIRs., do clearly constitute a cognizable offence and cases do not call for the exercise of inherent powers of this Court u/s 482 Code of Criminal Procedure to quash the F.I. Rs. The cases are still under investigation and the police is in the process of collecting evidence. The investigation is necessary and the same cannot be stopped at this stage in a proceedings u/s 482 Code of Criminal Procedure.

12. In view of the above, the misc. petitions filed by the accused Petitioners are rejected. The interim orders if any stand vacated.