
(2010) 08 JH CK 0066
In the Jharkhand High Court
Case No : Criminal Rev. No. 427 of 2008

Shashikant C. Adesara

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 04-08-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 202, 397, 401
Penal Code, 1860 (IPC) — Section 120B, 34, 406, 420, 465

Citation : (2010) 4 JLJR 84

Hon'ble Judges : Dilip kumar sinha, J

Bench : Single Bench

Advocate : Barun Kumar Sinha and Samir Kumar Lal, for the Appellant;
Assistant Public Prosecutor, A.K Kashyap K.P. Choudhary and A.R. Choudhary for
the O.P. Nos. 2 to 6, for the Respondent

Final Decision : Dismissed

Judgement

D.K. Sinha, J.—This Cr. Revision is directed against the order impugned dated 25.02.2008 passed by Shri D.C. Awasthi, Judicial Magistrate, 1st Class, Jamshedpur in C/1-477/2005 by which the Opposite Party Nos. 2 to 6 were discharged for the alleged offence under Sections 406/420/465/467/468/471/120B/34 of the Indian Penal Code by observing that the case, which was presented by the complainant Ramesh Kumar Ranpara was purely a case of civil nature and the complainant could not provide sufficient material to frame charge in the aforesaid sections against them, as such, the Opposite Party Nos. 2 to 6 were discharged.

2. The petitioner of this Cr. Revision was neither the complainant nor the accused opposite party in complaint C/1-477/2005 as such his locus to file the instant criminal revision has been challenged. Admittedly, the complainant did not prefer any revision nor the complainant has been impleaded as the opposite party by the petitioner herein who failed to associate himself so as to confer any legal right upon him to prefer this criminal revision by showing interest of the public at

large.

3. The prosecution story in short, as presented by the complainant Ramesh Kumar Ranpara, claiming himself to be the Secretary of Shri Jamshedpur Gujrati Samaj, a Society duly registered under Societies Registration Act, 1860 (hereinafter referred to as an Act) which was established in the year 1922 and thereafter a small school was opened in the year 1940. The school was registered in the year 1972 under the Act vide registration No. 82/Bihar/Patna. The complainant explained that the said school which was established by Shri Jamshedpur Gujrati Samaj was run by the Managing Committee of the said Samaj since the year 1940. As such, the affairs of the said school were owned and managed by Shri Jamshedpur Gujrati Samaj with its Constitution Rules and Regulation under the name and style "Narbharan Hansraj Gujarati M. E. School", Jamshedpur drawn under the instruction of the members of the Executive Committee in the year 1940. The Executive Committee consisting of 12 members were authorized by the Samaj to look after the affairs of the institutions, however, the complainant alleged that no general meeting of the Executive Committee of Shri Jamshedpur Gujarati Samaj could be convened for the last 10 years till the institution of the complaint case. It was alleged in the complaint that the Opposite Party No. 2 to 6 who claimed themselves to be the office bearers of the Samaj and the members of the Managing Committee of the schools, had no right to usurp or misappropriate the properties, income generated from N.H. Gujarati M.E. School and the another School namely D.N. Kamani High School, the latter being named by reason of the fact that the Kamani family i.e. the members of the Opposite Party were the donors who contributed in constructions of the school buildings and for such reason they were treating both the schools to be their personal properties though the same was registered under the Societies Registration Act at the instance of Shri Jamshedpur Gujarati Samaj. The complainant alleged that the Managing Committee of the schools was formed unauthorizedly by the members of the O.P. Nos. 2 to 6 on 18.09.2003 to suit their unholy, illegal, unlawful and mala fide objects and they manufactured certain documents purporting to be the deed of trust concerning schools and that the accused persons (Opposite Party Nos. 2 to 6 herein) were not furnishing the statements of income generated from resources and the expenditure of the schools and thereby misappropriated huge amount for their personal gains. It was more particularly alleged against the O.P. No. 6 Praful H. Gandhi that he in connivance and concert with the members of the Opposite Party No. 2 to 5 assumed the office of secretary of the so-called Managing Committee and thereby embezzled the funds including the subscriptions realized from the members of Gujarati Samaj.

4. The learned Judicial Magistrate meticulously dealt with all the Sections of the offence proposed by the complainant against the members of the Opposite Party Nos. 2 to 6 much less the offence alleged u/s 406 of the Indian Penal Code after examination of all the complainant's witnesses during enquiry u/s 202 Code of Criminal Procedure and came to finding that the alleged offences could not be

prima facie attracted against the O.P. No. 2 to 6 herein.

5. Mr. Barun Kumar Sinha learned Counsel for the petitioner submitted that after formation of separate Jharkhand State, Shri Jamshedpur Gujrati Samaj applied for fresh registration and accordingly the said Samaj was registered vide registration No. 129 dated 12.07 2004 under the Societies Registration Act, 1860 Pursuant to that the Samaj informed the Inspector General of Registration Bihar Patna to transfer their file to the jurisdiction of Jharkhand state, Ranchi. The members of the Opposite Party No. 2 to 6 claimed to be the members of original Gujrati Samaj on the basis of such registration in the year 1972 as also in the year 2004 and they also elected the members of the Executive Committee for the year 2003-04. Assailing the conduct of the members of the Opposite Party Nos. 2 to 6, learned Counsel explained that as per Rules and Regulation of Shri Jamshedpur Gujrati Samaj, a general meeting of the Samaj ought to have been convened for electing 5 members as trustee by majority of votes but the Opposite Party Nos. 2 to 5 who were the members of the same family, claimed themselves as the members of trustee as if they were elected by the majority votes in the general meeting, yet, they started raising subscription amount from the members of the Samaj for their own benefits on the pretext of renewal of membership of the individual.

6. Learned Counsel attracted attention by submitting that the allegations were specific against the members of the Opposite Party Nos. 2 to 6 in the statement of the witnesses examined during enquiry and the learned Judicial Magistrate having been prima facie, satisfied with the materials, took the cognizance of the offence under Sections 406/420/465/467/468/471 r/w 120B of the Indian Penal Code against the accused of the complaint, who were the O.P. Nos. 2 to 6 herein but later on to utter surprise of the petitioner, on the same set of materials on record the learned Judicial Magistrate by the impugned order dated 25.02.2008 discharged the members of the Opposite Party by observing that the case in hand was a case of civil nature.

7. Mr. A.K. Kashyap, learned Sr. Counsel, appearing on behalf of the members of the Opposite Party Nos. 2 to 6 strongly confronted the submissions as made above and raised the issue of locus of the petitioner herein to file the present Criminal Revision as he was neither the informant nor the witness in the entire criminal proceeding in Complaint Case No. C/1-477/2005 and no prejudice or injustice has been caused to the petitioner as he cannot be said to be an aggrieved by the impugned order for the reason that the petitioner was never a member of Shri Jamshedpur Gujrati Samaj which was earlier registered under the Act vide Registration No. 82/1971-72 in the erstwhile State of Bihar and later on it was registered under the Act vide Registration No. 129/2004-05 after creation of separate State of Jharkhand pursuant to the notice published by the State Government calling upon for renewal of the earlier registration of societies.

8. Mr. Kashyap learned Sr. Counsel further pointed out that a parallel Samaj in the same name had first made application in 2004 by the rival group which was

registered under the Act vide Registration No. 129/2004-05 after State of Jharkhand was created, having without reference or bearing of any other registration much less of the year 1972 in the erstwhile State of Bihar, as such, the Registration No. 129/2004-2005 was totally different which was obtained by the rival group and had no relation at all with the Samaj which was a ready registered in the year 1972 in the erstwhile State of Bihar.

9. Mr. Kashyap asserted that the instant Criminal Revision was brought about by the petitioner with mala fide intention to harass the members of the Opposite Party with oblique motive, to settle personal vendetta and to take vengeance out of way. In that manner, the petitioner was abusing the process of law to frustrate the impugned order which was recorded on the basis of the materials. The learned Counsel reiterated that the petitioner did not have locus to invoke the revisional jurisdiction before the High Court when there was no error, illegality or impropriety in the impugned order while discharging the members of the Opposite Party Nos. 2 to 6 from their criminal liability.

10. Finally, Mr. Kashyap submitted that a Title Suit was already pending vide Title Suit No. 99 of 2005 wherein the creation of trust and many other relevant issues have been challenged and was yet to be adjudicated As regards ambit, scope and application of the offence alleged under Sections 465/467/468/471 r/w 120B and 34 of the Indian Penal Code were concerned, no prima facie material could be brought on the record during enquiry u/s 202 of the Code of Criminal Procedure before framing of charge so as to call for criminal liability of the Opposite Party Nos. 2 to 6, as such, this Criminal Revision may be dismissed being devoid of merit.

11. The petitioner has preferred this Criminal Revision under Sections 397 and 401 of the Code of Criminal Procedure with the prayer for setting aside the order impugned as discussed here-in-before which was recorded by Shri D.C. Awasthi, Judicial Magistrate, 1st Class on 25.02.2008 by which the accused of the Complaint Petition that was brought about by the complainant Ramesh Kumar Ranpara were discharged as the dispute/controversy raised by the complainant as against them i.e. the OP. Nos. 2 to 6 herein was found to be a dispute purely of civil nature. The locus of the petitioner Shashikant C. Adesara has been consistently challenged by the Opposite Party Nos. 2 to 6 explaining that the petitioner was neither the complainant nor the accused-Opposite Party in complaint Case No. C/1-477/2005, as such, he was not a competent party to file the instant criminal revision. Admittedly, the complainant did not prefer any revision nor he has been impleaded as the Opposite Party in the instant revision. The law is well settled that the criminal law is not to be used as an instrument of wrecking private vengeance. As a broad proposition, revisional interference may be justified where (a) the decision is grossly erroneous, (b) there is no compliance with the provisions of law (c) the finding of fact affecting the decision is not based on evidence (d) material evidence of the parties is not considered and (e) judicial discretion is given arbitrarily or perversely. It is further settled

law that the revisional powers of the High Court are to be exercised only to correct injustice and not merely to rectify illegalities and that the finding of the lower court may not be reversed merely because another view was possible.

12. Having regard to the facts and circumstances of the case, argument advanced on behalf of the parties, I find substance in the contention of the learned Senior Counsel for the Opposite Party Nos. 2 to 6 that though the cognizance of the offence was taken but the learned Judicial Magistrate having been satisfied with the materials collected during enquiry u/s 202 Code of Criminal Procedure observed that it did not entail, prima facie, complicity of the Opposite Party Nos. 2 to 6 for the alleged offences and further observed that the materials on record suggested that the controversy was in the nature of civil dispute the learned Judicial Magistrate was justified in discharging them from their criminal liability by a reasoned order to which I subscribe and uphold. Learned Counsel for the petitioner failed to show any illegality or irregularity in the order impugned or the impropriety of the Judicial Magistrate to draw such order. In the given facts and situation a stranger, unconcerned with the controversy cannot be permitted to wreck vengeance when the complainant did not find himself aggrieved by the order impugned by which the Opposite Party Nos. 2 to 6 were discharged from their criminal liability. The petitioner failed to associate himself with the dispute so as to confer a legal right upon him to prefer this criminal revision or by showing public interest at large and for that he would have invoked extraordinary writ jurisdiction of this Court, if at all. I do not find that the Judicial Magistrate has exercised his discretion arbitrarily or perversely while recording the order of discharge. The Counsel for the Opposite Party has admitted Title Suit there being already filed before the appropriate court for adjudication of certain controversies, which is likely to be adjudicated. The order impugned does not call for interference.

13. I, therefore, in the facts and circumstances of the case, find that this Criminal Revision is devoid of merit as such it is dismissed.