
(2017) 01 GUJ CK 0081
In the Gujarat High Court
Case No : 53 of 2006

SHRI VIMUKTI JATI KALYAN MANDAL

APPELLANT

Vs

STATE OF GUJARAT & ORS.

RESPONDENT

Date of Decision : 17-01-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 401](#), [Section 396](#), [Section 202](#), [Section 203](#) - High Courts powers of revision - Disposal of case according to decision of High Court - Postponement of issue of process - Dismissal of complaint

Citation : (2017) 01 GUJ CK 0081

Hon'ble Judges : Z.K.Saiyed

Bench : Single Bench

Advocate : PATEL, ?N.J.SHAH

Final Decision : Dismissed

Judgement

[1] The present Criminal Revision Applications have been filed by the applicant-original complainant under Section 396 read with Section 401 of the Code of Criminal Procedure, 1973 against the Judgment and order dated 15.10.2005

rendered by the learned Judicial Magistrate, First Class, Khedbrahma, Camp at Vijaynagar in Inquiry Case Nos.2 and 3 of 2004, whereby the the complaint filed against the respondents-accused is dismissed.

[2] The applicant filed a complaint being Inquiry Case Nos.2 and 3 of 2004 in the Court of learned Judicial Magistrate First Class, Khedbrahma Camp at Vijaynagar against the respondents-accused. It is stated in the complaint that the complainant is Vice President of Shri Vimukti Jati Kalyan Mandal having its registered No.F/207 dated 14.03.1986 with Charity Commissioner and registration No. Gujarat-210 dated 14.03.1986 Registrar, Co-operative Societies, Ahmedabad. The said trust is engaged in imparting education by establishing schools, etc. It is further stated that the said Trust by giving

advertisement on 24.07.2003 in Gujarat Samachar declared election of office bearers of the said Trust and constituted new executive committee by resolution No.5 dated 03.08.2003. That, one Ramanbhai Shankarbhai Solanki is elected as the President of the said trust and Jayantibhai Punjabhai is appointed as a Secretary of the said trust. That, the said charge in the body of the trust was informed to the office of Deputy. Charity Commissioner, Sabarkantha at

Himatnagar by changed report No.191 of 2003 dated 18.08.2003. That, the respondent No.3 to 10 hatched a conspiracy knowing fully well that they are not in the administration of the trust and not holding any legal position in the trust, as President, Secretary and members of the executive committee of the trust, had utilized the said position by fabricating bogus documents, letter pads, stamps etc. with a view to embezzle the funds of the trust and had embezzled an amount of Rs.85,000/- of maintenance grant for Uttar Buniyadi School from the office of Sub-Treasury, Vijaynagar plus an amount of Rs.49,886/- of salary grant and total of both the grant comes to an amount of Rs.1,34,886/- are withdrawn by issuing cheque without any authority to issue the same and deposited the said cheques by opening new accounts with State Bank of India, Khedbrahma and Dena Bank, Antarsumba where they claimed themselves to be an office bearers and/or members of the executive committee of the trust and thereby misappropriated the said amount.

[3] The learned Judicial Magistrate Fists Class, Khedbrahma recorded the statement of complainant with reference to the abovementioned complaint and issued inquiry under Section 202 of the Code of Criminal Procedure, 1973 and directed the Police Sub Inspector, Vijaynagar to produce

the record after investigation. Thereafter, the report was produced and learned trial Judge has dismissed the complaint under Section 203 of the Cr.P.C. on ground that all the witnesses are not examined on oath by the complainant. Coupled with the fact that the dispute is regarding the administration of the trust which falls within the scope of the Charity Commissioner and the complainant has not made complaint before the Treasury Officer and therefore, the learned trial Judge stated that alleged offence does not appear to have been committed and therefore, the complaint is required to be dismissed. The learned trial Judge has also observed that Investigating Officer has shown carelessness and not shown any positive response so as to get warrant for the arrest of the accused etc.

[4] Being aggrieved and dissatisfied with the order dated 15.10.2005, present Criminal Revision Applications have been filed by the complainant.

[5] Heard Mr. Vijay H. Patel for H.L. Patel Advocates, learned advocate for the applicant and Mr. N.J.Shah, learned Additional Public Prosecutor for the respondent-State.

[6] Mr. Vijay H. Patel, learned advocate contended that in present case, due to faulty and negligent investigation carried out by the

Investigating Agency, learned JMFC cannot dismiss the inquiry case Nos.2 and 3 of 2004 by exercising powers under the provisions of Section 203 of the Cr.P.C. He read the report of the Investigating Officer and documents produced on record and argued that it is not mandatory to examine all the witnesses before the learned trial Judge. He then submitted that the learned trial Judge has committed grave error and wrongly dismissed the inquiry case and therefore, he prayed to allow these applications.

[7] Mr.Shah, learned APP has contended that the learned trial Judge has rightly considered the report. If Investigating Officer could not collect the evidence, eventhough, without any supportable evidence produced on record, the learned trial Court cannot consider the inquiry case to be registered as criminal case.

[8] I have minutely perused the judgment and order of the learned trial Court. Section 203 of the Cr.P.C, reads as under:-

"203.Dismissal of complaint. If, after considering the statements on oath (if any) of the complainant and of the witnesses and the result of the inquiry or investigation (if any) under section 202, the Magistrate is of opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint, and in every such case he

shall briefly record his reasons for so doing.

[9] During the pendency of inquiry case and at the time of passing of the order, the complainant could have filed fresh complaint with supportable evidence, but the complainant failed to do so. Further, in light of provisions of Section 203 of the Cr.P.C., when no sufficient evidence is produced on record or statement of the complainant or any other witnesses does not reveal the commission of offence, then, learned Magistrate has a right to dismiss the complaint under Section 203 of the Cr.P.C. if the learned trial Judge is of the opinion that there is sufficient ground to prove the case, then learned trial Court could have briefly recorded the said reasons for rejection of the complaint. Prima- facie, it appears that as per the provisions of Section 203 of the Cr.P.C, learned trial Judge has not committed any grave error in dismissing the inquiry case. Both the revisions applications fail on law and there is no substance on the revision applications. Therefore, they deserve fate of rejection only. Therefore, both revisions applications are hereby dismissed. Record and Proceedings, if any, be sent back to the trial Court concerned, forthwith.