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(1986) 01 GAU CK 0007

In the Gauhati High Court

Case No : Criminal Revision No. 128 of 1976

State of Assam — APPELLANT

Vs

Reba Nath Bhattacharyya and Others — RESPONDENT

Date of Decision : 24-01-1986

Acts Referred:
Criminal Law (Amendment) Act, 1932 — Section 6
Penal Code, 1860 (IPC) — Section 109, 120B, 409, 420, 468
Prevention of Corruption Act, 1988 — Section 1(1), 5, 5(1), 5(2)

Citation : (1986) 2 GLR 70

Hon'ble Judges : T.C. Das, J;Manisana, J

Bench : Division Bench

Advocate : C.R. De, P.P, for the Appellant; J.P. Bhattacharjee, K. Sarma, C.K.S. Barua for O.P. No. 1, S. Medhi, B. Barman for O.P. No. 2 and Md. Sulaiman, M.A. Laskar and T.C. Sarma for O.P. No. 3, for the Respondent

Final Decision : Dismissed

Judgement

T.C. Das, J.—We are not at all convinced by the strenuous argument of Mr. C.R. learned Public Prosecutor that it is a fit case where the provision of Section 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act it attracted. The learned Special Judge before whom the trial proceeded bad rightly come to the contusion that the trial was not within the jurisdiction of the learned Special Judge as because there was no prima facie material to show that the accused persons could be tried Section 5(1)(d) reed with Section 5(2) of the P.C. Act and Section 120B of the Indian Penal Code. The four accused persons against whom offence report was submitted under Sections 420/468/477A/409 IPC read with Section 5(2) of the P.C. Act read with Section 109 of the Indian Penal Code were sent up for trial before the learned Special Judge, Assam at Gauhati. The learned Judge considered all the materials on record which were made available before him and found that there was no prima facie case against the opposite party No. 1 to frame charge u/s 5(2) read with Section 5(1)(d) of the P.C. Act and u/s 120B of the Indian Penal Code. There fore, the learned Judge who was

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empowered to try the offence u/s 6 of the Criminal law (Amendment) Act, found that it was not within the jurisdiction of the learned Judge to try the case against the opposite parties under the provision of law. The learned Judge further held that as the case was not covered by those materials to be tried by the Special Judge and the learned Judge having no jurisdiction to try the same, the office alleged to have been committed by the Court of ordinary jurisdiction and on that finding, the learned Judge declined to proceed further with the case.

2. We have heard Mr. C.R. De, learned Public Prosecutor as length as well as Mr. J.P. Bhattacharjee, learned Counsel appearing on behalf of the opposite party No. 1, Mr. S. Medhi appearing for the opposite party No. 2 and Mr. M.A. Laskar, and Mr. Sulaiman learned Counsel on behalf of opposite party No. 3 and 4. The learned public prosecutor has led in to the impugned order of the learned Special Judge. We have perused the impugned order and have found that the learned Judge while considering the material evidence on record found that the facts did not indicate dishonest mind of accused R.N. Bhattacharjee. It might be an act of irregularity, carelessness or rashness. But in a criminal charge if there is no material to show that the act of the accused was tainted with dishonest intention, it cannot amount to criminal misconduct within the meaning of Section 5(1)(d) of the P.C. Act unless a corrupt practice is illegally adopted to abuse the official position. The learned Judge found that there was so such dishonest intention appearing in the case against the accused R.N. Bhattacharyya to come to the conclusion that offence u/s 5(2) read with Section 5(1)(d) of P.C. Act and u/s 120B of the Indian Penal Code to rope the accused persons in the trial. Reliance is sought to be placed by Mr. C.R. De, learned public prosecutor on two decisions of their Lordship of the Supreme Court as reported in Dhaneshwar Narain Saxena Vs. The Delhi Administration, M. Narayanan Nambiar Vs. State of Kerala, (M. Narayanan Nambiar v. State of Kerala). There cannot be any dispute as to the proposition of law laid down by their Lordships in catena of cases of like nature relating to the offence publishable u/s 5(2) of the P.C. Act read with Section 1203 and Section 109 of I.P.C. In S.P. Bhatnagar Vs. State of Maharashtra, their Lordships held that Section 5(1)(d) of the P.C. Act requires that the abuse of the position in order to come within the mischief of this section must necessarily be dishonest so that it may be proved that the accused caused deliberate loss to the department. Also it is for the prosecution to prove affirmatively that the accused, by corrupt or illegal means or by abusing his position obtained any pecuniary advantage for some other person. Therefore, the question in his case arises as to whether the first accused obtained pecuniary advantage either for himself or for some other person by adopting corrupt or illegal means or by abusing his position of the office with dishonest intention. In the present case after going through the documents the learned Judge found that the facts repealed could not show that the accused No. 1 acted with dishonest intention and that other material ingredients were available to frame a charge u/s 5(2) read with Section (5)(d) of P.C. Act and u/s UOB read with Section 109 IPC. The opposite party No. 1 (first accused) filed an affidavit in-opposition in this case. Along with affidavit-

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in-opposition he has produced certain documents which were very much available before the learned Special Judge, It appears that the accused No. 1 acted at the direction of S.D.O. (Civil) Nalbari. The learned Special Judge also found that the materials available were not sufficient to rope the accused with charge u/s 5(2) read with Section 5(1) (d) and Section I20B of the Indian Penal Code. We have also found that the learned Special Judge correctly held that there was no sufficient ground for processing against the accused No. 1 along with others u/s 5(2) read with Section 1(1) (d) of P.C. Act and u/s 120B read with Section 109 of I.P.C.

3. As regards dishonest Intention Mr. J.P. Bhattacharjee, learned Counsel appearing on behalf of accused No. 1 has drawn our attention to the decisions of their Lordships of the Supreme Court in AIR 1977 SC 622 State of Karnataka Vs. L. Muniswamy and Others, S.P. Bhatnagar Vs. State of Maharashtra, (S.P. Bhatnagar v. State of Maharashtra). There cannot be any dispute on the principles as laid down by their Lordships of the Supreme Court in this regard. On going through the materials on record before us we do not find any reason for our interference with the impugned order passed by the learned Special Judge. The petition is accordingly dismissed being meritness.

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