
(2006) 11 AHC CK 0150

In the Allahabad High Court

Case No : Criminal Miscellaneous Writ Petition No. 6798 of 2006

Surendra Taneja

APPELLANT

Vs

Addl. District and Sessions Judge, Fast Track Court, Gautam
Budh Nagar and Others

RESPONDENT

Date of Decision : 30-11-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 202
Penal Code, 1860 (IPC) — Section 406

Citation : (2006) 11 AHC CK 0150

Hon'ble Judges : Poonam Srivastava, J

Final Decision : Partly Allowed

Judgement

Mrs. Poonam Srivastava, J.—Heard Sri Veer Singh and Sri K.K. Pandey, learned Counsel for the petitioner, Sri D.K. Tiwari Advocate for the contesting respondent No. 4 and learned A.G.A. for the State.

2. The orders dated 2242006 passed by the Additional District and Sessions Judge, Fast Track Court No. 2, Gautam Budh Nagar and 2452005 passed by the Judicial Magistrate, Gautam Budh Nagar are impugned in the instant writ petition.

3. The contesting respondent No. 4 preferred a Criminal Complaint under Sections 409, 406, 323, 504, 420 I.P.C. and the same was numbered as Complaint Case No. 245 of 1996, Lalit Mohan Dabral v. Surendra Taneja. He examined himself under Section 200 Cr.P.C. and filed Provident Fund Scheme Form 19 in support of the case. If the Magistrate summoned the petitioner under Sections 323, 406, 504 I.P.C. vide order dated 11 101996. Objection was preferred by the petitioner challenging the summoning order which was partly allowed by the Magistrate vide order dated 2452005. The learned Magistrate was of the view that only an offence under Section 406 I.P.C. is made out discharging the petitioner under Sections 323, 504, 506 I.P.C. The petitioner filed Criminal Revision No. 157 of 2005 which also stands dismissed vide order dated 2242006.

4. The submission on behalf of the petitioner is that no criminal offence is made

out and the order summoning the petitioner under Section 406 I.P.C. is illegal and liable to be quashed. It is emphatically argued that there was a settlement between the petitioner Surendra Taneja and Lalit Mohan Dabral on 1971995 before the ALC Sri S.P. Shukla. The copy of the settlement has also been brought on record as Annexure4 to the writ petition. Learned Counsel for the petitioner has tried to place various clauses of the settlement and also emphasized that the payment was made to the workman by means of Cheque No. 942710 for an amount of Rs. 8,000/ dated 771995 and Cheque No. 942718 for an amount of Rs. 85,000/ dated 1971995. According to clause 8 of the settlement, the total amount was for Rs. 93,000/ and, therefore, the entire amount was paid. The signatures on the settlement were made by the employer and workman. It is also stated that the parties had resolved all the controversies and all the pending disputes stands withdrawn by the respective parties. In view of the settlement, the proceedings initiated on the basis of the complaint, which was instituted on 1321996, could not continue. The copy of the complaint is annexed as Annexure1 to the writ petition. The allegation is that the accused refused to endorse his signature on the Employees Provident Fund Scheme Form 19 and money of his provident fund was also not deposited whereby an offence of misappropriation under Section 406 I.P.C. has been committed by the petitioner. Learned Counsel for the petitioner has also stated that the complainant had not produced any material to show that he continued to be in service and received salary subsequent to March, 1994. There is nothing on record to establish that he was on duty neither any attendance register was produced. Since the factory stood closed there was no occasion for the petitioner to continue in service. The copy of the information of closer of factory to the Additional Labour Commissioner has also been annexed as Annexure 8.

5. Learned Counsel for the contesting respondent No. 4 has disputed each and every argument of the learned Counsel for the petitioner. It is submitted that the proceedings were continuing at the stage when the evidence was to be recorded under Section 244 Cr.P.C, therefore, the factual aspects raised by the petitioner cannot be looked into by the High Court in exercise of jurisdiction under Article 226 of the Constitution of India. Besides various arguments that there is no evidence to prosecute the petitioner can also not be accepted at this stage. The evidence is yet to be recorded and this Court in exercise of writ jurisdiction cannot stifle the trial and pass an order of acquittal or discharge.

6. In the instant dispute it is admitted to both the parties that Lalit Mohan Dabral was an employee of the petitioner's company and certain amount from his salary was being deducted towards his provident fund. This deduction was 8.33% which was liable to be deposited in the account of the complainant, which was not done whereby an offence of misappropriation has been committed. A notice was given by the complainant requiring the employee (sic employer) to deposit the amount in his account. The petitioner denied any liability after the closer of the factory or any deduction from his salary, hence the dispute between the parties. The petitioner made specific denial before the revisional Court regarding the

document in possession of the complainant which was stated to be forged documents.

7. I have heard the respective Counsel for the parties and gone through the impugned orders and various documents relied upon. It is true that the petitioner's Counsel has annexed a copy of an alleged settlement dated 1971/1995 but on perusal of the counteraffidavit, it appears that the evidence is yet to be recorded on behalf of the complainant. Various documents are also to be adduced in support of his case, therefore, the claim of the petitioner that no criminal offence is made out against the petitioner and the summoning order is bad, cannot be accepted. Besides, the proceedings before the Court below are also pending but because of the interim order passed in the instant writ petition on 372006 as well as by the revisional Court during the pendency of the revision, the proceedings have been stalled. This Court cannot examine the evidence and assume the role of trial Court and pass an order of conviction or acquittal at this stage. I am not inclined to quash the summoning order and revisional order confirming the summoning of the accused in exercise of jurisdiction under Article 226 of the Constitution of India. It is the trial Court which has to decide the questions after the evidence is recorded. There is no illegality whatsoever in the summoning order. The writ petition lacks merit and is accordingly dismissed. The interim order dated 372006 of this Court stands discharged.