(2011) 03 MP CK 0072

In the Madhya Pradesh High Court

Case No : M. Cr. C. No. 5613 of 2010

Yeshwant Club Thro Manjeet @ Toni Sachdeva — APPELLANT

Vs

State of M.P. and Another — RESPONDENT

Date of Decision : 18-03-2011

Acts Referred:
- Constitution of India, 1950 — Article 20
- Criminal Procedure Code, 1973 (CrPC) — Section 482
- Evidence Act, 1872 — Section 139

Citation : (2011) ILR (MP) 1781 : (2011) 2 MPHT 523

Hon'ble Judges : I.S. Shrivastava, J

Bench : Single Bench

Final Decision : Allowed

Judgement

I.S. Shrivastava, J.—This is a petition filed by applicant u/s 482 of Cr. P. C.

2. According to facts of the case Yashwant Club is a registered society under the M.P. Registered Societies Act. In the year 2006-2008 and 2008-2010 accused No. 2 Dr. Hemant Doshi was the Chairman, Accused No. 3 Pravin Kasliwal was the Secretary, Accused No. 4 Kuklvinder Singh was Joint Secretary, Accused No. 5 Santosh Wagle was the Treasurer. In the present working managing committee of Yeshwant Club, Accused No. 6-Manjeet @ Tony Sachdewa is the Chairman, Accused No. 6-B Santosh Wagle is the Secretary, Accused No. 6-C Anil Vijayvargiya is the Treasurer and Accused 6-D Manish Baheti is the Joint Secretary of the yeshwant Club.

3. It is alleged that in the above years 2006-2008 and 2008-2010 there were some audit objections raised by the auditors and there was some financial irregularities. It is alleged that some of new members were given membership wrongly and accused persons have committed alleged offence by violating Rule No. 2K and 2J of the club. Hence a private complainant has been filed by Sanjay Gorani against above named accused persons including the Yeshwant Club, on 12.10.09 under Ss. 406, 420, 467, 468, 471 and 120B of the I.P.C. The

complainant Sanjay Gorani is a businessman and permanent member of the club and he was member of Executive committee in the year 2006-2008. During his tenure he had an objection about the legal position of members and irregularities in the working of the Management. The accused persons were directors and members of the Executive Committee of the Club in the year 2006-2008 and 2008-2010 and they have prepared the balance sheet and all the documents showing financial condition of the club, income, profit and loss statement and the daily register of the club. They made the records of the club for audit to the auditors and chartered accountant. Thereafter they submitted the information to all the concern as per law.

4. In the balance sheet of the year 2007-2008 false and imaginary information was sent to all concerned including govt. departments. The auditor of the club Shri Prakash S. Jain and Company in his report dated 5.6.08 pointed out that the membership in the N.R.I. quota given to the non-residential was illegal and against the rules of Banking and Club.

5. Shri Bahadur Singh Choudhary a NRI, was given membership of the club on 28.3.08 and it was shown that his membership fees was deposited on or before 31.3.08 but reality was that it was deposited by e-mail transfer account on 8.4.08. In this way the financial position of the club on 31.3.08 was against the real position. The above fees was not in the account of club on 31.3.08 and office bearers of the club with the object to cheat members of club suppressed the fact that Bahadur Singh Choudhary was made member of the club without deposit of membership fees. When this fact came to the knowledge of the complainant and other members then secretly above amount of fees was credited to the account of club by e-mail transfer on 8.4.08 as a result of this Bahadur Singh Choudhary got right of voting as he got the membership before 31.3.08. There are other cases of the like nature. The membership fees of Mitesh Matlani, Kamalkishore Muchchal and Jitendra Bakliwal was not deposited till 31.3.08. This fact was also mentioned in the audit report.

6. When the many members of the club came to the knowledge about this decisive fact then on 28.6.08 a general meeting was convened in which it was decided that a committed be constituted to trace out the above conspiracy about the illegal membership given to the members. The above committee in its report dated 15.5.09 found that in the year 2007-08 in many cases the membership was given to such NRIs about which there is no proof that they had gone to abroad and had resided there. Their membership fees has not been derived from the NRI account. Some of the members are not resident of Indore. In this way membership of the club for NRI quota has been given to the persons against rules. A list of such persons has been included with the complaint.

7. In the general Meeting of club, the accused No. 6A the then Chairman was authorized to cancel the membership of such non-illegible members but he has not taken any action in this respect. The accused persons are also trying to pacify the matter applying the delay tactic.

8. On 28.6.08 it was also decided that NRI membership should not be given in the NRI quota till decision of this disputed NRI membership and Chairman was authorized to cancel such membership but due to non-action of him to action was taken. The applications of other aspirants for membership are not being considered. The election was conducted. During the election in the year 2008 the members whose fees was not deposited till 31.3.08, were allowed to vote against rules and accused No. 5 got himself elected. Avoiding the objections of Sunil Bajaj, those voters who were not eligible for vote, were authorised to vote which affected the results of the club. The complainant in general meeting dated 1.7.09 raised above objections and accused No. 3 pravin Kasliwal the then Secretary admitted the guilt and prayed for excuses. The complainant came to know the election of the club which he was contesting for the post of secretary was illegal and election was conducted on the basis of illegal voter''s list. In this election the complainant was defeated by 43 votes while in the votes list 64 members were illegally added and an objection was taken about their inclusion in the votes list. The accused persons for their benefit, prepared false and forged balance sheet for the club. Hence a private complaint has been filed and it has been prayed that the accused applicants be punished for the offence under S. 406, 420, 467, 468, 471 and 120B of I.P.C.

9. In the case the statement of witnesses under S. 200 were recorded by the Court of J.M.F.C. An application under S. 91 of the Cr. P.C. was filed by the complainant to summon record from accused No. 1 Yeshwant Club which was allowed by the trial court vide order dated 7.5.10 Against this order a Criminal Revision No. 448/10 was preferred before the Court of Sessions, Indore and it was dismissed vide order dated 12.8.10. It was held by the learned Sessions Judge that order dated 7.5.10 is interlocutory order against which revision is not maintainable and the Chairman of the club has replied before the court tat he is willing to produce record in the court. Against this order this petition under S. 482 of Cr.P.C. has been preferred.

10. It has been argued by the applicant that Yeshwant Club is accused No. 1 in the private complaint filed by Resp.2. And record can not be summoned from the accused. Hence order for production of the record passed by the learned Magistrate should be quashed.

11. It has been argued by the respondents counsel that Yeshwant Club is a registered society and it is managed by elected body. At present paramjit Singh Chabra is the Chairman of Yeshwant Club and he is not an accused in the complaint filed before the trial court. The case at this stage has not been registered against the accused persons. The record of the club is essential for the disposal of the case. Hence application was rightly allowed by the trial court. Hence petition is baseless and order of the court for summoning of the record from accused No.1 is justified. Yeshwant Club though is in the array of accused persons in the private complainant, but he is the custodian of the record and being managed by elected body at this time. Hence present management body is

responsible for the production of the record.

12. Considered the arguments and record perused.

13. The question arises that whether record can be summoned from an accused.

14. According to Art. 20(3) of the Constitution of India, no person accused of any offence, shall be compelled to be a witness against himself.

15. S. 139 of the Evidence Act in this respect reveals that "a person summoned to produce a document, does not become witness by the mere fact that he produces it and cannot be cross-examined unless and until he is called as a witness."

16. In the case of The State of Bombay Vs. Kathi Kalu Oghad and Others, a eleven judges Bench of the Apex Court considered this aspect "Evidence has been classified into three categories namely (i) oral testimony (ii) evidence furnished by document, and (iii) material evidence. The accused may have documentary evidence in his possession which may throw some light on the controversy. If it is a document which is not his statement, conveying his personal knowledge relating to the charge against him, he may be called upon by the court to produce that document in accordance with provisions of S. 139 of the Evidence Act., which in terms, provides that a person may be summoned to produce a document in his possession or power and that he does not become witness by the mere fact that he has produced it, and therefore, he can not be cross- examined. Of course, he can be cross-examined if he is called as a witness who has made statement conveying his personal knowledge by reference to the contents of the document or if he has given his statement in Court otherwise than by reference to the contents of the document

17. It is well established that Clause 3 of the Article 20 of the Constitution of India is directed against self incrimination by an accused person. Self incrimination must mean conveying information based upon the personal knowledge of the person giving the information and cannot include merely the mechanical process of producing documents in court which may throw light on any of the points in controversy but which do not contain any statement of the accused based on his personal knowledge. The Court further held............ (3)to be a witness is not equivalent to "furnishing evidence" in its widest significance; that is to say, as including not merely making of oral or written statement but also production of document or giving materials which may be relevant at a trial to determine the guilt or innocence of the accused."

18. Therefore, on the basis of above discussion it is clear that in this case the accused No. 1 Yeshwant Club which is a registered society and the custodian of the relevant document, then such record can be summoned from it. The relevant record summoned from it is not created by accused No. 1 Yeshwant Club but this is creature of rest of the accused persons. At present applicant Yeshwant Club (accused No.1) is being managed in the Chairmanship of Mr. Paramjit Singh

Chabra who is not accused in the private complaint. Therefore, the Production of the record in the court from Yeshwant Club, does not amount to be the witness against himself. Therefore, the record can be summoned from the applicant Yeshwant Club (accused No. 1) and there is no illegality in the order dated 7.5.10 passed by the learned J.M.F.C. Indore.

19. It has been further argued by the respondent that this is second revision of the applicant which is not maintainable but this is not a revision of the applicant but this petition has been filed under S. 482 of the Cr.P.C. Hence arguments of the respondent is baseless.

20. Therefore, on the basis of above discussion, I am of the view that this petition under S. 482 of the Cr.P.C. filed by the applicant is devoid of merits. Hence it is dismissed accordingly.

