Abhimanyu s/o. Virbhadra Rasure Vs State Of Maharashtra And Other

Court: Bombay High Court (Aurangabad Bench)

Date of Decision: Oct. 18, 2024

Acts Referred: Code of Criminal Procedure, 1973 â€" Section 156(3), 173, 239, 240(1)
Indian Penal Code, 1860 â€" Section 34, 420, 468, 471
Maharashtra Educational Institutions (Prohibition of Capitation Fee) Act, 1987 â€" Section 3, 4, 5
Maharashtra Public Trusts Act, 1950 â€" Section 41D
Evidence Act, 1872 â€" Section 9, 34

Hon'ble Judges: S.G. Mehare, J

Bench: Single Bench

Advocate: V. D. Gunale, S. P. Sonpawale, S. V. Natu, T. G. Gaikwad

Final Decision: Allowed

Judgement

S.G. Mehare, J

1. Rule. Rule made returnable forthwith. Heard finally with consent of the learned counsels for the parties.

2. The petitioner has impugned the order of the learned Chief Judicial Magistrate (C.J.M.), Latur, passed below Exhibit-93, in Regular Criminal Case

No.439 of 2006, dated 06.05.2010 and the judgment and order of the learned Additional Sessions Judge, Latur, passed in Criminal Revision No.91 of

2010, dated 28.09.2015.

3. The brief facts of the case are that the respondents/accused were the office bearers and trustees of Mahatma Bashweshwar Education Society.

The complaint was lodged against them that from 1983 to 1992, they in conspiracy and though not the office bearers accepted the donations from the

students for their admissions to the colleges run by the society and did not deposit it with the college or society. They had shared those amounts. They

did not enter the donation amount in the account. However, they manipulated the record for audit. Hence, they have committed the forgery.

4. The charge sheet has been filed against them for the offence punishable under Sections 420, 468, and 471 read with Section 34 of the Indian Penal

Code and Sections 3, 4 and 5 of the Maharashtra Educational Institutions (Prohibition of Capitation Fee) Act, 1987.

5. The respondents/accused had filed the application for discharge under Section 239 of the Code of Criminal Procedure (for short, Ã¢â‚¬Å“Cr.P.C.Ã¢â‚¬).

The learned Chief Judicial Magistrate, Latur discussed the facts and grounds raised by the respondents and discharged them. The learned Additional

Sessions Judge confirmed the order of the learned C.J.M.

6. Mr. Gunale, the learned counsel for the petitioner has vehemently argued that both Courts erred in law in discharging the respondents/accused. The

reasons for discharge are not legal, correct and proper. He submits that the application under Section 156(3) of the Cr.P.C. was filed and then the first

information report was registered. There were statements from the students and parents supporting allegations of accepting donations by the

respondents as bribes for their admissions. However, those material facts were ignored. Referring to the findings of the learned C.J.M., he would

submit that the learned C.J.M. considered the documents filed by the respondents which were not part of the investigation report and chargesheet.

While framing the charge the Court has to examine the record and the documents attached to the report under Section 173 of the Cr.P.C. However,

the learned C.J.M. erred in recording the findings on the basis of the documents filed by the respondents that the respondents along with one

M.S.Bidve were removed from the trusteeship under Section 41-D of the Maharashtra Public Trusts Act. It appears from the said copy of the order

of the learned Charity Commissioner that the allegations were levelled against them for collecting donations. In the circumstances, the Court can look

into the said judgment in view of the admitted facts of the judgment by both parties. He would further submit that the learned C.J.M. has also

exceeded the jurisdiction in observing that the documents referred by the complainant are not related to the trust. Nobody had issued receipts. The

forged receipts were produced by Mr. Girwalkar. It is a matter required to be proved and it cannot be said at this stage, whether the receipts are

genuine or forged. If those documents are produced on record those ought to have been considered as sufficient material for framing charge.

7. He further argued that there was sufficient material before the Court to believe that the respondents had misused their position and collected huge

donations from the students for their admission. There was also evidence from the staff that the accused asked them to collect the donations. He

further argued that the Court ignored the documents recovered from the house of the respondents which had a connection with the crime. Same way,

the Revisional Court also did not consider the errors pointed out to it and weighed the documents as if it was a trial. It is also argued that the learned

Revisional Court, without any basis, decided the evidentiary value of the documents and illegally presumed that those were not sufficient to believe

that the respondents had committed the alleged offence. The learned Revisional Court erroneously expressed the view that the police report as well as

documents attached with the chargesheet with charges levelled against them were groundless. He also erred in law in considering the documents

placed by the present respondents which was impermissible. He relied on the following cases:-

i) State of Anti-Corporation Bureau, Hyderabad and another vs. P. Suryaprakasam, 1999 Supreme Court Cases (Cri) 373;

ii) State of Orissa vs. Debendra Nath Padhi, (2005) 1 Supreme Court Cases 568;

iii) Central Bureau of Investigation vs. V.C. Shukla and others, (1998) 3 Supreme Court Cases 410;

iv) Mallikarjunappa Sidramappa Bidve & Ors. vs. Joint Charity Commissioner & ors., 2008(1) Bom.C.R. 172;

He prayed to allow the petition and set aside both impugned orders.

8. Per contra, the learned counsels for the respondents would further submit that during the alleged period, they were never holding the position to

extract the money. There were no allegations of accepting the donations. The involvement of respondents No.2 and 3 in committing wrong acts is

baseless. The complaint was silent about trusteeship against Mr Girwalkar, accused No.6. He would submit that the allegations levelled against the

respondents are general. Therefore, it is difficult to believe that they were involved in the alleged crime. There were no allegations against respondent

No.2. There is absolutely no witness stating that they had received donations. Considering the allegations levelled against the respondents, the offence

under Section 420 of the Indian Penal Code is not made out. There was nothing to believe that respondent No.2 had committed forgery.

9. Referring to the order of the Revisional Court in paragraph No.28, he would further submit that even if the allegations are accepted as it is, no

offence is made out against the Clerk. The allegations were vague. There was no manipulation in the accounts. Referring to page No.40 of the

chargesheet, he would submit that those were the notes of payment but not the donation amounts. When Mr Bidve was removed from the trusteeship

on the basis of identical allegations, the complainant had no explanation why he was not arraigned as an accused. He prayed to dismiss the petition.

10. Mr. Gunale, learned counsel has replied that the receipts and entries of the record were produced. The police have recorded the statements of the

students as well as their parents about payment of the donations. It is prima facie evident that the respondents were receiving the donations. The

findings of the Joint Charity Commissioner on the removal, could not be considered as grounds to discharge the respondents. The order of the Joint

Charity Commissioner had no relevance to the present crime. The complaint was an independent remedy under criminal law. The Charity

Commissioner had no power tso punish the wrongdoers. Therefore, both Courts wrongly held that it was an admissible document.

11. The learned counsel for the applicant raised the first ground that both Courts erred in relying on the documents filed by the accused while deciding

the application under Section 239 of the Cr.P.C., only the report under Section 173 of Cr.P.C., and documents should be considered to form an opinion

whether that material is sufficient to frame the charge or not.

12. Section 239 of the Cr.P.C. provides that if, upon considering the police report and the documents sent with it under section 173 and making such

examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard,

the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing.

13. Section 240(1) of the Cr.P.C. provides that if, upon such considering examination, if any, and after hearing, the Magistrate is of the opinion that

there was a ground for presuming that the accused had committed the offence, such Magistrate is competent to try and which, in his opinion, could be

adequately punished by him, he shall frame in writing a charge against the accused.

14. A conjoint reading of the above two sections, makes it clear that if the Magistrate, upon considering the report and the documents sent to him

under Section 173 of the Cr.P.C., thinks necessary, is of the opinion that the charge against the accused is groundless, he shall discharge the accused,

and record his reasons for so doing. However, before passing such an order he may examine any accused and give an opportunity to both sides.

However, upon considering the material, the Magistrate is of the opinion that there are grounds for presuming that the accused had committed an

offence for which he could be adequately punished by him, he shall frame the charge against the accused.

15. The above sections are crystal clear that for framing the charge and discharging the accused, the Magistrate has to consider the report and

documents submitted with it under Section 173 of the Cr.P.C. The trial court under Section 239 and the High Court under Section 482 of the Code of

Criminal Procedure is not called upon to embark upon an inquiry as to whether the evidence in question is reliable or not or evidence relied upon is

sufficient to proceed further or not. However, if upon the admitted facts and the documents relied upon by the complainant or the prosecution and

without weighing or sifting of evidence, no case is made out, the criminal proceedings instituted against the accused are required to be dropped or

quashed. The law is well settled that the Magistrate is not supposed to adopt a strict hypertechnical approach to sieve the complaint through a

colander of the finest gauzes for testing the ingredients of offence with which the accused is charged. Such an endeavour may be justified during the

trial but not during the initial stage.

16. Considering the above sections, the Court while deciding the application for discharge or framing the charges is not supposed to test the

evidentiary value of the documents and evidence placed before it as if it is a trial. The Court has to assess the prima facie evidentiary value of the

material sufficient to form an opinion that either the accusation against the accused is groundless, and if not, he should frame the charge. The opinion

of the trial Court should be on the basis of the material and evidence with the report under Section 173 of the Cr.P.C. that the accused might have

committed the offence. At the time of framing of the charges, the probative value of the material on record cannot be gone into, and the court is not

expected to go deep into the matter and hold that the material would not warrant a conviction. The court is required to evaluate the material and

documents on record with a view to find out if the facts emerging therefrom, taken at their face value, disclose the existence of all the ingredients

constituting the alleged offence.

17. It is trite that at the stage of considering an application for discharge, the court must proceed on the assumption that the material that has been

brought on the record by the prosecution is true and evaluate the material in order to determine whether the facts emerging from the material, taken

on its face value, disclose the existence of the ingredients necessary to constitute the offence. [State by the Inspector Police Chennai vs. S. Selvi

and another, (2018) Cr.L.J. SC 1422]

18. The Honourable Supreme Court, in the case of State of Anti-Corporation Bureau, Hyderabad and another vs. P. Suryaprakasam (supra)

has held that at the stage of the framing of charge, the Court is required to consider only the police report and documents sent with it under Section

173 of the Cr.P.C. Accused has a right of being heard and the Court may examine him if it thinks necessary. It has been further observed that the

High Court in quashing the proceedings not only looked into the documents filed by the respondents in support of his claim that no case was made out

against him even before the trial had commenced, but relied upon them to conclude that no offence was committed by him. This approach of the High

Court is also contrary to the settled law of the land.

19. The HonÃ¢â‚¬â„¢ble Supreme Court has taken a similar view in the case of State of Orissa vs. Debendra Nath Padhi (supra), that at the stage of

framing of charge, the trial Court is required to consider only material produced by the prosecution, no provision in Cr.P.C. grants to the accused any

right to file any documents at the said stage.

20. The ratio of the above case was that at the time of framing of the charge or considering whether there is sufficient material to frame the charge or

considering the material and evidence placed before the Court, is groundless, the Court cannot consider documents filed by the accused, while

deciding the application under Section 239 of the Cr.P.C.

21. In the case at hand, the findings of both Courts reveal that they have considered the documents placed on record by the accused, and relying on

those documents, they have formed an opinion that there is no sufficient material to frame the charges against the respondents/accused. Both Courts

not only considered the documents of the accused but also weighed and shifted those documents.

22. Both Courts erred in relying on the documents of the accused and weighing the documents of the accused. Consequently, they have erred in law

in discarding the material and evidence produced before the Court under Section 173 of the Cr.P.C.

23. The argument of the learned counsel for the respondents/accused based upon the decision in the case of Central Bureau of Investigation vs.

V.C. Shukla and others (supra) that the correct and authenticated entries in the books of account not admissible under Section 34 of the Evidence

Act are admissible under Section 9 of the Indian Evidence Act, does not apply to the case at hand.

24. In the matter of Mallikarjunappa Sidramappa Bidve & Ors. vs. Joint Charity Commissioner & ors .(supra), it was an inquiry under Section

41-D of the Bombay Public Trusts Act, 1950. The ratio laid in that case is altogether different having no reference to this case. Hence, it would also

not assist the accused.

25. The charge sheet submitted by the police reveals a detailed inquiry. Various witnesses were examined to support the allegations of

misappropriation of the donations. Prima facie, the documents placed on record with the report under Section 173 of Cr.P.C. establish the nexus of the

respondents/accused with the crime. On its face value, there are reasonable grounds to believe Ã, that the allegations leveled against them are not

false and incorrect. Some of the documents were also recovered from the accused. Therefore, the Court is of the view that upon considering the

documents, there were grounds for presuming that the respondents/accused have committed the offence triable under Chapter XIX of the Cr.P.C.

and the accused may be adequately punished.

26. For the above reasons, the writ petition deserves to be allowed. Hence, the order:-

ORDER

i) Criminal Writ Petition is allowed.

ii) The impugned order of the learned Chief Judicial Magistrate, Latur, passed below Exhibit-93, in Regular Criminal Case No.439 of 2006, dated

06.05.2010 and the judgment and order of the learned Additional Sessions Judge, Latur, passed in Criminal Revision No.91 of 2010, dated 28.09.2015,

stand quashed and set aside.

iii) Rule made absolute in the above terms.

iv) R & P be returned to the trial Court for proceeding with the matter according to the law.

27. The learned counsel for respondents No.2, 3 and 6/accused seeks stay to the order. However, considering the length and stage of the trial, the

Court is of the view that it would be unjustifiable to grant stay. Hence, the request is refused..