

(2009) 11 GAU CK 0025

Gauhati High Court (Shillong Bench)

Case No: None

Synraniang Nongshlong and
Another

APPELLANT

Vs

State of Meghalaya and Others

RESPONDENT

Date of Decision: Nov. 9, 2009

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Penal Code, 1860 (IPC) - Section 380, 403

Citation: (2010) 2 GLR 635 : (2010) 2 GLT 456

Hon'ble Judges: P.K. Musahary, J

Bench: Single Bench

Judgement

P.K. Musahary, J.

Heard Mr. D.K Thapa, learned Counsel, appearing for the petitioners and also heard Mr. H. Kharmih, learned Addl. P.P., Meghalaya.

2. This is an application u/s 482, Cr.PC for quashing the FIR No. 67(6) 2009 under Sections 403/380, IPC registered with Nongstoin Police Station, West Khasi Hills District, Meghalaya, and also for quashing the proceedings pending before the court of learned additional District Magistrate, West Khasi Hills District, Meghalaya.

3. The facts, in short campus, are that the petitioner No. 1 is the secretary of the Managing Committee of Rambrai Church of God Lower Primary School while the petitioner No. 2 is the chairman of the said committee. The Managing Committee aforesaid received an amount of Rs. 3,000 from the Deputy Inspector of School, Nongstoin sanctioned by the Government for purchase of school materials and teaching aid/teaching equipments for the said school. The said fund was released by the school Managing Committee and an utilisation certificate was also submitted to the Joint District Mission Coordinator, Nongstoin. The Managing Committee also received one SIM Card meant for distribution amongst the teaching staff but the

same was returned to the D.I. of the Schools, Nongstoin as the Managing Committee was asked to do so. The FIR was lodged by one A. Marbaniang on 22.6.2009 alleging that the petitioners did not pay the amount to her nor did they handover the SIM Card to her.

4. Mr. Thapa, learned Counsel for the petitioners submits that the FIR is liable to be quashed inasmuch as the ingredients of offence under Sections 403 and 380, IPC are absent and there is no prima facie case to proceed against the petitioners. It is also submitted by Mr. Thapa that the informant - Smt. A. Marbaniang was working as a teacher in the said school and she was terminated from service on 6.2.2009. After her termination, she, along with other persons approached this Court in WP(C) 13(SH)/2009 for dissolution of the Managing Committee headed by the petitioners and for reconstitution of the same. In the said writ petition the writ petitioners obtained an interim order dated (sic).2.2009 staying the operation of the order dated 7.1.2009 whereby the Authorities approved the constitution of the Managing Committee. The present petitioners filed a misc. application namely, MC 264(SH)/2009 for vacating the said interim order. By an order dated 5.6.2009 passed in the aforesaid miscellaneous case, the said interim order was vacated. The FIR has been filed only after the present petitioners obtained the order vacating the interim order and it has been done out of grudge, which is apparent from the allegations made in the FIR itself.

5. I have heard Mr. Kharmih, learned Addl. P.P., Meghalaya, who submits that the matter is still under investigation by the police and at this stage, there is no question of quashing the, FIR.

6. The Apex Court has laid down 7 golden principles/guidelines for exercising inherent powers u/s 482, Cr.PC by the High Courts for quashing the FIR, in [R.S. Raghunath Vs. State of Karnataka and another](#), One of the guidelines laid therein is that in cases where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused, the High Court would exercise inherent power to prevent abuse of the process of any court or otherwise to secure the ends of justice.

7. In the light of the aforesaid judgment, I have carefully gone through the FIR dated 22.6.2009 (Annexure-IX to the petition), which was registered u/s 403/380, IPC. Section 403, IPC provides punishment for dishonest misappropriation of property, which reads as under:

403. Dishonest misappropriation of property.- Whoever dishonestly misappropriates or converts to his own use any moveable property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

8. The petitioners have annexed a communication dated 26.8.2008 (Annexure-IV to the petition), by which the Joint District Mission Coordinator and Deputy Inspector of Schools, Nongstoin released the funds for implementation of SSA School grant and Teacher grant during 2008-09. It is found from the said communication that the school was provided with a small fund for purchase of materials and teaching aid/teaching equipments and a cheque of Rs. 3000 was issued in favour of the Secretary, Rambrai Committee of Rambrai Church of God Lower Primary School (Annexure-V to the petition). The petitioners, as office bearers of the said Managing Committee received the aforesaid cheque and utilised the amount for the purpose mentioned therein. The petitioners have submitted utilization certificate dated 12.2.2009 (Annexure-VI to the petition). Apart from this, utilisation certificate (Annexure-VI) was also submitted by petitioners. There is, therefore, no ingredients of dishonest misappropriation punishable u/s 403, IPC.

9. Regarding alleged offence u/s 380, IPC which relates to theft in dwelling houses, etc., it is found prima facie baseless inasmuch as the amount alleged to have been misused by the petitioners was a sanctioned amount, which was released by a cheque and encashed in the bank concerned. Regarding SIM Card, it is found that the same was issued from the department for distribution amongst the teaching staff of the school on 22.6.2009. The informant, Smt A. Marbaniang has already been termination from service on 6.2.2009 and therefore, she cannot legally claim the SIM Card. Moreover, it is found that the petitioners have already returned the SIM Card and the same is not under the possession of the petitioners. This being the position, the allegation that the SIM card was not handed over to the teaching staff is, apparently unacceptable.

10. This Court has not been apprised by the learned Addl. P.P., about the stage of the investigation inasmuch as, the case diary or the relevant records have not been produced by him at the time of hearing. However, taking into account the entire facts and circumstances of the case, particularly, the nature of allegations made in the FIR, which prima facie, disclose no ingredients of offence under Sections 403/380, IPC and that by allowing the investigating authority to proceed further with the case would cause undue harassment to the petitioners and it would amount to abuse of process of the court. It is for the ends of justice that the FIR is required to be quashed and accordingly, the same is quashed.

11. With the above observations and directions, this criminal revision stands allowed. There shall be no order as to costs.