

Gujarat High Court

R vs State on 11 January, 2011

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Gujarat High Court Case Information System

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SCA/14242/2010 4/ 4 ORDER

IN
THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL
CIVIL APPLICATION No. 14242 of 2010

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R
P RATHOD THE THEN MAMLATDAR - Petitioner(s)

Versus

STATE
OF GUJARAT & 1 - Respondent(s)

=====

Appearance :
MR
SANJAY D SUTHAR for
Petitioner(s) : 1,
MR NEERAJ SONI AGP for Respondent(s) : 1,
None
for Respondent(s) :
2,
=====

CORAM

:

HONOURABLE

MR. JUSTICE KS JHAVERI

Date
: 11/01/2011

ORAL
ORDER

1. By way of this petition, the petitioner has prayed to quash and set aside the order passed by the learned Addl. District Judge, Fast Track Court No.2, Narmada at Rajpipla in Civil Revision Application No.1 of 2007, whereby, the said application was partly allowed and the Warrant dated 07.11.2007 issued by the petitioner, while serving as the Mamlatdar, Nandod, was held to be illegal.
2. The facts in brief are that while the petitioner was serving as the Mamlatdar, Nandod, he was also the ex-officio Chairman of Hindu Devsthan Committee, Rajpipla and was in-charge of the administration of the said Committee. Respondent no.2 herein was serving as the Honorary Secretary of the said Committee.
3. On account of some alleged misconduct on the part of respondent no.2 herein, he was suspended by order dated 12.10.2007 passed by the Mamlatdar, Nandod (petitioner herein). Pursuant thereto, respondent no.2 was informed to hand over the charge of cash, documents relating to bank accounts and other records.
4. It is the case of the petitioner that respondent no.2 failed to hand over the same and therefore, in the capacity of ex-officio Chairman of the Committee, the petitioner issued Warrant dated 17.10.2007 against respondent no.2 u/s.25 of the Bombay Land Revenue Code. By the aforesaid order, respondent no.2 was ordered to be kept in civil jail until he discharged the documents / valuables demanded from him. On 20.10.2007 respondent no.2 surrendered before Rajpipla Police Station and was, thereafter, produced before the Mamlatdar for handing over the charge. However, respondent no.2 failed to supply the documents / valuables so demanded.
5. Therefore, again the petitioner passed an order dated 20.10.2007 by which respondent no.2 was ordered to be kept in civil jail until he hands over the demanded documents / valuables. Pursuant thereto, respondent no.2 filed an Undertaking to the effect that he would hand over charge of the items so demanded. However, the same were not supplied.

6. Therefore, the petitioner issued Warrant dated 07.11.2007 u/s.25, 28, 157 & 164 of the Code against respondent no.2. In pursuance of the said Warrant, respondent no.2 came to be arrested on 26.11.2007 and was kept in Sub-Jail. Ultimately, he was released on 03.12.2007.

7. Thereafter, respondent no.2 filed Revision Application No.1/2007 before the District Court, Narmada at Rajpipla challenging the action on the part of the petitioner in issuing the Warrant dated 07.11.2007. On 06.03.2008 an FIR came to be filed against the petitioner by respondent no.2 u/s. 220 & 342 IPC.

8. Ultimately, vide order dated 30.01.2008, the Court below partly allowed the said application, whereby, the action on the part of the petitioner of issuing Warrant dated 07.11.2007 while serving as the Mamlatdar, Nandod was held to be illegal. Being aggrieved by the aforesaid order, the petitioner has preferred the present petition.

9. Heard learned counsel for the petitioner and learned AGP for the respondent-State. The main case of respondent no.2 in the revision application filed before the Court below was that the provisions of the Bombay Land Revenue Code were applicable to revenue authorities only and since he was serving as the Honorary Secretary of Hindu Devasthan Committee at the relevant point of time, the provisions of the Code are not applicable upon him. The Court below accepted the above submission of respondent no.2 since the provisions of Sections 25 & 157 of the Code are, admittedly, applicable to revenue authorities only.

10. The State authority was not able to satisfy before the Court below as also before this Court that the provisions of the Code are applicable to respondent no.2. Therefore, the action of the petitioner was illegal and without jurisdiction. In view of the same, the Court below was completely justified in holding the action of the petitioner of issuing the Warrant dated 07.11.2007 as bad in law and illegal.

11. Prima facie, the locus standi of the petitioner is doubtful. However, without entering into the merits of the case, this petition is not entertained since any observations made by this Court may come in the way of the petitioner in the proceedings pending before the trial Court concerned. Hence, only on the ground of locus standi, this petition is not entertained and is, accordingly, rejected. Notice is discharged. No costs.

[K.

S. JHAVERI, J.] Pravin/* Top