2004 Y L R 1299

[Lahore]

Before Muhammad Muzammal Khan, J

MUHAMMAD ILYAS ASHRAF and 3 others---Petitioners

Versus

AITZAZ AHMAD, MAGISTRATE 1ST CLASS, GUJRANWALA and 2 others--Respondents

Writ Petition No. 15542 of 2001, decided on 24th December, 2003.

(a) Punjab Local Government Ordinance (XIII of 2001)-----

-----Ss.30, 31 & 32---Penal Code (XLV of 1860), Ss. 420, 468 & 471---Criminal Procedure Code (V of 1898), S.403-- Constitution of Pakistan (1973), Art. 13--Constitutional petition---Quashing of F.I.R.---Offences alleged against the petitioner fell under Ss.30, 31 & 32 of Local Government Ordinance, 2001 for fictitiously preparing National Identity Cards and also fell under Ss.420, 468 & 471 of Penal Code, 1860 for preparation of fake identity cards and using of them as genuine---Alleged offences fell under two distinct statutes being tried independently in different Courts---Contention of the petitioner was that trial of the alleged offences in different Courts at the same time would amount to double ,jeopardy in violation or Art.13 of the Constitution Validity---Where the extent of two offences was different and they fell under different statutes, their trial independently, would not amount to double jeopardy Constitutional petition was dismissed.

The State v. Anwar Khatak and others PLD 1990 FSC 62 ref.

(b) Criminal Procedure Code (V of 1898)-----

----S.154---Constitution of Pakistan (1973), Art. 199---Constitutional petition---Quashing of F.I.R.---Competence of a Magistrate to direct registration of a criminal case-- Contention of the petitioner was that the respondent being a Magistrate had no authority to order registration of a criminal case---Anybody can report commission of a cognizable offence to the police under S.154, Cr. P. C. and the respondent being a citizen of the country, ignoring his position as a Magistrate, was competent to give information of commission of the offence-- Constitutional petition was dismissed.

(c) Criminal Procedure Code (V of 1898)-----

----S.154---Constitution of Pakistan (1973), Art. 199---Constitutional petition---Quashing of F.I.R.---One illegal and cognizable act of any person, could make him liable under two enactments, triable by two different Courts---Assertion of the respondent that both the complaint and the F.I. R. against the petitioner could be ordered to be tried by one Court instead of canceling of F.I.R. was credible---Cancellation of the F.I.R. could not be done in its Constitutional jurisdiction by the High Court because the truthfulness or falsity of the assertions could not be determined by the High Court---Constitutional petition was dismissed.

Xiomoria Mania De Armas Trojillo and another v. The State 2000 PCr.LJ 956 ref.

Mushtaq Raj for Petitioners.

Muhammad Ahsan Bhoon for Respondent No.3.

ORDER

This Constitutional petition seeks, F.I.R. No.228 of 2001 dated 18-6-2001 under sections 420/468/471, P.P.C. registered with Police Station Cantonment Gujranwala, against the petitioners, to be declared as illegal, void and hence, is prayed to be cancelled.

2. A short factual background of the case is that during the Local Bodies Elections held on 21-3-2001, the petitioner was declared successful as Nazim of Union Council No.103, Rahwali, Talwandi, District Gujranwala, and his opposing candidate Nazar Abbas son of Taj-ud-Din, respondent No.3 got a criminal case registered under the orders of respondent No.1 with the assertion that during election campaign, the petitioner No.1 instigated in his public speeches required the persons who were not issued National Identity Card, to give him the requisite forms and committed to provide them, at their house, their identity cards for the purpose of casting of their votes. The complainant also mentioned in the F.I.R. that the petitioners, a day earlier to the election, at night time, distributed about 400 fake identity cards through his Munshi Saif Ullah, Abid Hassan Ansari, Councillor and Rafiq Mir after this distribution of fake identity cards by the petitioners, the complainant inquired into the matter and found those identity cards to be forged and fake. The complainant through his complaint requested respondent No. 1 for recovery of press printing, lamination machine and other allied things like rubber stamps etc. from the custody of the petitioner.

3. This case was registered with a delay of about three months and, on the orders of respondent No.1, hence, the petitioners seeks, it to be quashed, inter alia, on the grounds that a similar complaint by District Registration/ Assistant Director of National Database and Registration Authority (NADRA), Gujranwala, was also being tried by the Illaqa Magistrate for the same offence and it amounts to double jeopardy and is violation of Article 13 of the Constitution of Islamic Republic of Pakistan, 1973, section 403, Cr.P.C. and Article 15 of the Qanun-e-Shahadat Order, 1984 and that respondent No.1 had no authority to direct/order registration of criminal case.

4. Learned counsel for the petitioners submits that since the alleged offence is covered by sections 30, 31 and 32 of Ordinance, XIII of 2000 and complaint thereunder is being tried by the Illaqa Magistrate where the petitioner is appearing, the registration of F.I.R. is not only mala fide but is also unauthorized and violative of the Constitution warrantees provided to the petitioners. He also contends that the petitioners cannot be tried by two different Courts for one offence which otherwise appears to be fake, as the petitioners did not use any fake National Identity Card as alleged by the complainant. It is also an assertion of the learned counsel for the petitioners that complainant Nazar Abbas contested Local Bodies Election against petitioner No.1 and after losing the election, in counter-blast, moved fake application to respondent No.1 and District Registration Office, NADRA. Conversely, learned counsel appearing on behalf of respondent No.3 has controverted the assertions of the petitioners and urged dismissal of writ petition claiming that both the offences in F.I.R. and complaint, are distinct and can be tried by two different Courts/Tribunals. Learned counsel for respondent No.3 relying on the case of Xiomoria Maria De Armas Trojillo and another v. The State 2000 PCr.LJ 956 contended that at the most both the complaints, as well as, F.I.R. can be ordered to be tried by one Court but F. I. R. which was registered on a complaint, disclosing cognizable offence, cannot be quashed. Respondent No.2 has filed his report and parawise comments wherein he graded the writ petition as a pre-mature, on the ground that investigation has still not been finalized. Respondent No.1 is a pro forma respondent, who though has been served but has neither submitted any report or parawise comment nor has appeared.

5. I have anxiously considered the arguments of the learned counsel for the parties and have examined the record. Without commenting on the truthfulness or otherwise of the assertions, it is apparent that according to allegations in the complaint by respondent No.3, offence under sections 30, 31 and 32 of Ordinance, XIII of 2000 is made out, for fictitiously preparing the National Identity Cards and for that matter complaint is being lawfully processed against the petitioners, at the same time, preparation of fake identity cards and use of these, is separately an offence under sections 420/468/471, P.P.C. In this manner, the alleged offence falls under two distinct statutes because under the provisions of Ordinance, XIII of 2000, the authorities and complaint is only related to fabrication of National Identity Cards and not beyond that whereas under the provisions of Pakistan Penal Code, the petitioners have exposed to penal consequences as provided in the provisions under which the F.I.R. No.228 of 2001 has been registered, obviously, subject to the fact that charge against them is proved at the trial. For the purpose of this petition, process of complaint under Ordinance, XIII of 2000 and registration of F.I.R. does not amount to double jeopardy in violation of Article 13 of the Constitution or other provisions relied by the learned counsel for the petitioners. There are number of cases in which this proposition of falling offence in two different statutes and their trial, independently, was considered and it was held that it does not amount to double jeopardy. Leading judgment in this behalf is in the case of The State v. Anwar Khatak and others PLD 1990 FSC 62 wherein the accused were challaned under two different statutes i.e. Customs Act, 1969 and Prohibition (Enforcement of Hadd) Ordinance, 1979. In this case, all the provisions of law, of which the petitioners claims violation, were considered and it was mandated that since, prima facie, nature and extent of two offences are quite different and thus, the complained activity does not offend the provision of section 13 of the General Clauses Act and section 403, Cr.P.C. and does not amount to double jeopardy.

6. As regards competence of respondent No.1 to direct/order registration of criminal case to the police, Section 154, Cr.P.C. is clear in its' own words that anybody can report commission of cognizable offer to police and I think respondent No.1 being a citizen of this country, ignoring his position as a Magistrate, could give information of commission of the offence and as such, 8 there is nothing illegal or unauthorized, negatively reflecting on the F.I.R.

7. The result of above analysis is that both the laws one under Ordinance, XIII of 2000 and the other under Pakistan Penal Code deals with different situations and create distinct offences and there is no similarity therein, on the basis of which prayer can be granted in the instant petition. One illegal and cognizable act of any person, may make him liable under two enactments, triable by two different Courts. Reverting to assertion of the learned counsel for respondent No.3 that both the complaint and F.I.R. against the petitioners can be ordered to be tried by one Court. This argument without analysis appear to be more plausible instead of canceling the F. I. R. which cannot be done in Constitutional jurisdiction of the Court C because truthfulness or otherwise of the assertions therein cannot be determined by this Court. In the case of Xiomoria Maria De Armas Trojillo (supra) view taken by a Honourable Division Bench of High Court Karachi jurisdiction, was that the fact that accused were sent up for trial on common set of facts, was no ground for quashing of proceedings pending against them. In this judgment, it was also observed that second trial would only be barred when offence was same, but if offence was distinct, accused could be tried before two different Courts under two different enactments, on basis of common set of facts and trial would not be barred. Even according to this judgment, quashment of the proceedings were refused and trial by one Court of all offences was not ordered which otherwise appears to be impracticable because Court trying one offence may not have jurisdiction to try the other and thus, I find this submission of respondent No.3 as un practicable.

8. For what has been discussed above, registration of F.I.R. No.228 of 2001 cannot be declared as void and hence, it cannot be cancelled. The petitioners, if so advised; may move to the Court before whom the challan is ultimately submitted under section

249-A, Cr.P.C. his discharge on the grounds of delay in registration of case; mala fides or inimical attitude of the complainant towards him, on account of contest of election. This Court is not in a position to determine these assertions of the petitioner. This petition has no merit in it and is, accordingly dismissed.

M.A.W./M-21/L Petition dismissed.

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