

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL MISCELLANEOUS No.32209 of 2017

Arising Out of PS. Case No.-65 Year-2016 Thana- RAJGIR District- Nalanda

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1. Nishikant Tiwari S/o Sri Ramballabh Tiwari, Resident of Village-Singahi, P.O. Mehrauli, P.S. Doriganj, Distt.-Saran at Chapra.

... ... Petitioner/s

Versus

The State Of Bihar

... ... Opposite Party/s

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• **Indian Penal Code - Sections 409, 419, 420, 467, 468, 471 and Section 506 :- Discussed: (Para-9). Ingredients to attract Section 405 – Ingredients to attract Section 420 IPC** (Reliance made on:- N. Raghavender Vs. State of Andhra Pradesh, CBI as reported in (2021) 18 SCC 70, para no. 46 and 51).

(Para-9 and 10)

• **The Code of Criminal Procedure, 1973 – Section 482 – exercise of extra ordinary power – principles of law and categories of cases wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice.** (reliance made on :- State of Haryana and Others vs. Bhajan Lal and Others reported in 1992 Supp (1) Supreme Court Cases 335, para-102) ;(Usha Chakraborty and Another Vs. State of West Bengal and Another as reported in (2023) SCC Online SC 90, para-10)

(Para-11, 12, 13)

• Case now appears a *prima facie*, case of forged document, neither it is a impersonation. The allegation did not appear to constitute the offence punishable under Section 409 of the IPC, *prima facie*, as to constitute criminal breach of trust by public servant. It is well settled principle of law that issuance of *mens rea*, i.e., fraudulent or dishonest intention essentially the relevant ingredients to make out a case under Section 420 of the IPC, which must run from very inception. (relied on:- **Sangeetaben Mahendrabhai Patel Vs. State of Gujarat and Another** as reported in (2012) 7 SSC 621.) implication of petitioner appears only on the basis of experience certificate, which has been issued by himself being Deputy Registrar of SLIET,

where he was working till 30.05.2014 (afternoon) since 31.07.2014 (forenoon). Aforesaid period of service not appears disputed in view of letter dated 18.03.2016 bearing no. 1155 issued by SLIET. Any information furnished out of experience certificate dated 30.05.2014 not appears, prima facie, incorrect or forged. It further appears that the experience certificate was issued in favor of petitioner dated 27.02.2014 under signature of Col. (Retd.) Arun Kainthla bearing letter no. 7884 as issued by SLIET, where it has been shown that petitioner worked till 27.02.2014 since 31.07.2014 (forenoon). Different e-mails as annexed with FIR shows that petitioner and informant were in enimical terms out of official disputes and differences, where informant was also terminated from services of Finance Officer from N.U. vide order dated 07.11.2017, bearing no. 699. Accordingly, by taking note of guidelines as mentioned in para no. 7 of Bhajan Lal case (supra), impugned order of cognizance with all its consequential proceedings, qua, petitioner is hereby quashed and set aside. The application stands allowed.

(Para-14 and 16)

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1. Nishikant Tiwari S/o Sri Ramballabh Tiwari, Resident of Village-Singahi,
P.O. Mehrauli, P.S. Doriganj, Distt.-Saran at Chapra.

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Appearance :

For the Petitioner/s : Mr. Rajeev Kumar Singh, Advocate
: Mr. Gyanendra Kumar, Advocate
For the Opposite Party/s : Mr. Vinod Shankar Modi, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT
Date : 06-03-2024

1. Heard learned counsel for the petitioner and
learned counsel for the respondents.

2. The present quashing petition has been preferred
to quash the order dated 31.01.2017 passed in Rajgir P.S. Case
No. 65 of 2016, where learned Additional Chief Judicial
Magistrate-IV, Bihar Sharif, Nalanda took cognizance for the
offence punishable under sections 419, 420, 467, 468, 471, 409
and 506 of the Indian Penal Code against the petitioner.

3. On the basis of a letter written by one Amresh
Singh to the Secretary, Ministry of External Affairs,
Government of India dated 05.01.2016, a written information
was filed by the Finance Officer-cum-Officiating Registrar of
Nalanda University, Rajgir and upon so, a police case was



registered under Section 467, 468, 471, 419, 420 and 506 of the Indian Penal Code against the petitioner.

4. It is submitted by learned counsel for the petitioner that petitioner has been falsely implicated by informant, who is working as a Finance Officer, namely Mr. K. Chandramoorthi. It is submitted that allegation against petitioner as raised through FIR is completely biased and with ulterior motive out of official differences/enmities. It is pointed out that on the basis of one unsigned application dated 05.01.2016 written with name of one Amresh Singh, claiming certificate of petitioner forged was send to Vigilance Officer, Nalanda University (hereinafter referred to as N.U.) and the Grievance Officer, Nalanda University, and also the Vigilance Officer, Ministry of External Affairs, which was forwarded to Vice Chancellor of the University for enquiry. It is pointed out that in furtherance of said complaint report regarding genuiness was called for from Sant Longowal Institute of Engineering and Technology, Longowal, Distt. Sangrur, Punjab (hereinafter referred to as SLIET) by Dr. Gopa Sabharwal, Vice Chancellor of N.U. through letter no. NU/2015-16 dated 09.03.2016, wherein in response, a letter was issued by SLIET dated 18.03.2016 bearing no. 1155 addressing to Vice Chancellor of



N.U., stating thereto that out of five documents, four documents are genuine, whereas testimony regarding experience certificate was not issued by the institute. It is submitted that on the basis of said report the present FIR in issue was lodged by informant being a Finance Officer of N.U.

5. It is further submitted by learned counsel that petitioner was working as Deputy Registrar in SLIET. He was relieved on 30.05.2014 upon disposal of Civil Writ Petition No. CWP-8879 of 2014 pending before Hon'ble High Court of Punjab and Haryana at Chandigarh, whereafter he was to join on 02.06.2014 in Delhi at Indian Institute of Public Administration, New Delhi, therefore in absence of Registrar he himself created an experience certificate favoring himself and put his own signature for Registrar, it is submitted that genuineness of the particulars/statement as mentioned in experience certificate dated 31.05.2014 is not disputed and merely on the ground of irregularities as petitioner issued himself issued certificate under his own signature being Deputy Registrar in absence of Col. (Retd.) Arun Kainthla, Registrar of SLIET, where he is authorised to issue such experience certificates to others, implicated falsely with the present case. It is submitted that this is not even a case of impersonation as signature was not for



Registrar, rather it was his own signature in place of registrar in his official capacity. It is further submitted that no, *prima facie*, case is made out against petitioner for the offences punishable under Sections 467, 468 and 471 of the IPC. In support of his submission learned counsel further referred to the letter no. 1115 dated 18.03.2016, where the first bullet mark clearly specifies that petitioner as a Deputy Registrar joined SLIET on 31.07.2013 and was relieved w.e.f. afternoon of 30.05.2014.

6. It is submitted that petitioner was in enimical terms out of official differences with informant, where several issues regarding financial irregularities were raised against informant by petitioner while working as a Director Administration and as subsequently informant himself found in financial irregularities, his service as Finance Officer was terminated from N.U. vide letter dated 07.11.2017 (annexure 6 of the supplementary affidavit).

7. It is submitted that in view of aforesaid background the present cognizance order as discussed above is fit to be quashed as no, *prima facie*, case is made out against petitioner.

8. Learned APP appearing on behalf of State, while opposing the application submitted that petitioner issued



experience certificate to himself on behalf of Registrar of SLIET, Col. (Retd.) Arun Kainthla.

9. It would be apposite at this stage to reproduce the section in which cognizance was taken i.e., Sections 409, 419, 420, 467, 468, 471 and 506 of the IPC :-

409. Criminal breach of trust by public servant, or by banker, merchant or agent.—Whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with 1 [imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

419. Punishment for cheating by personation.—Whoever cheats by personation shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

420. Cheating and dishonestly inducing delivery of property.—Whoever cheats and thereby dishonestly induces the person



deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

467. Forgery of valuable security, will, etc.—Whoever forges a document which purports to be a valuable security or a will, or an authority to adopt a son, or which purports to give authority to any person to make or transfer any valuable security, or to receive the principal, interest or dividends thereon, or to receive or deliver any money, movable property, or valuable security, or any document purporting to be an acquittance or receipt acknowledging the payment of money, or an acquittance or receipt for the delivery of any movable property or valuable security, shall be punished with 4 [imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

468. Forgery for purpose of cheating.—Whoever commits forgery, intending that the 3 [document or electronic record



forged] shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

471. Using as genuine a forged document or electronic record.—

Whoever fraudulently or dishonestly uses as genuine any 5 [document or electronic record] which he knows or has reason to believe to be a forged 5 [document or electronic record], shall be punished in the same manner as if he had forged such 5 [document or electronic record].

506. Punishment for criminal intimidation.—Whoever commits the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

If threat be to cause death or grievous hurt, etc.—and if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or

8 [imprisonment for life], or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall be punished with



imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

10. In support of submissions learned counsel relied upon the report of Hon'ble Supreme Court in the case of **N. Raghavender Vs. State of Andhra Pradesh, CBI** as reported in **(2021) 18 SCC 70**, where he pressed para no. 46 and 51 of the said report, which is as under:-

“46. The entrustment of public property and dishonest misappropriation or use thereof in the manner illustrated under Section 405 are a sine qua non for making an offence punishable under Section 409IPC. The expression “criminal breach of trust” is defined under Section 405IPC which provides, inter alia, that whoever being in any manner entrusted with property or with any dominion over a property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property contrary to law, or in violation of any law prescribing the mode in which such trust is to be discharged, or contravenes any legal contract, express or implied, etc. shall be held to have committed criminal breach of trust. Hence, to attract Section 405IPC, the following ingredients must be satisfied:

1. Entrusting any person with property or with any dominion over property.



2. That person has dishonestly misappropriated or converted that property to his own use.

3. Or that person is dishonestly using or disposing of that property or wilfully suffering any other person so to do in violation of any direction of law or a legal contract.

51. It is paramount that in order to attract the provisions of Section 420IPC, the prosecution has to not only prove that the accused has cheated someone but also that by doing so, he has dishonestly induced the person who is cheated to deliver property. There are, thus, three components of this offence i.e. (i) deception of any person, (ii) fraudulently or dishonestly inducing that person to deliver any property to any person, and (iii) mens rea of the accused at the time of making the inducement. It goes without saying that for the offence of cheating, fraudulent and dishonest intention must exist from the inception when the promise or representation was made.”

11. It would also be apposite to reproduce the paragraph no. 102 of the Apex Court decision in the case of ***State of Haryana and Others vs. Bhajan Lal and Others*** reported in 1992 Supp (1) Supreme Court Cases 335, which reads as under:

“102. In the backdrop of the interpretation of the various relevant



provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) 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.

(2) Where the allegations in the first informant report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under



an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of nay offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent persons can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing



efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

13. Learned counsel further referred the legal report of Hon’ble Supreme Court, as reported in matter of **Usha Chakraborty and Another Vs. State of West Bengal and Another** as reported in **(2023) SCC Online SC 90**, where he pressed para no. 10 of the said report, which is as under:-

10. In Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra, a three Judge Bench of this Court laid down the following principles of law:—

“57. From the aforesaid decisions of this Court, right from the decision of the Privy Council in the case of Khawaja Nazir Ahmad (supra), the following principles of law emerge:

i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into cognizable offences;



ii) Courts would not thwart any investigation into the cognizable offences;

iii) However, in cases where no cognizable offence or offence of any kind is disclosed in the first information report the Court will not permit an investigation to go on;

iv) The power of quashing should be exercised sparingly with circumspection, in the 'rarest of rare cases'. (The rarest of rare cases standard in its application for quashing under Section 482 Cr. P.C. is not to be confused with the norm which has been formulated in the context of the death penalty, as explained previously by this Court);

v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;

vi) Criminal proceedings ought not to be scuttled at the initial stage;

vii) Quashing of a complaint/FIR should be an exception and a rarity than an ordinary rule;

viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities. The inherent power of the court is, however, recognised to secure the ends of justice or prevent the abuse of the process by Section 482 Cr. P.C.



ix) *The functions of the judiciary and the police are complementary, not overlapping;*

x) *Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;*

xi) *Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;*

xii) *The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. During or after investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;*

xiii) *The power under Section 482 Cr. P.C. is very wide, but conferment of wide*



power requires the court to be cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint; and xv) When a prayer for quashing the FIR is made by the alleged accused, the court when it exercises the power under Section 482 Cr. P.C., only has to consider whether or not the allegations in the FIR disclose the commission of a cognizable offence and is not required to consider on merits whether the allegations make out a cognizable offence or not and the court has to permit the investigating agency/police to investigate the allegations in the FIR.”

14. In view of aforesaid factual and legal discussions, it transpires that implication of petitioner appears only on the basis of experience certificate, which has been issued by himself being Deputy Registrar of SLIET, where he was working till 30.05.2014 (afternoon) since 31.07.2014



(forenoon). Aforesaid period of service not appears disputed in view of letter dated 18.03.2016 bearing no. 1155 issued by SLIET. Any information furnished out of experience certificate dated 30.05.2014 not appears, *prima facie*, incorrect or forged. It further appears that the experience certificate was issued in favor of petitioner dated 27.02.2014 under signature of Col. (Retd.) Arun Kainthla bearing letter no. 7884 as issued by SLIET, where it has been shown that petitioner worked till 27.02.2014 since 31.07.2014 (forenoon). Different e-mails as annexed with FIR shows that petitioner and informant were in enimical terms out of official disputes and differences, where informant was also terminated from services of Finance Officer from N.U. vide order dated 07.11.2017, bearing no. 699 and as such, this case not appears a *prima facie*, case of forged document, neither it is a case of impersonation. The allegation did not appear to constitute the offence punishable under Section 409 of the IPC, *prima facie*, as to constitute criminal breach of trust by public servant. It is well settled principle of law that issuance of *mens rea*, i.e., fraudulent or dishonest intention essentially the relevant ingredients to make out a case under Section 420 of the IPC, which must run from very inceptions as it has been held in the matter **Sangeetaben**



Mahendrabhai Patel Vs. State of Gujrat and Another as reported in **(2012) 7 SSC 621.**

15. Accordingly, by taking note of guidelines as mentioned in para no. 7 of **Bhajan Lal case (supra)**, impugned order of cognizance dated 31.01.2017 with all its consequential proceedings, *qua*, petitioner arising thereof as passed in Rajgir P.S. Case No. 65 of 2016, pending before learned Additional Chief Judicial Magistrate-IV, Bihar Sharif, Nalanda is hereby quashed and set aside.

16. The application stands allowed.

17. Let a copy of this order be sent to learned Trial Court, immediately.

(Chandra Shekhar Jha, J.)

S.Tripathi/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	
Transmission Date	

