
(2008) 09 PAT CK 0121

In the Patna High Court

Case No : Criminal Miscellaneous No's. 20884 of 2006

Rajendra Mochi and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 05-09-2008

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B, 191, 192, 193, 197

Citation : (2009) 2 PLJR 54

Hon'ble Judges : Mridula Mishra, J

Bench : Single Bench

Advocate : Bipin Kumar, S.S. Sandwar, Suresh Prasad Singh No. 1, Vitesh Kumar Singh, D.K. Sinha, Gagandeo Yadav, Mahendra Thakur, Prem Kumar Jha, Arun Kumar Jha and Mukesh Mishra, for the Appellant; S.M. Rahman and Vishwambhar Prasad for the State, for the Respondent

Final Decision : Allowed

Judgement

Mridula Mishra, J.—All these six criminal miscellaneous applications have been filed for quashing of the entire criminal proceedings of different Police cases instituted mainly for offence under Sections 191, 192, 193, 198, 199, 420, 471, 474 and 511 of the Indian Penal Code. The background in which the F.I.Rs. of Gardanibagh P.S. Case Nos. 211/06, 13/06, Madhepura P.S. Case No. 22 of 2006, Kazi Mohammadpur P.S. Case No. 11 of 2006 and Muzaffarpur Sadar P.S. Case No. 12 of 2006 were instituted relates to recruitment of Amins in the Department of Revenue Land Reforms, Government of Bihar. There were several vacancies of Amin in the Muffasil Office due to which the measurement of land and other land related work in the Government Department were being affected. Requests were made before the Department of Revenue Land Reforms for appointment on the vacant post of Amin. The Land Revenue Department in order to maintain uniformity in the appointment, issued instruction to all concerned by Memo No. 354(4) dated 26.3.2004 fixing qualification for the post of Amin in the State of Bihar. The qualifications were that the candidates should have certificate of matriculation/equivalent examination, certificate of examination of Amanat

training having no bar of experience. The appointment was to be based on competitive examination. The Staff Selection Commission, Bihar, Patna was directed to hold the examination for which total marks was 200 out of which 100 marks was fixed for Amanat and rest 100 marks of general knowledge/ general studies. The Staff Selection Commission, Bihar on 11.9.2004 published advertisement No. 604 of 2004 in Hindi Daily daunik Aaz inviting applications for the post of Amin. In this advertisement on the basis of guidelines issued by the Department of Revenue and Land Reforms, the criteria for appointment to the post of Amin was fixed. However regarding the certificate relating to Amanat training the criteria was that the training certificate should be from any institution approved by the State Government.

In pursuance of the advertisement several persons including the petitioners in Cr. Misc. No. 20884 of 2004 filled up their forms annexing the photocopies of their matriculation/equivalent certificate and also the certificate of Amanat training granted by the institution registered by the I.G. Registration. These institutions claimed to have given training of Amanat and also issued certificate to such training in favour of the candidates.

2. Case of the petitioners is that in the entire Bihar State there is no Government Institution conducting Amanat Training and that was the reason that since beginning up to date almost all the Amins functioning under the State of Bihar as the Government Amins have got the Amanat training and passed examination from the institution registered by the Department of Registration, Government of Bihar. So far these institutions are concerned their by-laws are duly approved by the I.G. Registration and they are authorized to conduct Amanat training and grant certificate. The Staff Selection Commission, Bihar scrutinized the entire applications and testimonials submitted by the aspirants and thereafter issued admit cards to the candidates finding the applications in order and testimonials as genuine. On 1.5.2005 the examination was conducted and altogether 50 aspirants were declared successful. Roll numbers of successful candidates were published in accordance with their seniority on 13.11.2005. The Chairman of the Staff Selection Commission and other members of the Board took decision vide Resolution No. 212 dated 10.12.2005 to recommend the names of successful candidates to the concerned department. Till this stage there was no objection from any quarter. The successful candidates were asked to produce their caste certificate for issuance of appointment letters, but some complaints were received at this stage by the new Chairman of the Commission. These complaints were made by the unsuccessful candidates of this examination. Complaints were made regarding irregularities in conducting the examination as well as regarding genuineness of the certificate produced by the candidates relating to their Amanat training. Since examination was already over by that time and almost reached to its final stage as such this enquiry was conducted only with respect to the certificate of Amanat training. The Collectors/District Magistrates of all those districts from where institution had issued certificates were directed to conduct enquiry. The enquiry report disclosed that the institution which have issued

certificates in favour of the 49 successful candidates, such institutions are not recognized by Government as such all successful candidates have produced forged certificate relating to Amanat training. Accordingly Gardanibag P.S. Case No. 211 of 2005 was instituted against all 49 successful candidates as well as the Members, Secretary, treasurers and Principals of such institutions which have issued certificates in favour of the successful candidates. The Collectors of the districts also instituted separate cases against the institutions and its authorities at their places on the basis of enquiry report.

3. Accordingly accused persons named in the F.I.R. have come before this court for quashing of F.I.R. as well as entire criminal proceeding. Case of the petitioners in Cr. Misc. No. 20884 of 2006 who are successful candidates is that the criminal case has been instituted against them only to harass though they have not committed any offence. So far submission of testimonials of Amanat training by them is concerned do not make out any offence for the reason that the institutions are duly authorized by the statutory authorities. Their testimonials were duly scrutinized by the Staff Selection Commission prior to issuance of the admit cards and only after finding these certificates to be genuine they were allowed to appear in the examination and thereafter declared successful. If such testimonials are considered to be forged in that case there is no reason for instituting criminal cases only against the successful candidates because altogether 1700 persons appeared in the examination and all of them had submitted their testimonials relating to Amanat training issued from those very institutions. If submission of forged certificate as genuine is an offence in that case such offence has been committed by all 1700 candidates. There cannot be pick and chose policy and discrimination in between the successful and unsuccessful candidates. This discrimination itself shows that the criminal cases have been instituted with malice, and for personal grudge. It has also been submitted on behalf of the petitioners who are successful candidates that after allowing the petitioners to appear in the examination, issuing admit cards after thoroughly scrutinizing their testimonials as well as publishing their results, there was no reason for initiating criminal case against them at the instance of complaints filed by such persons, whose identity has not been ascertained.

4. Jai Prakash Sharma petitioner in Cr. Misc. No. 14002 of 2006 is Secretary of registered institution namely Buddha Technical Shikshan and Jan Kalyan Samiti. His prayer is for quashing the entire criminal proceeding as well as F.I.R. of Kazi Mohammadpur P.S. Case No. 11 of 2006 registered for offence under Sections 419, 420, 467, 468, 471 and 472 of the Indian Penal Code.

5. Cr. Misc. No. 15329 of 2006 has been filed by Jai Prakash Sharma, Sanjeev Kumar, Raj Kishore Yadav, Raj Kumar Jha, Pawan Kumar Pradesh and Nagendra Singh for quashing F.I.R. of Gardanibagh P.S. Case No. 211 of 2006. These petitioners have independently filed Cr. Misc. No. 4266 of 2007, 20726 of 2007 and 7554 of 2006 as besides being accused in Gardanibagh P.S. Case No. 211 of 2006. Separate F.I.R. has also been instituted against them at the place where

their institutions are running. Those F.I.Rs. have been instituted at the instance of the District Magistrate of the concerned district after holding enquiry in respect to their institutions.

6. Raj Kishore Yadav is accused in Gardanibagh P.S. Case No. 13 of 2006 which has been instituted by Arun Kumar Singh, Executive Engineer-cum-Incharge Deputy Collector, Urban Ceiling, Patna. Allegation in the F.I.R. is that the informant conducted raid in the office of Nagar Gram Vikash Kalyan Sansthan at Patna at Balmi Chowk behind Sanjivini Hospital and recovered pamphlets which disclose that the institution used to misled students that it is a Government recognized institution. The Institution issued certificate of Amanat without imparting training after receiving handsome amount. Money collected is not being deposited in the Bank account of institution in violation of terms and conditions mentioned in Memorandum of Article of Association of the institute as well as in terms of recognition of institute by Registration Department.

Raj Kumar Yadav being the Secretary of the Institution was arrested at the time of raid and after completion of investigation charge-sheet was submitted by the Investigating Agency on 3.3.2006. The C.J.M., Patna took cognizance of the offence under Sections 419, 420, 467, 468, 471, 475, 120B of the Indian Penal Code by order dated 4.3.2006. Prayer of the petitioners is for quashing the entire criminal proceeding of Gardanibagh P.S. Case No. 13 of 2006 as well as for quashing the order taking cognizance dated 4.3.2006.

7. Indrajit Kumar Azad has filed Cr. Misc. No. 7554 of 2006 for quashing the F.I.R. of Madhepura P.S. Case No. 22 of 2006. The Assistant Director, Social Security, Madhepura namely R.D. Tiwary is the informant of this case. In the F.I.R. it has been alleged that he conducted enquiry in relation to recognition of Swawalambi Survey Evam Chakbandi Prashikshan Kendra, Madhepura and found that the institution is registered as a society having registration No. 294 of 1995-96. Head office of the Institution is at Lohia Nagar, Supaul who without any sanction to open and control its branch has been opened at Madhepura. Opening of this branch of this institution at Madhepura is illegal and forged. The institution has no authority to provide training of Amanat conduct examination and issue certificate of such training. As such offence has been committed under Sections 467, 468, 420 of the Indian Penal Code. Petitioner is Treasurer of the Institution at Supaul and working Principal of Institution at Madhepura.

In this case counter affidavit has been filed on behalf of Superintendent of Police, Madhepura on 12.12.2006 in which it has been stated that the investigation is almost complete and final form is going to be filed when the case was taken for hearing. Counsel appearing for the State was not in a position to inform the court that the investigation is still going on or it has concluded.

8. Petitioner No. 1 Ratan Kumar Mishra, in Cr. Misc. No. 20726 of 2007 is Secretary of the Institution, Petitioner No. 2 Ramesh Kumar Jha is Treasurer and other petitioners are members of the institution which is registered as Non-

Government Organization under the Societies Registration Act vide Registration No. 1202 of 2001-02. The Deputy Collector, Madhepura is the informant of this case. In the F.I.R. it has been stated that on the direction of the Collector, Muzaffarpur he conducted enquiry on 16.1.2006 of the institution in presence of his Chairman R.K. Jha and found that the training of Amanat is being given to the students after accepting Rs. 200/- and certificates of training are issued to the students by the institution for which it is not authorized by the State Government. Such Acts being against law is done with a view to cheat the students. Accordingly the offence under Sections 420, 467, 468, 471 and 120B of the Indian Penal Code has been committed by the accused named in the F.I.R.

9. Case of the petitioners is that in the bye-laws of the institution it is specifically mentioned that institution will take entrance fees for imparting training to unemployed persons for enhancing their self earning activity. It has also been submitted that the institution have organized number of training camp in different districts of Bihar among the unemployed educated persons to generate self-earning capacity with the help of local district administration. Certificates to the trainees after imparting training has been issued in presence of D.M., S.P. and the Minister. The District Magistrate, S.P. and Deputy Development Commissioner, Muzaffarpur himself has communicated to the B.D.O. and different authorities for needful help to the petitioners institution for organizing training camps and issuing certificates to the trainees. The Revenue Minister, Government of Bihar had also been present on such occasions. Till now not a single person has complained any where against these institutions and large number of trained persons from their institutions are working in different organization. So far receiving Rs. 200/- is concerned it is admitted fact and this is only for supplying stationery and other things. The institution is not going to be benefited illegally by receiving such money. The imparting training and issuing certificate being object of the institution it cannot be alleged that any forgery has been committed and the allegation is patently false. Criminal case has been instituted for mala fide motive.

10. Counter affidavit has been filed on behalf of the District Magistrate, Muzaffarpur in which nothing has been mentioned except that the F.I.R. was lodged for issuance of fake and forged Amanat certificate, to unemployed youth by the institution, for these petitioners as if they were authorized by the Government of Bihar to issue such certificates. Petitioners have knowingly misused the name of Government and emblem of Government of India for which they are not at all authorized. This has been done with a view to cheat unemployed youth. The certificates have been annexed in order to show that the Government name and emblem has been misused.

11. A supplementary counter affidavit has been filed by respondent No. 3 stating that in the counter affidavit on account of some confusion it was stated in paragraph-4 regarding the using emblem of Government of India as well as the Government name in the certificate. The mistake was not intentional as such this

part of statement should be treated as deleted. The certificate annexed as Annexure-A series is also be permitted to be withdrawn. In sum and substance the certificate which have been annexed with the counter affidavit to show that in order to cheat the students, it has falsely been mentioned in the certificate that it is a Government recognized institution and the Government emblem has been used was not at all applicable to the institution in question.

Another counter affidavit has been filed on behalf of respondent No. 4 the I.G., Registration. In paragraphs 12 and 13 of the counter affidavit it has been stated that there is no illegality so far imparting training of Amanat is concerned as it is mentioned in the memorandum of association itself. Only illegality is that the certificate of training has been issued by the institution without taking Government permission. In this counter affidavit also it has not been stated that any forgery has been committed so far imparting training is concerned. Issuance of certificate is an irregularity as Government's specific permission was not obtained.

12. No counter affidavit has been filed on behalf of Investigating Agency informing the court regarding status of investigation.

13. Common grounds have been taken by the counsel appearing in each case that the authorities have conducted enquiry, search and seizure without any sanction of law as well as prior notice to the institution and its authorities. Everything has been done in complete violation of rule of natural justice. All relevant and necessary documents of the institution have been seized even prior to institution of the case. It is also alleged by the petitioners that the criminal proceedings have been initiated with malice in which specific allegation is against Subhash Sharma, the new Chairman who joined after completion of examination and result in the light of the advertisement published for appointment to the post of Amin.

14. Admittedly all the institutions which are imparting training of Amanat are registered societies and functioning under registered bye-laws. The Memorandum of Article of Association of each institution disclose that imparting training of Amanat was one of the object of the Society. This is also mentioned in the Memorandum of Article of Association that the jurisdiction of the institution and its area of working will be throughout the State of Bihar although head office will be at a particular place. The training is being imparted to unemployed youth or persons eager for their self-employment. There is no complaint from any individual or students regarding the fraud committed by the institution of which the petitioners are Secretary, Treasurer or Organiser.

15. Counsel for the petitioners have also submitted that the entire exercise has been initiated on the basis of 2-3 complaints filed by unsuccessful candidates without even enquiring about their identity and without asking from such persons whether they have filed any complaint. Counsel for the petitioners submitted that in the bye-laws of the society there being clearly mentioned that the institution

will take entrance fees, give certificate after training. There is nothing which can be treated as cheating or fraud. Everything is open and so far the issuing certificate is concerned it was well known to everyone. This was being done for several years and till now the Government never objected to it or published any warning that the training from such institution is not sufficient for being recognized as qualified Amin. The certificates which have been annexed with the different criminal miscellaneous applications do not disclose that any misleading writing is there that the institutions are recognized by the Government. Counsel for the petitioners submits that there is complete lack of mens rea to make out offence of fraud and cheating. The institutions have not forged any documents for causing loss to anyone as such there is no reason for instituting any criminal case against the petitioners.

16. Considering the submissions of the counsel appearing on behalf of the petitioners in criminal miscellaneous applications I find that in the counter affidavit also it has been admitted by the respondents that the societies are registered and in Memorandum of Article of Association there is specific provision for imparting training of Amanat, Chakbandi as well as other course. So far imparting training and conducting examination is concerned it is connected with the training and can be treated as a consequence of training.

Counsel appearing for the State or the counsel appearing for the Selection Commission did not bring out any provision to show that for issuance of certificate either sanction or permission of the State Government is required. In case without sanction or prior permission of the State Government certificates are issued it is a penal offence. No such rule or provision has been brought before the Court.

17. Admittedly the State Government is not running any such institution which imparts training of Amanat. The Government being in full knowledge of this fact, in such a situation if fixed the eligibility criteria in the advertisement regarding Amanat training certificate, it cannot be presumed to be from any Government or Government recognized institution. It was well within the knowledge of Government that such certificate will be furnished by the applicants only issued from the nongovernmental organization like institution of the petitioners. The Subordinate Selection Commission scrutinized such certificates before issuing admit card to the students and allowed them to appear in the examination. Since at that stage no such objection regarding the certificate of Amanat training was raised by the Subordinate Selection Commission, presumption will be that everything was found in order and only thereafter admit cards were issued for appearing in the examination. At a later stage same certificates of Amanat training could not have been treated as forged as forgery means doing something which is not there in reality, with a motive either to gain something or cause loss to some one or doing something with respect to some documents. Here it is not the case of the prosecution.

18. Sections 191 and 192 relates to false evidence given intentionally by any one

in a criminal proceeding with an intention of deceiving the court. Offence u/s 192 is made out when false entry is made in a book or record or a false statement is made with respect to a document with an intention to produce it as an evidence in a judicial proceeding or any other proceeding taken by law before public servant. For making out an offence u/s 192 it is also essential that such false evidence or false entry must be material to the result of the said proceeding. Fabrication in the documents with an intention to produce as a evidence is essential for making out an offence u/s 192 of the Indian Penal Code.

Sections 192 and 191 defines the offence punishable u/s 193 of the Indian Penal Code whosoever intentionally give false evidence in a judicial proceeding or fabricates false evidence for the purpose of being used in any such judicial proceeding is liable to be punished for a term which may extend to seven years and also for fine.

Section 198 is a penal section if an offence is committed u/s 197 of the Indian Penal Code. For making out an offence it is essential that any one either issues or signs any certificate knowing or believing that it is false.

Section 420 is the penal section for committing offence of cheating and dishonestly inducing any one to deliver any property. For making out an offence of cheating essential ingredient is dishonest inducement of a person for the purpose to deliver any property or to make, alter or destroy whole or any part of a valuable security, or anything which is signed or sealed, and converted into a valuable security.

Section 471 relates to using as genuine a forged document or electronic record as genuine. For making out an offence it is required that a forged document is knowingly used as genuine. Section 474 relates to possession of any document or electronic record knowing it to be forged and intending as real and genuine.

For making out any offence under all these sections, fraudulent intention is essential in the mind of person forging or fabricating it.

19. Counsel for the petitioners (successful candidates) submits that the definition of all these sections is sufficient to show that none of these sections have any application in their case. The petition-3rs have completed their Amanat training in the institutes established under the Societies Registration Act for the reason that in the State of Bihar there is no Government institute which provides Amanat training. The institutions from which they have completed their Amanat training and the certificates have been issued, conducts training of Amin in the camps after obtaining permission from the Collector, Sub-Divisional Officers and other competent authorities. Minimum period of training is 45 days and thereafter examinations are conducted and certificates issued. Till date no Government authority ever raised any objection to anyone that the training imparted by such institutions are not recognized. In fact in past persons having completed their training from such institution got appointment on the basis of these certificates. So far the petitioners are concerned, they have taken their

training from these institutions much before when the advertisement was published in the newspaper for recruitment to the post of Amin. There was no reason for them at that time to take testimonials from these institutes only with a view to get Government appointment on the post of Amin. So far the petitioners are concerned they produced all their certificates with their application forms at that very time enquiry should have been conducted regarding its genuineness.

Since the petitioners were allowed to appear in the examination on the basis of certificate of Amanat training issued by such institutions, presumption will be that the certificates were treated as genuine it cannot be said that the petitioners intentionally produced any forged documents for their appointment with an intention to cheat and to get appointed as Amins. There being no such material even in the enquiry report, initiation of criminal proceeding against them for commission of offence as mentioned in the F.I.R. is nothing but abuse of the process of court.

20. The petitioners further stated that they preferred C.W.J.C. No. 5273 of 2006 for a direction to the Bihar State Staff Selection Commission to make necessary recommendation in their favour for appointment as they have been declared successful in Amanat Competitive Examination, 2004. In that case Bihar Staff Selection Commission as well as the State counsel appeared and made their submissions. It was held that criteria for eligibility for the post of Amin could have been fixed by the Department of Revenue and Land Reforms being the employer. So far Selection Commission is concerned being the agency for recruitment cannot change the condition of eligibility for appointment. The Department of Revenue and Land Reforms while fixing criteria had not put condition of eligibility that the certificate for Amanat training must have been issued by the Government recognized institutions. Such act on the part of the Staff Selection Commission was purely beyond jurisdiction and can be non suited for the reason that they applied and under went selection on the basis of training obtained from the institutions registered under the Societies Registration Act. The fake certificates simply being related to the issue that these certificates were not issued from Government recognized institutions cannot annul the earlier resolution of the Commission dated 22.11.2005 to make recommendation. The Hon"ble Court directed the Commission to make recommendation of the selected candidate in accordance with law.

21. Considering the aforesaid facts and circumstances of the case I am of the view that the allegations of forgery, cheating and all other offences mentioned in the F.I.R. is prima facie not made out.

22. I also find that this Court has already decided in C.W.J.C. No. 503 of 2006 that the employer the Department of Revenue and Land Reforms is only authorized to fix criteria for selection of Amin. The Department of Revenue and Land Reforms had not fixed any criteria that the certificate of Amanat training must be issued from a Government recognized institution. I think that this was

done for specific reason that there is no Government recognized institution or any institution run by Government for imparting Amanat training. If the employer has not fixed any such criteria, the agency for selecting candidates for appointment to the post could not have fixed or imposed any additional criteria. Non-fulfillment of such criteria neither could have been taken as disqualification nor any document in support of qualification, criteria fixed by the employer could have been treated as a forged document.

23. On perusal of the certificate I also found that in none of the certificates, issued by the institution it is mentioned that the institution is recognized by the Government. Simply it has been stated in some of the certificates that on the basis of such training persons are being retained in Government Department which is factually true as it has not been denied by the State Government by filing counter affidavit.

24. One thing which I found very disturbing is that all these criminal applications were admitted in the year 2006-07 but in none of the criminal miscellaneous applications any order was passed by this court regarding stay of investigation. Only order passed in Cr. Misc. No. 20884 of 2006 was that in the meantime further proceeding in connection with Gardanibagh P.S. Case No. 211 of 2006 pending in the Court of C.J.M., Patna shall remain stayed. There was no direction of this Court to stay the investigation of cases instituted through different F.I.Rs., even then investigation did not proceed. The Investigating Officer of Gardanibagh P.S. Case No. 211 of 2006 was present in court at the time of hearing when he was asked that what is the stage of investigation, he was answerless. He simply stated that the Investigating Agency misunderstood the order passed in Cr. Misc. No. 20884 of 2006 as such the investigation has not proceeded any further. This only shows that the prosecutor as well as the Investigating Agencies were not at all interested that the investigation should reach its finality and if it is found that a prima facie case is made out the criminal proceeding should further move and reach to its conclusion. Only anxiety and interest of the prosecutor and the Investigating Agency was to institute criminal cases against the petitioners and others so that a sword may remain hanging on their head for years and years together.

25. Petitioners have also alleged discrimination on account of initiation of criminal proceeding only against 49 successful candidates. It has been submitted that if production of certificate of Amanat training is considered as forgery, fraud and cheating then it was done by other also who applied for the post of Amin annexing similar certificates, but were not declared successful. It is well settled that the final result on producing any forged document do not make out any difference so far the commission of offence is concerned.

26. Considering all these facts the institution of criminal cases against the successful candidates as well as the institutions and its authorities which are engaged in imparting training of Amanat is nothing but malicious and such malicious prosecution cannot be allowed to continue. Continuation of such

malicious prosecution will amount to abuse of process of court as well as harassment to the accused. Accordingly the F.I.Rs. of Gardanibagh P.S. Case No. 211 of 2006, 13 of 2006, Madhupur P.S. Case No. 22 of 2007, Kazi Mohammadpur P.S. Case No. 11 of 2006 and Muzaffarpur Sadar P.S. Case No. 12 of 2008 as well as entire criminal proceedings of connected cases with Amanat training are quashed and all these criminal miscellaneous applications are allowed. Order taking cognizance in Gardanibagh P.S. Case No. 13 of 2006 (Cr. Misc. No. 4266 of 2007) is quashed. All applications are allowed.