

(2018) 11 PAT CK 0034

In the Patna High Court

Case No : Criminal Miscellaneous No.6699 of 2016

**Ravi Ranjan @ Ritu Raj Son of Chandreshwar Prasad Singh
@APPELLANT@Hash State of Bihar**

Date of Decision : 26-11-2018

Acts Referred:

Indian Penal Code, 1860 — Section 420, 490, 511
Bihar Conduct Of Examinations Act, 1981 — Section 3, 10

Citation : (2018) 11 PAT CK 0034

Hon'ble Judges : Aditya Kumar Trivedi, J

Bench : Single Bench

Advocate : Uday Bhanu Roy, Sunil Kumar, Jharkhandi Upadhayay

Final Decision : Allowed

Judgement

1. Petitioner has challenged the order dated 15.12.2015 passed by Chief Judicial Magistrate, Muzaffarpur to the extent of himself whereby and

whereunder apart from others, petitioner has also been summoned to face trial for an offence punishable under Sections 490, 420 of the IPC, 3/10 of

Bihar Conduct of Examination Act relating to Sadar P.S. Case No514/2015.

2. Centre Superintendent of Sahid Pramod B.Ed. College, Susta filed written report on 04.10.2015 disclosing therein that there has been centre of SSC

Constable Examination, 2015 at his college. During conduction of examination, Munmun Tiwari bearing Roll No.3205056693 has been found

impersonated whereupon, the impersonator has been apprehended who, on query disclosed his identity as Arbind Kumar, son of Sidheshwar Prasad of

village-Malichak, P.O.-Soharaiya, District-Jehanabad whereupon, Sadar P.S. Case No.514/2015 has been registered against aforesaid Arbind Kumar.

After completing investigation, charge sheet has been submitted against Arbind Kumar, Santosh Kumar, Ravi Ranjan @ Ritu Raj (Petitioner)

whereupon the learned lower court took cognizance of offences in terms as indicated above and summoned the petitioner and others to face trial, subject matter of instant petition.

3. It has been submitted at the end of the petitioner that perfunctory mode of investigation is itself evident from the fact that actually, Munmun Tiwary was impersonated so he was the person who would have wrongful gain in case, impersonator would have succeeded in his goal but, neither he has been made an accused in the FIR nor, during course of investigation police has cared. In likewise manner, it has also been submitted that the investigating officer deflected from its right path only to protect aforesaid Munmun Tiwary out of extraneous consideration, invented a new story flashing the theme of inculpatory extra judicial confession of Santosh Kumar depicting different story implicating the petitioner, as he had requested the aforesaid Santosh to manage for him also and for that he undertook to pay, having no nexus to the present episode. Furthermore, it has also been submitted that even considering the same, no step has been taken, subsequently, nor the place, date has been disclosed. In absence thereof, there could not be connectivity with the present occurrence and that being so, summoning of petitioner is found bad in the eye of law.

4. The learned Additional Public Prosecutor controverted the submission and submitted that at the present stage only a prima facie material has to be seen which is found properly surfaced on account of inculpatory extra judicial confessional statement of a co-accused. That being so, the order impugned is fit to be confirmed.

5. In State of Hariyana & Ors. Versus Bhajan Lal & Ors reported in AIR 1992 SC 604, the Apex Court properly delve the issue, and laid down the following criteria whereupon the order of cognizance/prosecution could be quashed:

â??(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 information 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 any 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, on 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 person can ever

reach a just conclusion that there is sufficient grounds for proceedings 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 proceedings 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 malafide 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.â??

6. In order to search out whether the plea of the petitioner does fulfill any of the criterion so laid down by the Apex Court at detailed herein above,

first the relevant materials (case diary) has been looked into. It is evident that petitioner?s presence is no where so far, the present controversy is

concerned. It is evident from para-19 of the case diary that police received confidential information that Arbind Kumar, the accused who was

apprehended while impersonating Munmun the real candidate got some sort of nexus with Santosh, a clerk of UCO Bank whereupon, Santosh was

apprehended and from his possession the articles so enumerated under seizure list (para-23) has been recovered. Then thereafter, his inculpatory

extra judicial confessional statement has been recorded (para-24) and during course thereof, he had divulged the syndicate being operated in getting

the candidates duly employed after realizing hefty amount and during course

thereof, it is evident that he shown presence of Ravi Ranjan @ Ritu Raj, petitioner who requested him to get him employed and for that, he undertook to make payment of rupees four lacs. He had assured but, during midst thereof, he has been apprehended. Save and except the aforesaid, nothing more remains in the whole case diary.

7. From the nature of incriminating material as disclosed hereinabove there happens to be complete absence of material showing any kind of effort at the end of the petitioner in getting anybody else duped nor, any kind of illegal step has been shown to be taken at his end. Apart from this, petitioners connectivity, so far present episode is concerned, is not at all found established. Furthermore, whatever comes out from the inculpatory confessional statement of Santosh, it could not be found sufficient to away the petitioner, an accused as the same did not fulfill the criteria of continuing offence nor having any sort of nexus in between. Apart from this when the inculpatory confessional statement of Santosh has been gone through, it is apparent that save and except offering nothing more has been divulged. There happens to be not an iota of material to suggest that petitioner had duped any body by impersonation. Applicability of Bihar Examination Act is also found negating in the facts and circumstances.

8. In *Abhayanand Mishra vs. State of Bihar* reported in AIR 1961 SC 1698 after referring so many decision, lastly concluded under para-26 as follows:

“26. We may summarize our views about the construction of Section 511, I.P.C., thus: A person commits the offence of “attempt to commit a particular offence” when (i) he intends to commit that particular offence; and (ii) he, having made preparations and with the intention to commit the offence, does an act towards its commission: such an act need not be the penultimate act towards the commission of that offence but must be an act during the course of committing that offence.”

9. After having critical analysis of the material available on the record it is evident that petitioner’s identification as one of the accused concerning present episode is not at all legally justifiable whereupon, the order impugned relating to petitioner is quashed. Petition is allowed.