

(2000) 02 PAT CK 0057
In the Patna High Court
Case No : Criminal W.J.C. No. 502 of 1999

Smt. Muzahat Ambar

APPELLANT

Vs

Chancellor, L.N.M. University and Others

RESPONDENT

Date of Decision : 11-02-2000

Acts Referred:

Bihar State Universities Act, 1976 — Section 9, 9(2)
Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 154, 156, 2, 482, 491
Penal Code, 1860 (IPC) — Section 109, 120B, 420, 465, 466
Prevention of Corruption Act, 1988 — Section 13(1)D, 13(2)

Citation : (2000) 2 PLJR 674

Hon'ble Judges : Nagendra Rai, J

Bench : Single Bench

Advocate : Yogendra Mishra and Suresh Chandra Giri, for the Appellant; B.P. Pandey, for Vig. Deptt., S.D. Yadav, for the Respondent

Final Decision : Dismissed

Judgement

Nagendra Rai, J.—The Petitioner has filed the present application for quashing the first information report of Vigilance P.S. Case No. 19 of 1999 dated 3.8.1999 under Sections 420, 465, 466, 471, 477-A, 109 and 120-B of the Indian Penal Code (hereinafter referred to as I.P.C.) and Section 13(2), read with Section 13(1)(D) of the Prevention of Corruption Act (hereinafter referred to as "the Act") and Section 4(2) of the Bihar Non-Government Physical Training College (Control and Regulation) Act and restraining the Respondents from proceeding with the Investigation In pursuance of the said first information report. A copy of the first information report has been annexed as Annexure-1 to this application.

2. The Petitioner's case is that Rauf Muslim Jamia (Trust) was established by the Petitioner and others for all round development of Muslim Minority Community. The said Trust was registered in the year 1985 under the Societies Registration Act. The aims and objects of the aforesaid Trust, inter-alia, were to open and establish various institutions from Primary to Re-search Standard, including

Teachers Training Colleges. The Petitioner was also one of the members of the said Trust and she signed the Memorandum of Articles of the aforesaid Trust. With a view to fulfil one of the objects incorporated in the Memorandum of Articles, the Trust established S.M. Zareef College of Education at Darbhanga (hereinafter referred to as "the College") in the year 1990 to impart teachers' training education as per the norms and standard prescribed by the law and the State Government.

3. The College approached the State Government for recognition and requested for inspection, but the same was not done. In the meantime, the students of the College filed a writ application being C.W.J.C. No. 618 of 1998 in this Court for a direction to allow them to appear at the B. Ed. examination, which was disposed of on 28.1.1998 by a learned Single Judge of this Court. This Court directed the University to take a decision in accordance with law within a period of two months for the purpose of granting affiliation/no objection certificate as per the relevant provisions of the Rules. The said order was communicate to the Chancellor of the Universities, wt sent it to the Vice Chancellor of the L.N. Mithila University (hereinafter referre to as "the University") and the Vice Chancellor of the Universities granted affiliation to the College by letter dated 9.2.1998 and on that basis, the students were, allowed by the University to appear in the examination for the sessions 1995-96 and 1996-97. In 1998, the Parliament enacted National Council for Teachers Education Act, 1998, for whole of the country with a view to provide statutory powers to the National Council for Teachers Education (hereinafter referred to as "the Council") created under the said Act with the objective of determination, maintenance and co-ordination of standard in teachers education laying down the norms and guidelines for various courses. Under the provisions of the Act, the Colleges were required to be recognised by the said Council and for recognition the Council was authorised to depute an In spection Team for inspection and report. The College applied for its recognition in the prescribed proforma. The Council refused to grant recognition to the College. Thereafter, the College filed an appeal before the appellate authority created under the said Act, which was pending.

4. In the meantime, the Chancellor of the Universities (the Governor of the State of Bihar) received certain information with regard to the bungling and irregularities committed by several Teachers Training Colleges, including National Teachers Training College, Arer (Madhubani) and Fakruddin Ali Ahmad Teachers Training College, Darbhanga and, thereafter, directed the Vigilance Department of the State of Bihar to make necessary enquiry into the affairs of the College, including the College in question. The Vigilance Department entrusted the enquiry to Ajay Kumar Mishra, D.S.P., Vigilance-cum-Officer Incharge, Vigilance Police Station, Patna, who made a preliminary enquiry and after conclusion of the said enquiry, it was found that a prima-facie cognizable case for investigation is made out against the public servants as well as the office bearers of the fictitious Teachers Training Colleges and, thereafter, the aforesaid case was registered against the public servants including the Minister, the Petitioner and others.

5. According to the Petitioner, the prosecution of the Petitioner in the aforesaid case is an abuse of the process of the Court. It is stated that the Chancellor has power to order inspection or enquiry with regard to the affairs of the University or the Colleges attached to the University. The College in question being a private minority institution is not receiving any aid either from the State Government or the Central Government and as such the very order of enquiry passed by the Chancellor was without jurisdiction and consequently the lodgment of the first information report on the basis of the result of the aforesaid enquiry is not sustainable in law. It was also submitted that the Vigilance Department is a wing of the State created by notification and it has no power to institute and investigate the case against a private College. The cases can be instituted by the Vigilance Department against the public servants with regard to charges of corruption and bribery and the Petitioner not being a public servant, the institution and investigation of the case against her is without any support in law. It was lastly submitted that there is no allegation against the Petitioner in the first information report and as such the first information report be quashed so far as she is concerned.

6. Learned Counsel appearing for the Vigilance Department submitted that the Chancellor having received information about the charges of corruption and bribery against the public servants with regard to grant of affiliation/recognition to the Teachers Training Colleges, sent the same to the Vigilance Department, which has been created to look into such matter and the Vigilance Department after enquiry having found that a prima-facie case cognizable was made out against the public servants as well as the private persons, who also conspired and connived in the commission of the offence, lodged a first information report in exercise of its statutory power u/s 154 of the Code of Criminal Procedure (hereinafter referred to as the Code) and is investigating the case in exercise of its statutory power under the Code.

7. It was further submitted that as the alleged offences against public servants and others are cognizable ones, the Police has statutory right to investigate the case and this power is not curtailed or ceased only on the ground that the Chancellor having come to know of the irregularities directed the Vigilance Department to look into the matter. Only (sic) cause the information was received in the office of the Chancellor to look (sic) the matter, the lodging of the first information report and proceeding with the investigation by the Vigilance Department not be said to be without jurisdiction. It further stated that there is a direct allegation against the Petitioner in the first Information report that she along with other members and office bearers of the Trust arrived with the Government officials/public servants and forged and fabricated documents and they obtained monetary benefit result of their fraudulent acts.

8. When the offence is alleged to have been committed, the guilty person is to be brought to book by the procedure established under the law. If there is no proper investigation and the offender escapes from the consequences, the same will

cause miscarriage of justice and the society at large would be sufferer. The Police has statutory right to register the case with regard to commission of a cognizable offence and to proceed with the investigation. This power of the Police is unfettered so long it exercises in accordance with the statutory provision concerning investigation. The High Court either in exercise of extra-ordinary jurisdiction or inherent power will interfere only in the rarest of rare cases on the well-settled grounds; such as when no case is made but or the Police has transgressed its jurisdiction or its action is actuated by malafide etc.

9. The Privy Council in the case of AIR 1945 18 (Privy Council) , held as follows:

In India there is a statutory right on the part of the Police under Sections 154 and 156, to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities, and it would be an unfortunate result if it should be held possible to interfere those statutory rights by an exercise of the inherent jurisdiction of the Court u/s 561-A. The functions of the judiciary and the Police are complementary not overlapping and the combination of individual liberty with a due observation of law and order is only to be obtained by leaving each to exercise its own function, always of course subject to the right of the Court to intervene in an appropriate case when moved u/s 491, Code of Criminal Procedure, to give direction in the nature of habeas corpus. In the case of a cognizance offence, the Court's functions begin when a charge is preferred before it and not until then, therefore, the High Court can interfere u/s 561A only when a charge has been preferred and not before.

10. The Apex Court has also considered this matter in catena of cases. However, it is not necessary to refer each and every case, suffice it to refer to the case of State of Haryana and others Vs. Ch. Bhajan Lal and others, , wherein at paragraph No. 62, it was held as follows:

The sum and substance of the above deliberation results to a conclusion that the investigation of an offence is the field exclusively reserved for the police officers whose powers in that field are unfettered so long as the power to investigate into the cognizance offences is legitimately exercised in strict compliance with the provisions falling under Chapter XII of the Code and the Courts are not justified in obliterating the track of investigation when the investigating agencies are well within their legal bounds as aforementioned. Indeed, a noticeable feature of the scheme under Chapter XIV of the Code is that a Magistrate is kept in the picture at all stages of the police investigation but he is not authorised to interfere with the actual investigation or to direct the Police how that investigation is to be conducted. But if a police officer trans gresses the circumscribed limits and improperly and illegally exercises his investigatory powers in breach of any statutory provision causing serious prejudice to the personal liberty and also property of a citizen, then the Court on being approached by the person aggrieved for the redress of any grievance has to consider the nature and extent of the breach and pass appropriate orders as may be Constitution called for without leaving the citizens to the mercy of police echelons since human dignity

is a dear value of our. Needs no emphasis that no one can demand absolute immunity even if he is wrong and claim unquestionable right and unlimited powers exercisable up to unfathomable cosmos. Any recognition of such power will be tantamount to recognition of Divine Power which no authority on earth can enjoy.

It was further held that the High Court can quash the first information report and investigation of a cognizable case in exercise of power under Article 226 or inherent power u/s 482 of the Code in rarest of rare cases and this power has to be exercised when the allegation does not constitute a cognizable offence justifying the investigation by the police or when the allegations are absurd or inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused or there is express legal bar engrafted in any of the provisions of the Code or the Act to the institution and continuance of the proceedings or the proceeding is manifestly attended with mala fide or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused or with a view to spite him due to private and personal grudge.

11. In the State of Bihar, for the purpose of institution and investigation of cognizable cases relating to corruption and bribery by the public servant, the Government by a notification dated 6.6.1973 in exercise of power u/s 4(1) Sub-section (1) Clause (s) of 1908 (sic-1898?) Code created the Head Office of the Cabinet (Vigilance) Department as Police Station with regard to cases registered by the Cabinet (Vigilance) Department regarding bribery and corruption. The investigation of the aforesaid cases registered at the Vigilance Police Station has to be carried out by the officers of the said department under the control of the D.I.G., Cabinet (Vigilance) Department. In view of the aforesaid notification, the Head Office of the Cabinet (Vigilance) Department is now a Police Station in terms of Section 2(s) of the Code of 1973. The Officer-in-charge of the said Police Station is, thus, empowered to institute the cases with regard to offences concerning bribery and corruption committed by public servants throughout the State of Bihar.

12. There is no statutory provision, which provides that the institution of cognizable cases before the Vigilance Department is to be done by the particular authority. Once the information is received by the Vigilance Department and the Vigilance Department is prima-facie satisfied about the commission of cognizable offence, then it has power to register and proceed with the investigation. This power is not taken away or in any way affected only because the information with regard to corruption etc. is received by the Chancellor of the University.

13. Section 9(2) of the Bihar State Universities Act, 1976 (hereinafter referred to as the Universities Act") empowers the Chancellor to inspect the University, its buildings, laboratories, workshops and equipment, any College or hostel or get the inspection or enquiry done by other agency. Thereafter, the provision has been made (sic)erein empowering the Vice Chancellor proceed after receipt of

the enquiry and inspection report.

14. According to the Petitioner, as (sic) College in question is a private College, the Chancellor has no power to (sic)rect an enquiry in this case and as such he very order of the Chancellor to hold inquiry by the Vigilance Department is without jurisdiction. This submission is without any substance. That section has no application in the present case. Here the Chancellor did not order enquiry or Inspection in exercise of the statutory power u/s 9 of the Universities Act. On the other hand, on receipt of complaints with regard to fraudulent and dishonest acts of the public servants regarding grant of affiliation to the training Colleges simply sent the matter to the Vigilance Department to look Into it and the Vigilance Department, thereafter, in exercise of the statutory power made a preliminary enquiry and on being satisfied instituted a case and is proceeding with the investigation. Only because the Chancellor asked the Vigilance Department to look Into certain allegations, the power of the Vigilance Department to Initiate and investigate the cognizable case is not affected in any way. The offence as alleged being a cognizable one, the matter can be brought to the police by any person or authority, specially when there is no legal bar to the institution and continuance of the proceeding.

15. The submission advanced on be half of the Petitioner that the Vigilance Department has no right to register and investigate the case against the Petitioner as she is not a public servant is devoid of any substance. The first Information report has been lodged alleging commission of a cognizable offence against public servants and the Petitioner and others are alleged to have connived and conspired in commission of the said offence. The actions alleged against the Petitioner and the public servants form part of the same transaction and as such there is no legal infirmity in instituting a case and proceeding with the investigation thereof against the Petitioner along with the public servants.

16. From a perusal of the first Information report, which runs into more than 200 pages, it is clear that there is allegation against the Petitioner. Admitted position is that the Petitioner is one of the members of the Rauf Muslim Zamia (Trust) and according to the allegation, the Trust opened S.M. Zareef College of Education and created forged and fabricated documents, as a result of which a large number of students were allowed to appear in the examination, though they were not the real students of the said College, as a result of which a huge sum of money was earned by the Institution and the public servants in an illegal manner. Whether those allegations are correct or not has to be seen during investigation. As there are allegations against the Petitioner, this Court cannot quash the first information report and investigation against the Petitioner only on the basis of certain averments made in the petition, which are still to be verified during the investigation.

17. For the reasons aforementioned, I find no merit in this application and it is, accordingly, dismissed.