
(2019) 02 SHI CK 0014
In the High Court Of Himachal Pradesh
Case No : CrMMO No. 171 Of 2017

State Of Himachal Pradesh

APPELLANT

Vs

Dina Nath Sharma

RESPONDENT

Date of Decision : 28-02-2019

Acts Referred:

Indian Penal Code, 1860 — Section 420

Citation : (2019) 02 SHI CK 0014

Hon'ble Judges : Sandeep Sharma, J

Bench : Single Bench

Advocate : S.C. Sharma, Dinesh Thakur, Sanjeev Sood, Pritam Singh Chandel

Final Decision : Dismissed

Judgement

Sandeep Sharma, J

1. By way of instant petition filed under S.482 CrPC, challenge has been laid to the order dated 17.6.2016 passed by the learned Additional Sessions Judge, Ghumarwin, District Bilaspur, HP. (Camp at Bilaspur) in Cr. Revision No. 18/10 of 2013, affirming order dated 7.2.2013 passed by the learned Judicial Magistrate 1st Class, Bilaspur, Himachal Pradesh in case No. 107/2 of 2009, whereby application filed under S.239 CrPC, by the respondent-accused (hereinafter, 'accused') for his discharge, came to be allowed.

2. Precisely, the facts of the case, as emerge from the record are that a complaint came to be filed against the accused by a person namely Dina Nath son of Shri Prabha Ram, alleging therein that the accused, while serving as a teacher with the Education Department of Himachal Pradesh and posted at Senior Secondary School, Ghumarwin, had simultaneously obtained a degree in law, from NES Law College (Night College), Jabalpur, Madhya Pradesh, affiliated to Rani Durgawati University. Complainant further alleged that during aforesaid period, accused had drawn full salary from the Department and factum with regard to his having acquired degree in law was also not entered in the service

book. Complainant also alleged that the accused, after his retirement from the Department, got himself enrolled with the Bar Council of Himachal Pradesh on 9.5.2000. Complainant also alleged that the accused obtained the law degree as a regular student of three year course, whereas, total period of days, for which he remained on leave was 87. He further claimed that at no point of time, the accused submitted his attendance and moot court certificates with the Bar Council of Himachal Pradesh, despite his having given undertaking to that effect.

3. It emerges from the record that the aforesaid complaint having been filed by Dina Nath was initially inquired into by the Vigilance Department, Police Headquarters, Khalini. DIG Vigilance, Police Hqrs, after having received complaint, got inquiry conducted through Inspector, State Vigilance and Anti Corruption Bureau, Bilaspur, but, since no act of corruption was found to have been committed by the accused, matter was sent for registration of FIR at local Police Station, consequent to which FIR No. 47/08 dated 6.3.2008, came to be registered against the accused under Ss.420, 468 and 471 IPC at Police Station Ghumarwin, Bilaspur, Himachal Pradesh.

4. After completion of investigation, police submitted its final report under S.173 CrPC, in the court of learned Judicial Magistrate 1st Class, Ghumarwin, against the accused for commission of offences punishable under Ss.420, 468 and 471 IPC. During these proceeding, accused filed an application under S.239 CrPC, praying for his discharge on the ground that the charge sheet filed did not disclose prima facie criminal offence, if any, against the accused and as such, he deserves to be discharged. Record further reveals that the prosecution chose not to file any reply to the application and the learned trial Court, vide order dated 7.2.2013, allowed the application for discharge concluding therein that no offence is spelt out in the charge sheet so framed against accused, on the basis of material available on record.

5. Being aggrieved and dissatisfied with the aforesaid order of discharge passed by the learned Judicial Magistrate 1st Class, Bilaspur, petitioner-State preferred a criminal revision under S.397 CrPC laying therein challenge to the order dated 7.2.2013 passed by the learned Judicial Magistrate 1st Class, Bilaspur, however, the same was dismissed, as a consequence of which, order of discharge passed by learned trial Court came to be upheld. In the aforesaid background, State has approached this court in the instant proceedings filed under S.482 CrPC, praying therein to set aside the order of discharge.

6. Having heard the learned Additional Advocate General and perused the material available on record vis-à-vis reasoning assigned by the learned Courts below, while allowing the application having been filed by the accused under S.239 CrPC, for his discharge, this court is not at all persuaded to agree with the contention of Mr. Sanjeev Sood, learned Additional Advocate General that the impugned orders passed by the learned Courts below are not based upon proper appreciation of the material adduced on record by the investigating agency, alongwith its report filed under S.173 CrPC, rather, this court finds that there is

no material at all placed on record by the investigating agency to demonstrate that the accused committed offences punishable under Ss.420, 468 and 471 IPC. Admittedly, the complaint having been filed by the complainant namely Dina Nath, at the first instance, came to be investigated by the Vigilance Department of the State, which having inquired into the complaint arrived at a conclusion that no case of corruption is made out against the accused and as such, sent the complaint for registration of an FIR at local Police Station i.e. Bilaspur, whereafter, FIR detailed herein above came to be lodged against the accused. Admittedly the complaint in the case at hand came to be filed at the behest of a third person, i.e. Shri Dina Nath, who, in no manner could be said to be aggrieved with the offences, if any, committed by the accused. Otherwise also, it is not the case of the complainant that the accused, on the basis of forged degree of law, procured employment in the Education Department, rather, record itself suggests that the degree of law from NES Law College (Nigh College), Jabalpur, Madhya Pradesh, was obtained by the accused, while he was in service. The question whether the accused obtained degree of law from the aforesaid college during his service, after having obtained necessary permission from the Department, could only be determined by way of a departmental inquiry, if any, initiated by the Education Department. Interestingly, in the case at hand, at not point of time, Education Department, even after having discovered the factum with regard to accused having acquired degree in law from NES College, during his service time, thought it proper to investigate the case and thereafter initiate disciplinary proceedings, if any, against the accused. Similarly, factum with regard to lodging of FIR, on the basis complaint having been filed by Dina Nath was very much in the knowledge of the Bar Council of Himachal Pradesh, who, after having scrutinized the documents placed on record by the accused with his application for enrolment, enrolled him as an advocate in the year 2000. It is not in dispute in the present case that neither the Education Department nor the Bar Council of Himachal Pradesh at any point of time lodged a complaint against the accused that he suppressed facts from his employer or the Governing Body of Advocates at the time of enrolment/registration as an advocate. Moreover, there is no material at all suggestive of the fact that the accused committed offence, if any, punishable under Ss.420, 468 and 471 IPC.

7. Complainant alongwith his complaint failed to supply any material to substantiate the averments contained in the same. Similarly, this court finds that the investigating agency also failed to obtain/produce the record with regard to service record of the accused, suggestive of the fact that the factum with regard to accused having degree in law during his service career, was ever brought to the notice of Education Department and at any point of time, accused had applied for Study Leave. Similarly, there is nothing on record, that the accused, after having obtained of degree in law, got the factum with regard to same incorporated in the service record, rather, after his retirement, accused applied for registration with the Bar Council of India, who subsequently, having perused documents made available to it by the accused, enrolled him as an advocate on

9.5.2000.

8. Section 420 IPC provides that, 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. Hence, a person can only be said to have committed offence punishable under S.420 IPC, if he 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. Moreover, main ingredients of S.420 IPC pertain to property, whereas, offence of cheating is defined under S.415.

9. Interestingly, in the case at hand, there is no material adduced on record to demonstrate that the accused cheated the complainant and thereafter dishonestly induced him or for that matter, Education Department, or the Bar Council of Himachal Pradesh to deliver any property. S.415 provides that, whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".

10. Interestingly, if material placed alongwith charge sheet filed by the police is read juxtaposing the complaint filed by Shri Dina Nath, there is nothing to suggest that the complainant was induced by the accused to do some act or omit something. Even there is nothing on record suggestive of the fact that accused Dina Nath son of Shri Maru Ram induced the Education Department or the Bar Council of Himachal Pradesh to cause harm to them or cause wrongful gain to himself.

11. There is yet another aspect of the matter that though the complainant has submitted that the accused obtained degree in law without obtaining requisite permission from the Government/concerned Department, but, material available on record suggests that the accused had obtained leave from the Department, which certainly relates to the period, while he was allegedly undergoing the law studies at Jabalpur.

12. Leaving everything aside, at no point of time, Department of Education, or the Bar Council of Himachal Pradesh lodged complaint, if any, against the accused, being aggrieved of his aforesaid illegal act, if any. Though, there is nothing on record to suggest that the Department of Education, who admittedly, after retirement of the accused, released pensionary benefits, filed complaint, if any, against the accused, but this court is informed by the learned counsel

representing the accused that the complainant Dina Nath had filed a complaint before the Bar Council of Himachal Pradesh, who after proper enquiry, found the complaint to be false and accordingly dismissed the same. Learned counsel appearing for the accused also informed that after the decision by the Bar Council of Himachal Pradesh, complainant also approached Bar Council of India, but his appeal was dismissed.

13. Needless to say, accused can always seek his discharge under S.239 CrPC, if he/she is able to show that no prima facie case at all is made out against him/her. Similarly, by now, it is well settled that the court, while framing charge, is required to sift the material adduced before it alongwith charge sheet to atleast infer prima facie case, if any, against the person sought to be charged, because, a person can not be made to suffer agony of protracted trial, especially, when there is no material warranting framing of charge against him/her, hence, this court sees no reason to interfere with the impugned judgments passed by the learned Courts below, which otherwise appear to be based on proper appreciation of the evidence.

14. Consequently, in view of the above, I find no merit in the present appeal, which is accordingly dismissed. Judgments passed by both the learned Courts below are upheld. Bail bonds, if any, furnished by the accused are discharged. Pending applications, if any, also stand disposed of.