
(2023) 09 JH CK 0024

In the Jharkhand High Court

Case No : Criminal Miscellaneous Petition No. 2352 Of 2016

Upendra Nath Verma

APPELLANT

Vs

State Of Jharkhand And Others

RESPONDENT

Date of Decision : 11-09-2023

Acts Referred:

Indian Penal Code, 1860 — Section 409, 420, 467, 468, 471

Citation : (2023) 09 JH CK 0024

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Abhay Kumar Mishra, Manoj Kumar Choubey, Ravi Prakash

Final Decision : Dismissed

Judgement

Sanjay Kumar Dwivedi, J

1. Heard Mr. Abhay Kumar Mishra assisted by Mr. Manoj Kumar Choubey, learned counsel appearing for the petitioner and Mr. Ravi Prakash, learned counsel for the State.

2. This petition has been filed for quashing of the FIR and the entire criminal proceedings in connection with Garhwa P.S. Case No.387/2012, dated 02.11.2012, corresponding to G.R. Case No.2053/2012 registered under Sections 409, 420, 467, 468 and 471 of the Indian Penal Code, pending in the court of the learned Chief Judicial Magistrate, Garhwa. Subsequently, the learned court has taken cognizance against the petitioner vide order dated 18.02.2017. The said order was challenged in I.A. No.4957 of 2022, which was allowed by this Court vide order dated 25.07.2023. In view of that the order taking cognizance is also under challenge.

3. The FIR was registered by the informant-District Education Officer, Garhwa by letter dated 01.11.2012 alleging therein that as per the letter dated 29.10.2012, he has received a letter from the office of the Director, Secondary Education, Human Resource Department, Jharkhand, Ranchi wherein direction has been

given to him to lodge an FIR against the petitioner as his appointment was found forged.

4. Mr. Abhay Kumar Mishra, learned counsel appearing for the petitioner submits that the petitioner has been falsely implicated in the case. The petitioner filed W.P.(S) No.376/2013, wherein, the prayer was made for quashing the letter dated 01.11.2012, whereby, the petitioner has been terminated from service on the ground that initial appointment itself was found forged. He further submits that the said writ petition was dismissed by this Court and against that, the petitioner has moved before the Division Bench of this Court in L.P.A. He also submits that the learned court has taken cognizance against the petitioner, which is not in accordance with law. He submits that the entire criminal proceedings may kindly be quashed.

5. On the other hand, Mr. Ravi Prakash, learned counsel for the State submits that the petitioner has taken appointment by way of producing fraudulent documents. Annexures-3 and 4 have not been issued by Vidyalaya Seva Board, Bihar, Patna and appointment letter was not issued by the said Board.

6. In view of the above submissions of the learned counsel for the parties, the Court has gone through the materials on the record and finds that the letter dated 29.10.2012 is part of the FIR, wherein, it has been alleged that the appointment letter has not been issued by the Vidyalaya Seva Board, Bihar, Patna. The petitioner has already been terminated from service and he has lost in the writ petition. In view of that, it appears that there is serious allegation against the petitioner of taking appointment on the basis of forged letter. The court finds that the learned court has taken cognizance against the petitioner looking into the case diary as well as the charge-sheet. This is the case in which the cognizance has been taken after investigation. The police has filed charge-sheet and in view of the charge- sheet and other materials on record, the learned court has taken cognizance against the petitioner.

7. The mens rea can only be decided at the time of trial and not at the stage of issuing summons. When prosecution relies upon the materials, strict standard of proof is not to be applied at the stage of issuance of summons nor to examine the probable defence which the accused may take. All that the Court is required to do is to satisfy itself as to whether there are sufficient grounds for proceeding. Before summoning the accused, the facts stated will have to be accepted as they appear on the very face of it. For issuance of process against the accused, it has to be seen only whether there is sufficient ground for proceeding against the accused and the Court is not required to weigh the evidentiary value of materials on record. The Court must apply its mind to the allegation in the charge-sheet and the evidence produced and satisfy itself that there is sufficient ground to proceed against the accused. The Court is not to examine the merits and demerits of the case and not to determine the adequacy of the evidence for holding the accused guilty. The Court is also not required to embark upon the possible defences likewise, 'possible defences' need not be taken into

consideration at the time of issuing process unless there is an ex facie defence such as a legal bar of if in law the accused is not liable. Whether the accused had mens rea or not is not to be established at the stage of issuance of summons.

8. The learned court, looking into the materials in the charge-sheet as well as the case diary, has taken cognizance against the petitioner.

9. In view of the above facts, the contention of the learned counsel appearing for the petitioner with regard to the order taking cognizance is not being accepted by the court. No case of interference is made out.

10. This petition is, accordingly, dismissed.

11. Interim order, if any granted by this Court, stands vacated.