

GAHC010120302020



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Pet./438/2020

DR. MD. LOKMAN ALI
S/O MD. SAYED ALI, R/O VILL-GHOGA, P.S.-MUKALMUA, P.O.-LAWTOLA,
DIST-NALBARI, ASSAM

VERSUS

THE STATE OF ASSAM AND ANR.
TO BE REPRESENTED BY THE CRIME INVESTIGATION DEPARTMENT
THROUGH THE PUBLIC PROSECUTOR, ASSAM

2:AMRIT CHANDRA KALITA
APS
THE DEPUTY SUPERINTENDENT OF POLICE
CHIEF MINISTER'S SPECIAL VIGILANCE CELL
ASSAM
GUWAHATI-3

Advocates for the petitioner : Mr. A.R. Bhuyan, Adv.

Advocates for the respondents : Mr. D. Das, Addl.P.P.

Mr. G. Bokalia, R-2

...RESPONDENTS

:::BEFORE:::
HON'BLE MRS. JUSTICE MITALI THAKURIA

Date of hearing : 25.04.2023
Date of Judgment & Order : 15.05.2023

JUDGMENT & ORDER (CAV)

Heard Mr. A. R. Bhuyan, learned counsel for the petitioner. Also heard Mr. D. Das, learned Additional Public Prosecutor representing the State respondent and Mr. G. Bokalia, learned counsel for the respondent No.2.

2. This Criminal petition is filed under Section 482 of the Code of Criminal Procedure, 1973 of the Code of Criminal Procedure, 1973, praying for quashing of the FIR dated 28.04.2020 lodged by the opposite party No.2 and CID P.S. Case No.08/2020, registered under Sections 120(B)/468/471 of the IPC.

3. The brief facts leading to the filing of the present petition is that;

3.1. The petitioner is working as the Assistant Professor in the Department of History at Barkhetri College. His post was provincialised on 12.09.2016 w.e.f 01.01.2013. The petitioner was also an Ex. Principal of the said College, who hold the post of In-Charge of the Principal w.e.f. 15.10.2001 to 07-12-2007 and again from 31.12.2010 to 18.12.2011. Due to some dispute, the claim on the post of the Principal of the present petitioner is sub-judice before this Court.

3.2. One Sk. Mubaraque Hussain lodged a complaint against the present

petitioner before the Chief Minister's Special Vigilance Cell, Assam (In short C.M's SVC). On the basis of the said complaint, the official of Chief Minister's Special Vigilance Cell, asked the present petitioner to appear before the office and accordingly, the present petitioner appeared on 26.02.2019 on the said office.

3.3. On the basis of the FIR, the allegations leveled against the present petitioner are as follows:-

(i). That the petitioner wrote a letter on 19.06.2000 to one Nurul Bhai claiming money for increasing the percentage of marks fraudulently in examinations.

(ii). The petitioner appointed one Dilip Ch. Haloi by forging the signature of the respondent No.3.

(iii). The petitioner by manufacturing the signature of one Prafulla Ch. Medhi prepared one report for selection committee for his appointment as Principal of Barkhetri college as well as an appointment letter dated 16.11.2003 in his favour.

(iv). The petitioner appointed two persons namely Joynab khatun and Ayub Ali on 28.12.2006 and 01.12.2007 in a most illegal manner without observing any formalities for extraneous consideration whereas his position as In-charge Principal of Barkhetri College has been set aside/quashed by this Court vide Judgment & Order dated 08.09.2005, i.e. prior to those two appointment.

(v). The petitioner while supposed to have been serving in Barkhetri College from 06.08.2008 to 31.12.2010 serving as Principal of Dakshin Guwahati Jr. College and draw salary for Rs.1,47,549 from the said College.

(vi). On the day of re-joining at Barkhetri College 31.12.2010 after giving resignation from Dakshin Guwahati Jr. College on the same day, the petitioner issued two appointment letters in favour of Md. Mofidul Islam and Khalilur Rahman on 31.12.2010 in a most arbitrary and illegal manner for huge extraneous consideration.

(vii). The petitioner manufactured a selection process for Grade-IV post pursuant to an fake and purported advertisement dated 30.06.2011 and furthermore, the petitioner collected a certificate dated 21.09.2011 from the Addl. Secretary to the Government of Assam, Higher Education Department (named R.P. Mazumdar) with the seal regarding not getting ad-hoc grant by Barkhetri College which bears a serious doubt of its genuineness.

(viii). During the tenure of Akan Ch. Choudhury as President of Governing Body, Barkhetri College, the petitioner was illegally appointed as Principal of the said College, although he lacked requisite qualification. The Ph.D. degree of the petitioner is fake.

The allegation is that the petitioner did not obtained Migration Certificate from the Gauhati University to pursue his Ph.D. course which as per the complaint reveals from the letter dated 01.08.2017 issued by the Registrar,

Gauhati University issued under letter No.GU/AFF/2017/4944. And further alleged that the complaint came to know that the Ph.D. degree of the petitioner is fake when they communicated the matter with Magadha University.

(ix). The petitioner forged the signature of Dr. Bhumidhar Barman, the then, Minister and President of Governing Body of Barkhetri College in manufacturing a no objection certificate said to have been issued on 04.08.2008, allowing him to work at Dakshin Guwahati Jr. College as well as a resolution dated 27.01.2011.

(x). The petitioner while serving as I/c Principal of Barkhetri College involved in mal-practices, rampant corruption and direct defalcation of college fund. It was further alleged that the petitioner misappropriated huge amount of money collected from the lottery held in the year 2002-03 and no statement of audited accounts was maintained.

3.4. The petitioner found that all the allegations made in the complaint petition were alleged with the subject matter of earlier criminal cases as well as the subject matter of some litigation disposed of or pending before this Court. Some of the issues have already been settled before some of the competent authorities and some of the said issues are still pending before the competent Court including this Court. Therefore, the petitioner being aggrieved by the said complaint petition had approached this court by filing a writ petition being numbered as WP(C)No.2880/2019, praying for setting aside and quashing of the impugned complaint petition, which was registered as R.E. No.17/2018 along with the whole proceedings. The said writ petition is now sub-judice before this

Court. However, the petitioner also filed another writ petition bearing number as WP(C)8723/2019, challenging the guidelines issued by the Joint Secretary, C.M.'s Secretariat and the offences under P.A. Act of 1988. But, the said writ petition was later on withdrawn by the petitioner on 09.12.2019. Thereafter, the petitioner again filed another writ petition being numbered as W.P(C)No./1438/2020, praying for setting aside and quashing of the impugned order dated 18.05.2004. In the said writ petition this Court had issued notice of motion vide order dated 11.03.2020.

3.5. In the meantime, the Deputy Superintendent of police C.M.'s SVC, Assam, by violating the provision of law completed the investigation and prepared an enquiry report, wherein it has been alleged that the petitioner is guilty in two allegations, one of which for holding fake and forged Ph.D certificate and another is about allegation of manipulation of list of beneficiaries of financial assistance for teaching and non-teaching staff of Barkhetri College, Mukalmua for the year 2010-2011. Accordingly, the Deputy Superintendent of Police C.M.'s SVC, Assam has recommended the Mukalmua Police Station to register a case against the present petitioner for forgery and cheating under Sections 120(B)/420/468/471 of IPC, in respect of fake Ph.D degree and refrained him from lodging another FIR.

3.6. Thereafter, the opposite party No.2 lodged an FIR with the CID Police Station, Ulubari, Guwahati on 28.04.2020, wherein, the opposite party No.2 has prayed for registration of a case against the petitioner on the basis of the enquiry made by them in the matter of holding fake Ph.D. degree. Along with the said FIR the opposite party No.2 annexed the photo copy of the enquiry

report as well as the approval letter.

3.7. It is further submitted that the allegations leveled against the present petitioner is not a new allegations rather it is old allegation which is false and concocted one. The informant with the support of the agent, first lodged a complaint against the CID, Ulubari with similar short of allegation, wherein, after enquiry it was found by the CID, that the allegation made against the present petitioner regarding holding of fake M.A., LL.B. Certificate and Ph.D. Certificate could not be found. Thereafter, the superintendent of Police, CID, Assam, vide letter dated 13.11.2013 communicated the result of the said enquiry to the President of Governing Body of Barkhetri College. But, the said enquiry report was not challenged by the President of Governing Body and the same attained finality.

3.8. Due to some personal grudge and enmity the informant/respondent No.2 filed a writ petition being numbered as WP(C)No.4587/2018, before this Court challenging the provincialised service of the petitioner as the Assistant Professor. The said writ petition is still pending for disposal. But, due to some personal enmity the informant lodged the FIR dated 28.04.2020, before the CID, which is accordingly registered as CID Police Case No. 08/2020. On the basis of the enquiry report dated 02.03.2020, wherein, out of 10 allegations, the Deputy Superintendent of Police C.M's SVC, Assam held the petitioner guilty in two allegations, one of which alleging of holding fake and forged Ph.D. degree and another is about allegation of manipulation of list of beneficiaries of financial assistance for teaching and non-teaching staff of Barkhetri College, Makulmua for the year 2010-2011. But, the enquiry officer has already recommended to

lodge a case against the present petitioner and accordingly, a case has been registered as Makalmua P.S. case No.36/2017, registered under Sections 468/ 471/ 420/ 409/ 201/ 506 of the IPC and in the said case the police also submitted its charge-sheet.

3.9. But, the petitioner has challenged the FIR and the proceeding of Makalmua P.S. case No.36/2017 and this Court vide order dated 09.03.2018 stayed/suspended the further proceeding in Makalmua P.S. case No.36/2017 and Charge-sheet dated 30.06.2017 bearing Charge-sheet No.130/17 on the grounds that on same issues, earlier a case was lodged with Mukalmua P.S. Case No.375/2011 and is under trial. In the said case the learned trial Court vide Judgment and order dated 29.08.2019 acquitted the petitioner from all charges. All this development has been happened prior to the completion of the enquiry. Accordingly, the petitioner holding a fake Ph.D degree has already been enquired by the CID, and found that the degree is genuine. Thus, again the informant/respondent No.2 has lodged the present FIR out of personal grudge and enmity.

4. The petitioner being highly aggrieved has approached before this Court by challenging the following grounds:-

I. That the enquiry officer did not seize the Ph.D Certificate from the petitioner, therefore, the enquiry officer investigated the matter is still in dark. Without seizing the original documents the genuineness of the same from the authority cannot be verified as because in such cases someone may produce fake or manufactured documents or documents impersonating someone as the

investigated person before the authority. The said report was prepared only on the basis of some purported documents supplied by the complainant and the same cannot be said to be unbiased, fair and independent enquiry. However, from the enquiry report of the Deputy Superintendent of Police C.M's SVC, Assam, it is found that the petitioner was found guilty on two allegations, but in the said allegations, the petitioner was acquitted by the learned Trial Court whereas in another charge the petitioner's certificates are found genuine in a independent thorough enquiry conducted by the CID, but those two vital facts did not find place in the enquiry report which clearly reveals that the enquiry report is devious and the FIR basing on which lodged is also bad-in-law.

II. The FIR dated 28.04.2020 and the CID P.S. case No.08/2020 registered under Sections 120(B)/468/471 of IPC is amount to violation of the fundamental rights of the petitioner guaranteed under Article 20(2) of the Constitution of India, which speaks about that person cannot be tried or punished twice on the same offence. In the present case the allegation against the present petitioner has already investigated by the CID itself and the petitioner was exonerated from the allegations. Thus, the same was not challenged before any forum or Court of law, hence, the same attained finality.

5. Thus, the present petitioner is highly aggrieved and prayed for setting aside and quashing of the impugned FIR dated 28.04.2020 lodged by the opposite party No.2 and CID P.S. case No.08/2020 registered under Sections 120(B)/468/471 of IPC.

6. The learned counsel for the petitioner has submitted that though the

enquiry was conducted by the C.M's, SVC, Assam, it is seen that the charges could not be substantiated except the allegation of furnishing forged and fake certificate of Ph.D degree, and manipulation of list of beneficiaries of financial assistance for teaching and non-teaching staff of Barkhetri Collge. However, it is also submitted that the services of Joynab Khatun and Ayub Ali were provincialised already.

7. He further submitted that from the status report submitted by the CID, it is seen that the allegation of submitting fake Ph.D. Certificate by the present petitioner was not proved in the investigation of the CID. Thus, further enquiry or investigation will amount to double jeopardy. Therefore, it is a fit case, where the Section 482 of the Code of Criminal Procedure, 1973 can be invoked.

8. In this context, the learned Additional Public Prosecutor, Mr. D. Das has submitted that the investigation is still under process and the materials available in the case diary reveals that the accused/present petitioner fails to produce the original Certificate of Ph.D degree before the IO. Hence, at this stage quashing of the FIR or the Criminal proceeding does not arise at all.

9. In this regard, the learned counsel for the petitioner has submitted that the present petitioner has already been given 5 (five) increments and his service is already been provincialised. In the same time the Directorate of the Higher Education issued a letter to the Magadha University, and the report of the same has already been furnished, wherein, it has been held that the Certificate of Ph.D degree is genuine one.

10. On this point, the learned counsel for the respondent No.2/informant has submitted that the Chief Minister's Vigilance is not supposed to register all the cases. However, the investigation is still in process, where the genuineness of his Ph.D. degree certificate is still under investigation. Hence, at this stage the question of quashing of the FIR does not arise. Further, the principle of Article 20(2) of the Constitution of India is also not applicable here in this case, where the question of double jeopardy arises only when a second trial is sought on a subsequent indictment following a conviction or acquittal on an earlier case. Similarly, Section 300 also bars trial of a person not only for same offence but also for any other offence on same facts. So long as an order of acquittal or conviction by a Court of Competent jurisdiction remains in force, person cannot be tried for the same offence for which he was tried earlier. But, here in the instant case, it is seen that as per the inquiry conducted by the Chief Minister's Vigilance Cell, the present accused person was found guilty for furnishing fake Ph.D. Certificate as well as for manipulation of list of beneficiaries of financial assistance for teaching and non-teaching staff of Barkhetri College, Makulmua for the year 2010-2011.

11. He also submitted that the present FIR has been lodged by the respondent No.2/informant on the ground of furnishing the fake Ph.D Certificate and the matter is still under investigation by CID. The entire inquiry is made after filing of the present FIR. Further, he relied on the decision of the Hon'ble Apex Court in the case of ***T. P. Gopalkrishnan vs. State of Kerela***, reported in 2022 (0) Supreme (SC) 1268, wherein, it has been held that;

“Criminal Procedure Code, 1973 - Section 300-Constitution of India -

Article 20(2) - Double Jeopardy - No person shall be prosecuted or punished for same offence, more than once - Double jeopardy is used to denote protection to accused, that he had fair trial for same offence, wherein fair trial means trial according to law and established legal procedure - So long as an order of acquittal or conviction by a Court of competent jurisdiction remains in force, person cannot be tried for same offence for which he was tried earlier – Where accused has not been tried and as such convicted or acquitted, Section 300(1) shall not be applicable – Section 300 of Cr.P.C. bars trial of a person not only for same offence but also for any other offence on same facts - There should be not only a prosecution and also punishment in first instance in order to operate as a bar to a second prosecution and punishment for the same offence - Where there are two distinct offences made up of different ingredients, embargo under Article 20 of Constitution of India, has no application, though offences may have some overlapping features - Crucial requirement of Article 20 is that offences are same and identical in all respects - Concept of double jeopardy can also be understood in terms of Article 21 of Constitution of India which states that no person shall be deprived of his life or personal liberty except according to procedure established by law. (Paras 19, 20, 22, 23, 24, 25, 26, 28 and 29).

Constitution of India-Article 20(2)-Criminal Procedure Code, 1973 - Section 300 -Double Jeopardy -Double jeopardy is often confused with double punishment - There is a vast difference between two - Double punishment may arise when a person is convicted for two or more offences charged in one indictment - However, question of double

jeopardy arises only when a second trial is sought on a subsequent indictment following a conviction or acquittal on an earlier indictment - This doctrine is certainly not a protection to individual from peril or second sentence or punishment, nor to service of a sentence for one offence, but is a protection against double jeopardy for a second trial for same offence. (Para 30)."

12. It is submitted by the learned counsel for the respondent No.2, Mr. G. Bokalia, that as per the guidelines of **Bhajanlal** (*supra*) also, it is not a fit case to be set aside or quash as a cognizable offence is already made out and the case the investigation is still in process. Accordingly, it is submitted that that the present petition is liable to be dismissed, as it is not a fit case, where, Section 482 Cr.P.C. can be invoked.

13. After hearing the submissions made by the learned counsels of both sides and also perusing the case record, it is seen that, as per the enquiry made by the C.M's SVC, Assam, the petitioner was found guilty of two allegations, one for submitting fake and forged Ph.D Certificate and another is about manipulating the list of beneficiaries for financial assistance for teaching and non-teaching staff of Barkhetri College, Makulmua for the year 2010-2011. As per the enquiry report, the other charges could not be substantiated or proved against the present petitioner. Accordingly, the Deputy Superintendent of Police, C.M's SVC, Assam, had recommended the Makulmua Police Station to register a case of forgery and cheating against the present petitioner. On the basis of the said recommendation one case has been lodged before the Makulmua Police Station Case No.36/2017, registered under Section 468/471/420/409/201/506 of IPC.

But, the charge-sheet and further proceeding was stayed by this Court vide order dated 09.03.2018, on the ground that another case has already been registered as Makalmua P.S. case No.375/2011 on the same issue.

14. It further reveals that in the said case, the present petitioner was acquitted vide its judgment and order dated 29.08.2019. In the same time, it is also seen that in the inquiry report, the allegation of fake Ph.D. Certificate of the petitioner was not proved and hence, the investigation was closed. But, the present FIR has been lodged by the informant/respondent No.2 before the CID Police Station, Ulubari on 28.04.2020 with the allegation of fake and forged Ph.D. degree. It is also observed that, after registration of the case by the CID, the present criminal case is still under investigation and the final form is yet to be furnished by the investigating agency.

15. The view of the double jeopardy raised by the petitioner is not applicable here in this case as there is no conviction/acquittal order passed in earlier case on this issue. Moreover an independent enquiry might have conducted by the CID, but the present case is instituted on the basis of the FIR lodged by the informant/respondent No.2 and further the investigation is still under process. The learned counsel for the informant/respondent No.2 also relied on the decision of the T. P. Gopalkrishnan (*Supra*), which is found applicable in the instant case, as in the instant case there is no order on conviction or acquittal has been pass by any competent authority in regards to procuring fake or forged Ph.D. Certificate, though, one independent investigation was done by the CID. In the same time, it is seen that the cognizable offences is already been made out in this case and the investigation is still under process. Therefore, the

plea raised by the learned counsel for the petitioner that the present FIR has been lodged due to some personal grudge and enmity cannot be considered at this stage for quashing the entire criminal proceeding as well as the FIR in connection with this case.

16. The Hon'ble Supreme Court in the case of **State of Haryana & Ors. Vs. Bhajan Lal & Ors.**, reported in **1992 Supp (1) SCC 335**, has held as under:

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

- (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, no 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 ground for proceeding 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 proceeding 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 mala fide 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.”*

17. From reading of the **Bhajan Lal** (Supra) case as well as FIR and the case diary, it is seen that the allegation made in the said FIR constituted a cognizance offence. Case is still under investigation, thus, it cannot be held that the certificate produced by the petitioner was genuine or the FIR filed by the informant/respondent No.2 with mala-fide intention.

18. So, from the above facts and circumstances of this case, I am of the considered opinion that this is not a fit case, where, the extra-ordinary power

under Section 482 Cr.P.C. can be invoked to quash the criminal proceeding. Thus, in the result, I find no merit in this petition and accordingly, the same stands dismissed.

JUDGE

Comparing Assistant