



IN THE HIGH COURT OF UTTARAKHAND AT
NAINITAL

Criminal Misc. Application No.38 of 2018

Constable 627 C.p. Hemraj Singh Mehra --Applicant

Versus

State Of Uttarakhand

2: Shri Samarveer Singh Rawat --Respondents

Present:-

Mr. M. K. Ray, learned counsel for the applicant.

Mr. Siddhartha Bisht, learned AGA for the State.

Hon'ble Siddhartha Sah, J. (Oral)

By means of the present criminal miscellaneous application under Section 482 of the Code of Criminal Procedure, the applicant has sought quashing of the impugned charge sheet dated 14.07.2016 and summoning order dated 09.05.2017, issued by the learned Additional Chief Judicial Magistrate, Haridwar, in Criminal Case No. 798/2017, State versus Hemraj Singh Mehra, under Sections 420 and 417 IPC, along with the entire proceedings of Criminal Case No. 798/2017, State versus Hemraj Singh Mehra, under Sections 420 and 417 IPC, pending before the Court of the learned Additional Chief Judicial Magistrate, Haridwar.



2. The facts necessary for the adjudication of the present application under Section 482 of the Code of Criminal Procedure are as under:-

- i. The applicant was enrolled as a Constable on 13.04.2006 in the Police Line, Nainital. He completed nine months of training at the Police Training Centre, Jahankhera, in the State of Punjab. Thereafter, he was posted at Police Station Bhimtal (Nainital) for a period of six months and was further posted at Kotwali Haldwani (Nainital) for four months. Since 2014, the applicant has been posted as a Constable at Police Station Transit Camp, Rudrapur.
- ii. The Inspector General of Police, Uttarakhand, vide departmental letter dated 21.02.2014, invited applications from constables posted at different police stations of the State of Uttarakhand for selection for undergoing training for the purpose of promotion to the post of Ranker Sub-Inspector (Civil Police). The said letter was circulated to all police stations in the State. As per the said D.O. letter, three



years of service as a Constable (C.P.) was required for applying for the training to be undergone for the purpose of promotion to the post of Ranker Sub-Inspector.

- iii. In pursuance of the said D.O. letter, the applicant applied for undergoing training for availing himself of an opportunity for promotion to the post of Ranker Sub-Inspector. A written examination was held on 01.03.2015 at G.B. Pant University, Udham Singh Nagar. The applicant qualified in the written examination.
- iv. In pursuance of the directions issued on 23.09.2015, all successful candidates, including the applicant, reached the 40th Battalion PAC, Haridwar, on 28.09.2015 and participated in the physical ability test (race) organised by the 40th Battalion PAC, Haridwar. All the successful candidates were assembled in eight Tollies (Groups), each Tolly containing 300 candidates. The applicant was kept in Tolly (Group) No. 6.



- v. As per the D.O. letter dated 12.02.2014, each candidate had to run five kilometres, which had to be completed within the prescribed time limit of 30 minutes. At the finishing point, the successful candidates were given a token by the official of the PAC standing at the finishing point. The token contained a number, as well as the seal and signature of the Commandant, 40th Battalion PAC.

- vi. It is the case of the applicant that he successfully completed the physical ability test (race) within 30 minutes. As a result, a token was given to him by the officers present at the spot. The candidates who received tokens had to gather in a barrack, wherein the invigilator had to maintain a list of the successful candidates. The applicant brought the token to the finishing point and deposited the same before the invigilator present in the barrack. Thereafter, the invigilator entered the name of the applicant in the list and made a remark of "pass" in front of the name of the applicant in the said list. The applicant, as well as the invigilator, put their signatures on the list.



Therefore, the name of the applicant was shown at Serial No. 1606 in the list.

- vii. Thereafter, the Senior Superintendent of Police, Udham Singh Nagar, issued a list of candidates who had successfully qualified in the physical ability test (race) on 28.09.2015. In this list, the name of the applicant was included at Serial No. 53.
- viii. After completion of the physical ability test, the departmental authorities examined the service records of the successful candidates. The annual confidential reports and other records of the candidates were duly examined and verified by the concerned authority, and thereafter, the SSP, Udham Singh Nagar, vide letter dated 03.12.2015, issued the final list of selected candidates. In the final selection list, the name of the applicant is mentioned at Serial No. 46.
- ix. Suddenly, on 18.11.2015, the Deputy Commandant, 40th Battalion PAC, Haridwar, issued a letter to the SSP, Udham Singh



Nagar, and informed him that a complaint had been received against the applicant to the effect that the applicant was unsuccessful in the physical ability test (race), but had been declared to have passed. Thereafter, a domestic/departmental enquiry was started against the applicant. On the other hand, on the basis of the aforesaid complaint, the informant got an FIR lodged against the applicant on 21.01.2016 at Police Station Ranipur, Haridwar, for the offences punishable under Sections 420/477 IPC, alleging therein that on 28.09.2015, a physical ability test (race) was conducted by the 40th Battalion PAC, Haridwar, for the purpose of promotion to the post of Ranker Sub-Inspector (Civil Police), in which the applicant was also a candidate who participated in the race and, by playing fraud, joined the group of successful candidates, although he had failed to complete the race within the prescribed duration.

- x. After lodging of the FIR, the Investigating Officer investigated the matter and submitted a charge sheet against the applicant on



14.07.2016. On 09.04.2017, the learned Additional Chief Judicial Magistrate, Haridwar, issued summons to the applicant to face trial.

3. Assailing the charge sheet and the summoning order, learned counsel for the applicant, Mr. M.K. Ray, would submit that, in the facts and circumstances of the case and in view of the allegations levelled against the applicant, the offences under Sections 417 and 420 of the IPC are not made out. He has referred to the very sections, which are being quoted hereinafter for ready reference, in addition to Section 415, containing the definition of cheating. Referring to Sections 415, 417 and 420 IPC, learned counsel for the applicant would submit that even on a bare reading of the FIR, no offence under Sections 417 and 420 IPC would be made out, even if the allegations are taken at their face value.

“415. Cheating.—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”.

Explanation.—A dishonest concealment of facts is a deception within the meaning of this section.

*Illustrations*

(a) A, by falsely pretending to be in the Civil Service, intentionally deceives Z, and thus dishonestly induces Z to let him have on credit goods for which he does not mean to pay. A cheats.

(b) A, by putting a counterfeit mark on an article, intentionally deceives Z into a belief that this article was made by a certain celebrated manufacturer, and thus dishonestly induces Z to buy and pay for the article. A cheats.

(c) A, by exhibiting to Z a false sample of an article, intentionally deceives Z into believing that the article corresponds with the sample, and thereby dishonestly induces Z to buy and pay for the article. A cheats.

(d) A, by tendering in payment for an article a bill on a house with which A keeps no money, and by which A expects that the bill will be dishonoured, intentionally deceives Z, and thereby dishonestly induces Z to deliver the article, intending not to pay for it. A cheats.

(e) A, by pledging as diamonds articles which he knows are not diamonds, intentionally deceives Z, and thereby dishonestly induces Z to lend money. A cheats.

(f) A intentionally deceives Z into a belief that A means to repay any money that Z may lend to him and thereby dishonestly induces Z to lend him money, A not intending to repay it. A cheats.

(g) A intentionally deceives Z into a belief that A means to deliver to Z a certain quantity of indigo plant which he does not intend to deliver, and thereby dishonestly induces Z to advance money upon the faith of such delivery, A cheats; but if A, at the time of obtaining the money, intends to deliver the indigo plant, and afterwards breaks his contract and does not deliver it, he does not cheat,



but is liable only to a civil action for breach of contract.

(h) A intentionally deceives Z into a belief that A has performed A's part of a contract made with Z, which he has not performed, and thereby dishonestly induces Z to pay money. A cheats.

(i) A sells and conveys an estate to B. A, knowing that in consequence of such sale he has no right to the property, sells or mortgages the same to Z, without disclosing the fact of the previous sale and conveyance to B, and receives the purchase or mortgage money from Z. A cheats.

417. Punishment for cheating.—Whoever cheats shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

420. Cheating and dishonestly inducing delivery of property.—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.”

4. Learned counsel for the applicant also submits that the applicant completed the race and obtained the marks. Mr. Samar Veer, who was in charge of the physical examination, had put his signature, and the applicant was declared a successful candidate. He also received the token of a successful candidate. He would further submit that a complaint was made by an



unknown person, pursuant to which a departmental inquiry was initiated, and a punishment order dated 17.06.2019 was passed by the SSP, Udham Singh Nagar. The said order dated 17 June 2019 was assailed by the applicant in a departmental appeal, and the appeal was dismissed and the punishment order was confirmed by the appellate authority, the Deputy Inspector General of Police, Kumaon Region. The orders passed in the departmental proceedings were assailed by the applicant in a claim petition before the Uttarakhand Public Services Tribunal. The Uttarakhand Public Services Tribunal, by virtue of its judgment and order dated 3rd November 2025, exonerated the applicant, and, in pursuance thereof, by virtue of order dated 3rd December 2025, the adverse entry against the applicant was also directed to be erased.

5. Learned counsel for the applicant would thus submit that, in the aforesaid facts and circumstances, the continuation of the proceedings in the criminal case on the basis of the said departmental proceedings would amount to an abuse of the process of law. He would further submit that the proceedings were initiated against the applicant on the basis of an anonymous



complaint and that his criminal prosecution on that basis would amount to malicious prosecution.

6. In support of his case, learned counsel for the applicant has drawn the attention of the Court to the judgment of the Hon'ble Supreme Court in the case of *Ashoo Surendranath Tewari vs. The Deputy Superintendent of Police, EOW, CBI and another*, reported in (2020) 9 SCC 636, and has drawn the attention of the Court to paragraph 12 thereof. Paragraph 12 thereof is being extracted hereunder for ready reference.

“12. After referring to various judgments, this Court then culled out the ratio of those decisions in para 38 as follows: (Radheshyam Kejriwal case [Radheshyam Kejriwal v. State of W.B., (2011) 3 SCC 581 : (2011) 2 SCC (Cri) 721] , SCC p. 598)

“38. The ratio which can be culled out from these decisions can broadly be stated as follows:

(i) Adjudication proceedings and criminal prosecution can be launched simultaneously;

(ii) Decision in adjudication proceedings is not necessary before initiating criminal prosecution;

(iii) Adjudication proceedings and criminal proceedings are independent in nature to each other;



(iv) The finding against the person facing prosecution in the adjudication proceedings is not binding on the proceeding for criminal prosecution;

(v) Adjudication proceedings by the Enforcement Directorate is not prosecution by a competent court of law to attract the provisions of Article 20(2) of the Constitution or Section 300 of the Code of Criminal Procedure;

(vi) The finding in the adjudication proceedings in favour of the person facing trial for identical violation will depend upon the nature of finding. If the exoneration in adjudication proceedings is on technical ground and not on merit, prosecution may continue; and

(vii) In case of exoneration, however, on merits where the allegation is found to be not sustainable at all and the person held innocent, criminal prosecution on the same set of facts and circumstances cannot be allowed to continue, the underlying principle being the higher standard of proof in criminal cases.”

7. Placing reliance upon the aforesaid judgment in the case of *Ashoo Surendranath Tewari* (supra), learned counsel for the applicant would submit that, since the departmental proceedings have been quashed, the criminal proceedings based on the same would not be sustainable and would also deserve to be quashed.

8. Learned counsel for the applicant further relies upon the judgment of the Hon’ble Supreme Court in the case of *State of Haryana and others versus Bhajan Lal and others*, reported in 1992 Supp (1) SCC 335, and



has drawn the attention of the Court to paragraph 102.

Paragraph 102 thereof is being extracted hereunder for ready reference:-

“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 have given 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 channelised 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.”

9. He would thus submit that where the allegations made in the FIR, 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, the criminal proceedings can be quashed. In the present case also, it is an identical case,



and on reading the FIR in the present context, no case is made out against the applicant.

10. Learned counsel for the applicant has also relied upon a judgment of the Hon'ble Supreme Court in the case of *Jupalli Lakshmikantha Reddy versus State of Andhra Pradesh and others*, rendered by the Hon'ble Supreme Court in SLP (CRL) No. 9744 of 2024, and has drawn the attention of the Court to paragraphs 12 and 13 thereof, which are being extracted hereunder for ready reference.

“12. The ingredients of the offence of cheating are as follows:

1) Deception of a person by making false representation which the maker knows or has reason to believe is false and thereby

2)(a) Fraudulently or dishonestly inducing such person:

(i) to deliver any property to any person, or

(ii) to consent that any person shall retain any property, or

(b) Intentionally induces that person 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.

13. The words ‘dishonestly’ and ‘fraudulently’ are defined as follows:

“24. “Dishonestly”—

Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing “dishonestly”.



25. “Fraudulently”—

A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise.”

Section 23 IPC defines wrongful loss/wrongful gain:

“Wrongful gain”: Wrongful gain is gain by unlawful means of property to which the person gaining is not legally entitled.

“Wrongful loss”: Wrongful loss is the loss by unlawful means of property to which the person losing it is legally entitled.”

Reading the ingredients in the backdrop of these definitions, it is evident in order to attract the offence of cheating, a person must knowingly make a false statement which would induce another to part with property or to do or omit to do a thing which the latter would not do or omit unless deceived and thereby is likely to suffer damage/harm in body, mind, reputation or property.”

11. Placing great emphasis on the said judgment, learned counsel for the applicant would submit that, on reading the definition of the words “dishonestly” and “fraudulently” and also Sections 415, 417 and 420 of the IPC, for attracting the offence of cheating, a person must knowingly make a statement which would induce another to part with property or to do or omit to do a thing which the latter would not do or omit unless so induced, and thereby is likely to suffer damage/harm in body, mind, reputation or property.



12. In the context of the present case, learned counsel for the applicant would submit that the offence of cheating would not be made out because, in the present case, there is no allegation of parting with property, nor is it a case where, by deceiving any other person, any person has been made to suffer damage or harm in body, mind, reputation or property. He would thus submit that the offences under Sections 417/420 are not made out, even if the case is accepted on the face of it or in its entirety, and would thus submit that, in the facts and circumstances of the case, the further prosecution of the applicant would be a gross abuse of the process of law. He would thus request the Court to invoke its powers under Section 482 of the Code of Criminal Procedure and quash the summoning order, charge-sheet, and the entire proceedings arising therefrom.

13. Per contra, learned counsel for the State would submit that, though Sections 417 and 420 are in the context of cheating, and none of the illustrations to Section 415 would be attracted in the present context of the case, yet, since there has been deception on the part of the applicant in securing the token for completing the



race, the offence of cheating as envisaged under Sections 417 and 420 of the IPC would be made out.

14. Learned AGA has drawn the attention of the Court to the statements of the IO, who was the departmental enquiry officer of the departmental proceedings, Smt. Sarita Dobhal, and has drawn the attention of the Court to her statements, wherein she has stated that, on perusal of the video, it was revealed by the Starting/ Finishing Point Assistant In-charge Shri Samar Veer Singh Rawat that the video coverage of the incident was seen by him, in which the applicant had not reached the finishing point on time. From this, it appears that he had obtained the token by cheating and had got himself included in the category of successful candidates, due to which he had signed it. It appears that the applicant had erroneously got himself included in the category of successful candidates or, by cheating, had signed in the category of successful candidates.

15. Learned AGA would thus submit that, by committing this act, the applicant would benefit by getting a promotion to the higher pay scale. He would further submit that the essence of Sections 417 and 420



is not merely monetary gain; it is also in the context of deceiving. He would further submit that what is being agitated by the applicant by means of this criminal miscellaneous application under Section 482 of the Cr.P.C. can very well be considered at the stage of framing of the charge. He would further submit that the judgment rendered in the case of *Ashoo Suprendranath Tewari* (supra) is not attracted in the present case, since the adjudication by the Uttarakhand Public Services Tribunal has been on technical lines and not on merits. He would thus submit that there is no scope for interference in the proceedings under Section 482 of the Cr.P.C., and the present criminal miscellaneous application deserves to be dismissed.

16. After hearing the learned counsel for the parties and after going through the record, the main question which falls for adjudication in this case is whether the offences under Sections 417/420 of the IPC are made out in the present facts and circumstances of the case. The allegations, as borne out from the FIR, charge-sheet, and other documents as referred to by the learned counsel for the parties, are that, though the applicant did not finish the race in the physical examination test, yet he got himself declared to be a



successful candidate in the physical examination. Thus, whether this would attract the offence of cheating or not will determine the fate of the present case.

17. To understand the controversy, the provisions of Section 415 of the IPC need to be referred to. The same has also been quoted in an earlier part of this judgment.

18. The offence of cheating is very clearly defined in Section 415 of the IPC, and various illustrations to explain cheating are also given in illustrations (a) to (i). Perusal of the definition clause of cheating under Section 415 of the IPC, read with the illustrations thereof, would show that the offence of cheating would be relatable to property or causing, or likely to cause, damage or harm to any person in body, mind, reputation, or property.

19. In the present case, it is not the case against the applicant that he has deceived any person to deliver any property or to consent to any person to retain any property, or that the act has caused any damage or harm to any person in body, mind, reputation, or property.

20. So far as the judgment in the case of *Ashoo Surendranath Tewari (supra)* is concerned, upon hearing and considering the rival submissions of learned counsel



for the parties, the Court is persuaded by the submissions made on behalf of the learned Additional Government Advocate that, since the adjudication by the Uttarakhand Public Services Tribunal was not on merits but on the ground that the Inquiry Officer had framed the charge-sheet as well as recommended the punishment in the inquiry report, which was not permissible in the eyes of law, the exoneration of the applicant by the Uttarakhand Public Services Tribunal was not on merits but on a technical ground. Thus, the judgment in the case of *Ashoo Surendranath Tewari (supra)* would not be attracted.

21. Reference also needs to be made to the judgment of the Hon'ble Supreme Court in the case of *Jupally Lakshmikantha Reddy (supra)*, wherein the ingredients of the offence of cheating were determined by the Hon'ble Supreme Court, and the Hon'ble Supreme Court has held that, in order to attract the offence of cheating, a person must fraudulently make a false statement which would induce another to part with property or to do or omit to do a thing which the latter would not do or omit unless deceived, and there is likely to be damage or harm to the body, mind, reputation, or



property. In the present case, the aforesaid judgment of *Jupally Lakshmikantha Reddy* would be attracted.

22. In the present case, there is nothing to suggest that the applicant/accused has made the informant part with property or had deceived the informant, whereby the informant has suffered damage/harm to the body, mind, reputation, or property.

23. Thus, after considering the entire facts and circumstances of the case and after considering the case from the perspective of the definition clause of cheating under Section 415 of the IPC and the offences under Sections 417 and 420 of the IPC, it is evident that merely by the alleged securing of the status of a successful candidate in a race in a departmental promotion exercise would not attract the offence under Sections 417 and 420 of the IPC. Thus, when no offence is made out against the applicant, the further proceedings in the aforesaid case would amount to an abuse of the process of law. Accordingly, the summoning order, charge-sheet, and the entire proceedings in the criminal case deserve to be quashed.



24. The Criminal Miscellaneous Application under Section 482 of the Cr.P.C. is allowed. The impugned charge-sheet dated 14.7.2016 and summoning order dated 9.5.2017, issued by the learned Additional Chief Judicial Magistrate, Haridwar, in Criminal Case No. 798/2017, *State versus Hemraj Singh Mehra*, under Sections 420 and 417 I.P.C., along with the entire proceedings of Criminal Case No. 798/2017, *State versus Hemraj Singh Mehra*, under Sections 420 and 417 I.P.C., pending before the Court of the learned Additional Chief Judicial Magistrate, Haridwar, are hereby quashed.

(Siddhartha Sah, J.)

13.08.2026

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