

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.10111 of 2013

Arising Out of PS.Case No. -30 Year- 2013 Thana -AHIAPUR District- -

1. Dr. Abha Singh, Daughter Of Shri Narendra Narayan Singh, Resident Of Mohalla- Brahampura, P.S.- Brahampura, Town And Distt.- Muzaffarpur, At Present Secretary, Jyoti ANM Training School, Ahiyapur, P.S.- Ahiyapur, Town And District- Muzaffarpur

.... Petitioner/s

Versus

1. The State Of Bihar

.... Opposite Party/s

Appearance :

For the Petitioner/s : Mr.

For the Opposite Party/s : Mr. Mani Madhukar (App)

CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO

ORAL ORDER

2 02-07-2015 Heard the learned counsel, Mr. Ashok Kumar Singh for the petitioner and learned A.P.P. for the State of Bihar.

This criminal miscellaneous application under Section 482 Cr.P.C. has been filed by the petitioner for quashing F.I.R. of Ahiyapur(Muzaffarpur) P.S. Case No.30 of 2013 dated 18.01.2013 registered under Sections 406, 420, 467, 468, 471 and 34 of the Indian Penal Code.

It appears that the F.I.R. was lodged by 25 students alleging that the petitioner who is Secretary of Jyoti A.N.M. Training School, Ahiyapur collected Rs.2-2 ½ lacs from each of the informants-students in the name of fees for the training school and the fees for hostel but gave receipt for only less than Rupees



one lakh. Subsequently, the informants learnt that their forms for appearing in the examination were not deposited in the concerned department and, therefore, they were debarred from the examination. It is further alleged that they had already paid the examination fees of Rs.7,500. It is further alleged that some of the students had sold even their lands and have taken loan but because of the cheating of the petitioner and others, they were debarred from appearing in the examination and some of the students will not be able to appear in future because of lapse of their age.

The learned counsel for the petitioner submitted that in fact, by the order of the High Court subsequently examination was conducted and some of the students have already appeared. The petitioner submitted their form. According to the learned counsel, forms were deposited for 18 students only. The learned counsel submitted that so far rest of the students are concerned, they were not the students of the said Jyoti A.N.M. Training School. The learned counsel further submitted that almost all the students who have already appeared in the examination have sworn affidavit that in fact, they have lodged the false F.I.R. at the instigation of some persons of the management. The affidavits have been annexed with the quashing application.

On the other hand, the learned A.P.P. objected the

prayer.

Perused the F.I.R. There is direct allegation that petitioner and other named co-accused had collected Rs.2-2 ½ lacs from each of the students on account of the fees for the school and the hostel but receipts were granted for Rupees one lakh or less only. They had also paid Rs.7,500 as examination fee but they were debarred from appearing in the examination.

So far the submission of the learned counsel for the petitioner that subsequently, the examination was conducted by the order of the High Court is concerned, it may be mentioned here that the subsequent event will not absolve the petitioner from the offence, if any, has been committed by the petitioner. So far the affidavits annexed with the quashing application are concerned, there is no reason as to why the affidavits were sworn by the said students. There was no occasion for swearing the affidavits, therefore, it is clear that the petitioner has got these affidavits sworn by the said students for the purpose of filing this application itself.

Hon'ble Suprme Court in the case of **Rishipal Singh v. State of Uttar Pradesh and Another, (2014) 7 Supreme Court Cases 215** has held that "when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is

as to whether the uncontroverted allegations as made in the complaint prima facie establish the case and the High Courts should not convert itself into a trial court and dwell into the disputed questions of fact. The High Court need to be circumspect and exercise power under Section 482 in exceptional circumstances. If allegations leading to criminal prosecution, prima facie, did not disclose or constitute offence then power under Section 482 can be exercised. However, disputed questions of fact cannot be decided like a trial court.”

In the present case, it cannot be said that no offence has been disclosed and from the allegation, it cannot be said that no offence is constituted. In such circumstances, while exercising jurisdiction under Section 482 Cr.P.C., this Court cannot be embark upon to decide the truthfulness or otherwise of the allegation made in the F.I.R. on the grounds raised by the learned counsel for the petitioner which are only disputed questions of fact that can be decided only by the trial court.

Accordingly, I do not find any merit in this criminal miscellaneous application and thus, it is dismissed.

(Mungeshwar Sahoo, J)

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