

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.29630 of 2013

Arising Out of PS.Case No. -9 Year- 2008 Thana -HILSA District- NALANDA (BIHARSHARIFF)

Sushma Sinha W/O Bimal Kr. Sinha, resident Of Village/Mohalla- Naya Tola,
Kumhrar, Meenakshi Apartment, Flat No.-104, P.S.- Agamkuan, District- Patna

.... Petitioner

Versus

The State Of Bihar

.... Opposite Party

Appearance :

For the Petitioner/s : Mr. Ramakant Sharma, Sr. Advocate
Mr. Prabhu Nath Pathak, Advocate
For the Opposite Party/s : Mr. Jharkhandi Upadhyay, APP

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 12-07-2016

Heard Mr. Ramakant Sharma, learned Senior Counsel
for the petitioner and Mr. Jharkhandi Upadhyay, learned Additional
Public Prosecutor for the State.

2. The petitioner has invoked the inherent
jurisdiction of this Court under Section 482 of the Code of Criminal
Procedure (for short 'CrPC') for quashing of the order dated 17th
September, 2012 passed by the learned Judicial Magistrate, 1st
Class, Hilsa, Nalanda in G. R. Case No. 17 of 2008, arising out of
Hilsa P. S. Case No. 09 of 2008, registered under Sections 467, 468
and 420 of the Indian Penal Code (for short 'IPC'), whereby the
discharge petition filed by the petitioner under Section 239 of the

CrPC has been rejected.

3. The prosecution case according to the first information report instituted on the basis of written report of one Arun Kumar, Block Welfare Officer, Hilsa is that on the complain of one Anju Kumari against selection of Anganbari Sevika of Ravidas Tola under Ward No.10, an enquiry was conducted by the Sub Divisional Officer, Hilsa, who gave his report to the District Magistrate, Nalanda on 06.08.2007 in which he found that the selected Anganbari Sevika of Ravidas Tola did not belong to the Posak Kshetra, which is contrary to Clause- 3(C) of the guidelines issued by the Director of Integrated Child Development Service (for short 'ICDS'). It is alleged in the enquiry report dated 06.08.2007 of Sub Divisional Officer, Hilsa that the name of the selected Aanganbari Sevika of Ravidas Tola did not find place in the merit list prepared on the basis of Mapping Register. Hence, the Sub Divisional Officer, Hilsa had recommended for cancellation of appointment of selected Aanganbari Sevika and taking action in accordance with rules against the Chairman of the Selection Committee and others.

4. It is argued by the learned counsel for the petitioner that the co-accused Smt. Uma Devi, Ward Commissioner of Ward No. 10-cum-Chairman of Selection Committee herself had declared that Smt. Kumari Pushpa Sinha had wrongly made



application for selection of Aanganbari Sevika against the vacant post of Deepnagar Aanganbari Centre. She was a resident of Ravidas Tola and as such Smt. Uma Devi transferred the application of Smt. Kumari Pushpa Sinha from Deepnagar to Ravidas Tola and in this way Smt. Uma Devi declared the selection of Smt. Kumari Pushpa Sinha as Aanganbari Sevika for Ravidas Tola in the absence of backward candidate as would be evident from perusal of proposal no. 3 of the minutes of proceeding of Aam Sabha dated 05.04.2007, which is the part of FIR. It is urged that on the basis of proposal no. 3 of the said minutes of proceeding of Aam Sabha dated 05.04.2007, Smt. Kumari Pushpa Sinha was selected as Aanganbari Sevika for Ravidas Tola.

5. It is submitted that the petitioner being a Women Supervisor was one of the members of the Selection Committee and had pointed out irregularities committed by Smt. Uma Devi, Ward Commissioner of Ward No. 10-cum-Chairman of Selection Committee in selection of Smt. Kumari Pushpa Sinha and the same was communicated to her Controlling Authority, the Child Development Project Officer (for short CDPO), Hilsa, Smt. Anita Chaudhary, by issuing a letter dated 14.05.2007 as contained in Annexure- 2 and on the basis of letter of the petitioner, the CDPO, Hilsa had issued letter no. 223 dated 17.05.2007 to the District Welfare Officer, Nalanda. It is further submitted on behalf



of the petitioner that the District Magistrate, Nalanda had ordered vide letter dated 18.12.2007 to institute an FIR against Smt. Uma Devi, who was the Chairman of the Selection Committee on the basis of inquiry report dated 06.08.2007 of Sub Divisional Officer, Hilsa for making illegal appointment of Aanganbari Sevika, but apart from the Chairman, other persons of the Selection Committee have also been shown in the accused column of the FIR.

6. It is also submitted that there is neither any allegation nor any material in the case-diary to show that the petitioner has committed forgery in any document for the purpose of cheating or in selection of Smt. Kumari Pushpa Sinha as Aanganbari Sevika. Hence, the offences punishable under Sections 467, 468 and 420 of the IPC are not made out nor any evidence has come in the case-diary against the petitioner. Lastly, it has been contended that the case of the petitioner is squarely covered by the order dated 08.09.2009 passed in Cr. Misc. No. 3571 of 2009 by this Court, whereby the order of cognizance dated 30.07.2008 passed in Hilsa P. S. Case No. 09 of 2008 in respect of co-accused Kumari Anita Choudhary, the CDPO, Hilsa has been quashed.

7. Mr. Jharkhandi Upadhyay, learned Additional Public Prosecutor for the State after going through the materials collected in course of investigation as recorded in the case-diary has submitted that the case of the petitioner stands on the same



footing to that of Kumari Anita Choudhary in whose case a Bench of this Court has quashed the order taking cognizance. He has submitted that there is no material to show that any tampering in the record or forgery was committed by the petitioner in the appointment of Smt. Kumari Pushpa Sinha. However, he has submitted that the appointment of Smt. Kumari Pushpa Sinha was thoroughly illegal as her appointment was in contravention to Clause-3(C) of the guidelines issued by the ICDS which mandates that only the permanent resident of tola/village/mohalla of Aanganbari Centre can be considered for appointment on the post of Aanganbari Sevika.

8. I have heard learned respective counsels for the parties and carefully perused the materials available on record.

9. While quashing the order taking cognizance in the case of Kumari Anita Chaudhary, CDPO, Hilsa, a co-accused of this case in Cr. Misc. No. 3571 of 2009, this Court has observed as under :

“Considering that the enquiry report does not indicate that the petitioner was involved in the appointment of Aanganbari Sevikas or was in conspiracy with the Chairman of the Committee in question, coupled with the facts that the petitioner was the person who brought the anomaly in the alleged appointment to the notice of the Authority, it cannot be said that any offence is made out

under Sections 467, 468 and 420 of the Indian Penal Code as far as it relates to the petitioner. The plain reading of the First Information Report indicates that the petitioner is not involved in the alleged appointment.

This case also comes under the exception (i) provided by the Supreme Court in the case of State of Haryana and others vs. Bhajan Lal and others reported in 1992 Supp (i) SCC 335, wherein it has been stated as follows :-

1. Where the allegations made in the first information report or the complainant, even if they are taken at their face value and accepted in their entire dot not prima facie constitute any offence to make out a case against the accused.

Considering the discussions aforesaid, the order taking cognizance dated 30.07.2008 is quashed so far as the above named petitioner is concerned.

In the result, this application is allowed.”

10. Admittedly, at the relevant time, the petitioner being Women Supervisor was nominated by the CDPO as one of the members of the Selection Committee. The CDPO was also a member of the said Selection Committee. There is nothing on record to show that the petitioner in any way conspired with the Chairman of the Committee in question. The learned APP for the



State has conceded that the case of the petitioner stands on the same footing to that of Kumari Anita Choudhary in whose case a Bench of this Court has already quashed the order taking cognizance. There is no material in the case-diary to show that the petitioner has committed forgery in any document for the purpose of cheating or selection of Smt. Kumari Pushpa Sinha as Aanganbari Sevika.

12. The condition precedent for an offence under Sections 467 and 468 of the IPC is forgery. The condition precedent for forgery is making a false document. A person is said to have made a false document as described under Section 464 of the IPC, if he made or executed a document claiming to be someone else; or he altered or tampered a document; or he obtained a document by practicing deception, or from a person not in control of his senses. The allegations made against the petitioner clearly and obviously do not fall under any of the above categories. Similarly, for constituting an offence under Section 420 of the IPC there should not only be cheating, but as a consequence of such cheating, the accused should have dishonestly induced the person deceived (i) to deliver any property to any person; or to make, alter or destroy wholly or in part a valuable security. Apparently, there is no such allegation as against the petitioner.

12. Furthermore, in any event, the case of the petitioner stands either on identical or better footing to that of co-

accused Kumar Anita Choudhary, in whose case this Court has already quashed the order taking cognizance of the offence.

13. Keeping in mind the discussions made, hereinabove, the application is allowed. The impugned order dated 17.09.2012 passed by the Judicial Magistrate, 1st Class, Hilsa in G. R. Case No. 17 of 2008, arising out of Hilsa P. S. Case No. 09 of 2008 is quashed. The petitioner is directed to be discharged from the aforesaid case.

(Ashwani Kumar Singh, J.)

Kanchan/-