

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.993 of 2016

Arising Out of PS.Case No. -null Year- null Thana -null District- GAYA

Param Pal Singh Gandhi son of Shri Kirpal Singh Gandhi
resident of House No. 2211, Sector 21 C, P.S. – Sector 19
District – Chandigarh.

.... Petitioner/s

Versus

The State of Bihar through the Principal Secretary, Department
of Home, Govt. of Bihar, Patna

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Gautam Kejriwal, Advocate
For the Respondent/s : Mr. P. K. Verma, AAG
Mr. Suresh Prasad Singh, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

JUDGMENT AND ORDER

CAV

Date: 28-10-2016

The petitioner, with the help of this writ petition, filed under Articles 226 and 227 of the Constitution of India, seeks issuance of a writ of *certiorari* to quash the order, dated 24.09.2016, passed by learned Additional Chief Judicial Magistrate-IX, Gaya, in connection with Magadh University P.S. Case No. 46/2015 (G.R. Case No. 3743 of 2015), whereby the prayer for discharge made by the petitioner, in aforementioned case, has been refused. The petitioner also seeks quashing of the entire proceeding of aforementioned case on the ground that the aforementioned case is based on unfounded and

misconceived allegations and the case is nothing, but wholly an abuse of the process of the Court.

2. The prosecution's case, in brief, are as under:

(i) Based on the written report of the informant, namely, Anil Kumar Bhanoth, Magadh University P.S. Case No. 46/2015 (G.R. Case No. 3743 of 2015) came to registered, on 24.07.2015, under Sections 420/467/468/471/474/477(A)/120(B)/201/34 of the Indian Penal Code, against three named accused persons including the present petitioner.

(ii) The accusation against the petitioner is that the petitioner allegedly, in connivance with the officials of Magadh University, has not only obtained a fake Graduation Degree, but also, on the basis such fake degree, he also secured employment in Punjab Police. It is further alleged that the petitioner had tampered with the records of Magadh University and in connivance with other accused, destroyed the evidence and submitted false report concealing the truth.

(iii) Upon completion of the investigation, a *charge sheet*, under Sections 420/467/468/471/474/477(A)/120(B)/201/34 of the Indian Penal Code, was submitted and cognizance of offences was also taken accordingly under the aforementioned provisions of the Indian Penal Code.

(iv) The petitioner, on the other hand with allegedly ulterior motives and in connivance with the officials of

the Magadh University, also lodged a case against the informant and officials of the Magadh University, which gave rise to Magadh University P.S. Case No. 55 of 2015, under Sections 420/465/466/467/468/471/200/ 120(B)/34 of the Indian Penal Code.

BACKGROUND FACTS :

3. The petitioner states that he had taken admission in the correspondence course for three years Bachelor of Arts course (for short, B.A.) in Punjab University for the Session 1989 – 90 (1st year), but having come across a newspaper article about a two years B.A. course, conducted by the Magadh University, Bodh Gaya, Bihar, through its affiliated colleges, in the month of May/June 1989, the petitioner, complying with all the requisites and after submitting all the documents relating to intermediate examination passed out by the petitioner, at Punjab, took admission, in the year 1989, at Kishan College, Sohsarai, Nalanda, in two years B.A. (Pass Course Special).

4. The petitioner, thereafter, at the time of admission was informed by the Kishan College, Sohsarai, that the examination for the Session 1987 – 89 was already over and the petitioner, if so inclined, could take admission in special B.A. (Pass Course) 1989, final examination whereof would be conducted in the year 1991, i.e., after the period of 2

years.

5. The petitioner, having learnt that there is no likelihood of examination to be held at Magadh University, under the B.A. 2 years course in 1991, appeared in 1st year (1990 - 91) examination of three years B.A. correspondence course at Punjab University held in the month of April.

6. The petitioner, thereafter, suddenly, learnt about the exams to be held in the month of September, 1991, at Magadh University, for B.A. 2 years course, whereunder the petitioner had taken admission at Kishan College, Sohsarai, in 1989. The petitioner decided to complete graduation in 2 years B.A. course at Magadh University and, then, to keep pursuing 3 years course at Punjab and, therefore, the petitioner appeared in the examinations, so conducted by the Magadh University, in the month of September 1991.

7. The petitioner, it is submitted, enquired about the classes to be held at the college and he was informed that no classes for the said course would be held as it was a special degree course and the petitioner had to appear in the examination directly. It is stated that the petitioner appeared in examination, for the B.A. (Pass Course Special) 1989, which was held in September 1991.

8. The petitioner was accordingly issued certificates from the university, in the year 1992, through the

Kishan College, Sohsarai. The petitioner, then, appeared for recruitment, in Punjab Police, for the post of Inspector in the year 1993, wherein the said certificates were furnished in support of the educational qualification of the petitioner.

9. The petitioner was selected and all his degrees and educational records were verified by the Punjab Government through its concerned department.

10. The petitioner was appointed as an Inspector in Punjab Police. In the year 1997, the informant filed C.W.P. No. 7592 of 1997 before the Punjab & Haryana High Court challenging the appointment of the petitioner. Thereafter, it is stated that, in the year 1998, an anonymous complaint was made to Director General of Police, Punjab, regarding the degrees of the petitioner pertaining to the B.A. (Pass Course) passed out by the petitioner from the Magadh University to be invalid. The Director General of Police, Punjab, entrusted Senior Superintendent of Police, Roper, to enquire into the complaint and verify the genuineness of the certificate of the petitioner.

11. The Senior Superintendent of Police, Roper, vide a letter, dated 06.01.98, requested the Vice Chancellor of Magadh University to confirm the issuance of the degrees so produced by the petitioner pertaining to the B.A. (Pass Course Special) 1989, passed out from the said university. (Enclosure

- 2 to the first information report). The university vide letter, dated 15.01.98, confirmed that the marks-sheet and certificate of the petitioner were issued by the university meaning thereby that the petitioner's educational testimonials were genuine.

12. The Senior Superintendent of Police, Roper, vide a letter, dated 21.01.98, requested verification of the registration number of the petitioner (Enclosure 3 to the first information report). It seems that the university, by a letter, dated 28.01.98, confirmed that the petitioner's registration number, as per the tabulation register of the university, is 61276/89, and the same was mistakenly mentioned as 6527189. (Enclosure 5 to the first information report).

13. The informant also approached the Inspector General of Police, at Punjab, at the year 2000, raising complaint against the certificate of the petitioner, whereupon an enquiry was, once again, directed.

14. It is stated that the officer deputed to conduct the enquiry, i.e., Kunwar Vijay Pratap Singh, purportedly personally visited the university office at Bodh Gaya and, as per his report, dated 28.07.2000, it appears that a report was submitted concluding that the petitioner had passed the B.A. (Pass Course Special) 1989 examination, as per the tabulation register, but expressed his own views regarding the



correctness of the records; this was, according to the petitioner, based on assumption alone and no documentary or oral evidence could be produced in support thereof. (Enclosure 6 to the First Information Report). Thereafter, the Director General of Police, Punjab, vide a detailed order, dated 24.10.2001, dropped the entire proceeding against the petitioner holding the degrees of the petitioner to be genuine. (Enclosure 7 to the first information report).

15. Mr. Gautam Kejriwal, learned Counsel, appearing for the petitioner, has drawn the attention of this Court towards two cases being C.W.J.C. No. 4021 of 2013 and C.W.J.C. No. 9065 of 2014 pending before this Court with respect to the allegations of the same forged marks-sheet/degree and allied offences under the Indian Penal Code. Learned Counsel submits that the present case is clearly, upon examination of the materials collected by the police in course of the investigation and in the light of the fact that several stages and rounds of verification of the degree issued by the Magadh University have been done, filed by the informant out of his personal vengeance against the petitioner. Upon these circumstances, learned counsel submits that the investigating officer, in Magadh University P.S. Case No. 46/2015 (G.R. Case No. 3743 of 2015), has received and enquired about various documents and communications with regard to enquiries

conducted under the direction of the Director General of Police, Punjab, and other authorities with respect to the allegations of the petitioner having obtained a forged degree, marks sheet and secured a job with Punjab Police on the basis of such a forged degree.

16. It is submitted, on behalf of the petitioner, that it is duty of the learned Additional Chief Judicial Magistrate-IX, Gaya, to consider and appreciate, in light of the right of an accused to fair investigation, all the relevant documents, which were collected by the police during investigation, even though such material or information may go in favour of the accused and may not support the version of prosecution. It is the case of the petitioner that the learned Additional Chief Judicial Magistrate-IX, Gaya, while taking cognizance of the alleged offences and rejecting the application and the prayer for discharge of the accused (i.e., the petitioner herein), has failed to consider various documents, which show that the offences alleged to have been committed by the accused petitioner may not be sustainable and that the case of prosecution is incoherent. The learned counsel has referred to the following documents and information, on record, which, it is submitted, have not been considered by the learned Additional Chief Judicial Magistrate-IX, Gaya, though has the bearing upon the case of the prosecution.



17. Per contra, Mr. P.K.Verma, learned Additional Advocate General No.3, appearing for the respondent, has drawn our attention to various documents and has submitted that these documents show that there is a *prima facie* case made out against the accused appellant herein. It is further submitted by the learned Additional Advocate General No.3 that the veracity and authenticity of the information received is not the factor upon which a Magistrate takes cognizance under the provisions of the Code of Criminal Procedure, 1973. It is submitted that once a *prima facie* case is made out upon the information received and materials, documents collected during the course of investigation, it is not mandatory upon a Magistrate to consider the veracity or truthfulness of such information or documents. It is, therefore, submitted that the present writ petition is, in the light of the fact that a *prima facie* case has been made out against the accused-petitioner, liable to be dismissed.

18. Mr. Suresh Prasad Singh, learned counsel, appearing for the informant-intervener, in tune with the submissions of the learned Additional Advocate General, contends that a case of strong suspicion against the accused-petitioner has been made out and, therefore, the impugned order, framing charge, may not be interfered with.

Right of an Accused to Fair Investigation



19. In the present case, this court is not required to appreciate the probative value of evidence collected during the investigation or materials placed on record before the learned Magistrate. However, the purpose of carrying an investigation, under the provisions of the Code of Criminal Procedure, 1973, is to bring out the truth before the court. The Supreme Court, in various decisions, has held that an accused has a right to have a fair investigation and fair trial and that such right is a part of fundamental right of the accused under Article 21 of the Constitution of India.

20. The Constitution of India, under Article 21, guarantees a right to fair trial to an accused. A fair trial is impossible if there is no fair investigation. In order to be a fair investigation, the investigation must be conducted thoroughly, without bias or prejudice, without any ulterior motive and every fact, surfacing during the course of investigation, which may have a bearing on the outcome of the investigation and, eventually, on the trial, must be recorded contemporaneously by the Investigating Officer at the time of investigation. A manipulated investigation or an investigation, which is motivated, cannot lead to a fair trial. Necessary, therefore, it is that the Courts are vigilant, for, it is as much the duty of the Court commencing from the level of the Judicial Magistrate to ensure that an investigation conducted is proper

and fair as it is the duty of the Investigating Officer to ensure that an investigation conducted is proper and fair. A fair investigation would include a complete investigation. A complete investigation would mean an investigation, which looks into all aspects of an accusation, be it in favour of the accused or against him.

21. In ***Babubhai v. State of Gujarat***, reported in **(2010) 12 SCC 254**, the Supreme Court has held that the right to fair investigation is a fundamental right of an accused under Article 21 of the Constitution of India in following words (at page-272 of SCC):-

"45. Not only fair trial but fair investigation is also part of constitutional rights guaranteed under Articles 20 and 21 of the Constitution of India. Therefore, investigation must be fair, transparent and judicious as it is the minimum requirement of rule of law. The investigating agency cannot be permitted to conduct an investigation in a tainted and biased manner. Where non-interference of the court would ultimately result in failure of justice, the court must interfere..."



22. During the course of hearing, learned counsel, appearing for the petitioner, has passionately argued, upon this fundamental right of the accused, that the investigation conducted in the present case is tainted with *bias* or *mala fide* on the part of the investigating agency, and that the investigation had not been fair and impartial, therefore, no charge-sheet could be submitted on the basis of such tainted investigation. It is the case of the petitioner that the learned Additional Chief Judicial Magistrate-IX, Gaya, while passing the impugned order, opting to frame charges thereunder, has failed to appreciate the material on record, which clearly establishes the hollowness of the prosecution's case. It is, thus, submitted that the impugned order is bad and untenable in law, because it denies a fair investigation to the accused.

23. In ***Babubhai v. State of Gujarat*** (supra), the Supreme Court considered various aspects of an investigation to be conducted under the provisions of the Code of Criminal Procedure, 1973, and reiterated the law in following words (at page 269):-

"32. *The investigation into a criminal offence must be free from objectionable features or infirmities which may legitimately lead to a grievance on the part of the accused that investigation was unfair and carried out with an ulterior*



motive. It is also the duty of the investigating officer to conduct the investigation avoiding any kind of mischief and harassment to any of the accused. The investigating officer should be fair and conscious so as to rule out any possibility of fabrication of evidence and his impartial conduct must dispel any suspicion as to its genuineness. The investigating officer "is not merely to bolster up a prosecution case with such evidence as may enable the court to record a conviction but to bring out the real unvarnished truth". (Vide R.P. Kapur v. State of Punjab [AIR 1960 SC 866 : 1960 Cri LJ 1239] , Jamuna Chaudhary v. State of Bihar [(1974) 3 SCC 774 : 1974 SCC (Cri) 250 : AIR 1974 SC 1822] , SCC at p. 780, para 11 and Mahmood v. State of U.P. [(1976) 1 SCC 542 : 1976 SCC (Cri) 72 : AIR 1976 SC 69])"

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"40. The abovereferred judgments of this Court make it clear that scheme of investigation, particularly, Section 173(8) CrPC provides for further investigation and not of reinvestigation. Therefore, if the court, comes to the conclusion that the investigation has been done in a manner with an object of helping a party, the court may direct for further

investigation and ordinarily not for reinvestigation."

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"44. The charge-sheets filed by the investigating agency in both the cases are against the same set of accused. A charge-sheet is the outcome of an investigation. If the investigation has not been conducted fairly, we are of the view that such vitiated investigation cannot give rise to a valid charge-sheet. Such investigation would ultimately prove to be a precursor of miscarriage of criminal justice. In such a case the court would simply try to decipher the truth only on the basis of guess or conjectures as the whole truth would not come before it. ..."

24. In **Sasi Thomas v. State**, (2006) 12 SCC 421, fairness of investigation is held to be an important facet of the rule of law. The Supreme Court has, in this regard, in **Sasi Thomas** (supra), observed as follows:-

"8. Proper and fair investigation on the part of the investigating officer is the backbone of rule of law. A proper and effective investigation into a serious offence and particularly in a case where there is no direct evidence assumes great significance

as collection of adequate materials to prove the circumstantial evidence becomes essential...”

25. In the light of what has been discussed above, when we revert to the facts of the present case, it transpires that the learned Magistrate, while assigning the reasons for framing of charges, has merely observed to the effect that the materials collected include various letters and report from one or the other authority and that these materials create a reasonable doubt against the accused-petitioner as regards his involvement in the alleged offences. It is on this basis that the impugned order, deciding to frame charges, has been passed. There is, however, not a word used by the learned Magistrate to show as to why the contentions, raised on behalf of the accused-petitioner, were not acceptable in fact or tenable in law. The order, deciding to frame a charge, must be a speaking order and such speaking order shall not only record the submissions made by the prosecution as well as the defence, but also the reasons as to why the submissions, which may have been made by the accused or the prosecution, cannot be accepted. On this aspect, the impugned order is wholly silent.

26. I, therefore, consciously, avoid from expressing any opinion on the correctness or veracity of the



submissions made on behalf of the parties concerned either before this Court or before the learned trial Court. The learned trial Court shall, in the facts and attending circumstances of the present case (which has been investigated almost after a quarter of century), assign reasons as to why the submissions, made on behalf of the accused-petitioner, cannot be accepted at all and, thereafter, the learned trial Court, if it finds that there are grounds to proceed with the case, may frame charge(s). In the event charges are framed, the case shall be expeditiously dealt with in accordance with law keeping in view the fact that a delayed trial amounts to denial of fair trial.

27. Because of what have been discussed and pointed out above, this writ petition partly succeeds. The impugned order, dated 24.09.2016, passed by learned Additional Chief Judicial Magistrate-IX, Gaya, in connection with Magadh University P.S. Case No. 46/2015 (G.R. Case No. 3743 of 2015), is hereby set aside and the case is remanded to the learned trial Court for hearing the parties afresh and pass necessary orders as regards framing of charges against the accused-petitioner or as regards discharge of the accused-petitioner in the light of the observations made in the preceding paragraphs of this order.

27. Send back, forthwith, the lower Court records

along with the case diary.

(I. A. Ansari, CJ)

Pawan/-

AFR/NAFR	AFR
CAV DATE	27.10.2016
Uploading Date	28.10.2016
Transmission Date	28.10.2016