

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.33155 of 2013

Arising Out of PS.Case No. -25 Year- 2013 Thana -LALGANJ District- VAISHALI(HAJIPUR)

Arbind Kumar Mishra, son of Shri Laxmi Narayan Mishra, resident of village + P.O. Musapar, P.S. Korha, District Katihar, at present posted as Sub-divisional Welfare Officer, Chandil, District Saraikela (Jharkhand)

.... Petitioner

Versus

The State of Bihar

.... Opposite Party

Appearance :

For the Petitioner/s : Mr. Shashank Shekhar Jha, Adv.

For the Opposite Party/s : Mr. Ram Naresh Rai(App)

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI

SHARAN SINGH

ORAL ORDER

2 10-03-2016

Heard learned counsel for the parties.

This application has been filed seeking quashing of the First Information Report of Lalganj P.S.Case No. 25/2013 dated 5.2.2013 registered for the offences punishable under sections 167, 171F of the Indian Penal Code, which is pending in the court of the learned Chief Judicial Magistrate, Hajipur. The First Information Report has been brought on record by way of Annexure 1, which is based on a written report addressed to the Officer In-charge, Lalganj Police Station. The said written report is based on an order of the State Election Commission, Bihar in Case No. 145/2011.

It is alleged against the petitioner, who at the relevant point of time was posted as Block Development Officer of Lalganj



Block, that he had issued a Caste Certificate on 28.2.2011 in favour of one Kumari Mamta showing her to be belonging to the caste 'Paswan', which is a Scheduled Caste. It is alleged against the petitioner that he ought to have mentioned father's name of the said Kumari Mamta while issuing the Caste Certificate as was required in accordance with the guidelines issued by the General Administration Department dated 8.3.2011.

Learned counsel for the petitioner has submitted that the very order dated 16.1.2013 making the petitioner responsible for not mentioning the father's name of the said Kumari Mamta in the Caste Certificate suffers from an apparent fallacy, inasmuch as it has been mentioned that the said certificate was issued in violation of the directions issued by the General Administration Department on 8.3.2011, whereas, the said certificate was issued by the petitioner prior to issuance of the said guideline on 28.2.2011. He further submits that mens rea is an essential ingredient for constituting any offence. No motive has been assigned against the petitioner behind issuance of the said Caste Certificate.

Section 167 of the Indian Penal Code reads thus:

"167. Public servant framing an incorrect document with intent to cause injury.- Whoever, being a public servant, and being as such public servant, charged with the preparation or translation of any document or electronic record, frames, prepares or translates that document or electronic record in a

manner which he knows or believes to be incorrect, intending thereby to cause or knowing it to be likely that he may thereby cause injury to any person, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

It is evident from bare perusal of the said provision that a public servant can be held liable for framing an incorrect document if such document is prepared which he believes to be incorrect with intent to cause injury to any person. In the present case, I find that there is no allegation against the petitioner that he prepared the said document knowing it to be incorrect nor with an intent to cause injury to any person. Further, there is no allegation in the First Information Report that prior to the date when the petitioner had issued Caste Certificate, there was any guideline or circular issued by the State Government making it mandatory for an authority issuing Caste Certificate to mention the father's name.

I, therefore, find substance in the submissions made on behalf of the petitioner that even if the contents of the F.I.R. are taken to be true, no offence under section 167 I.P.C. is made out.

Coming to Section 171F of the Indian Penal Code, it deals with punishment for undue influence or personation at an election. Upon perusing and analyzing the contents of the F.I.R. I do not find that any offence under section 171F of the I.P.C. is made out,

which reads thus:

"171F. Punishment for undue influence or personation at an election.- Whoever commits the offence of undue influence or personation at an election shall be punished with imprisonment of either description for a term which may extend to one year or with fine, or with both."

It is evident from reading of the provisions contained in Section 171F of the I.P.C. that no offence under the said provision can be said to be made out, on the basis of allegations contained in the First Information Report.

I am further of the view that on the basis of allegation, which led to institution of the First Information Report, the petitioner can be said to have committed a misconduct dealt under the Conduct Rules but in my opinion, no cognizable offence is made out on the basis of the allegations made in the F.I.R.

The First Information Report of Lalganj P.S. Case No. 25/2013 dated 5.2.2013 is, accordingly, quashed. This application is, accordingly, allowed.

(Chakradhari Sharan Singh, J)

Surendra/-

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