

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Cr.M.P. No. 699 of 2016**

Dr. Hitendra Kumar Soni S/o Shri Dinbandhu Soni, aged about 33 years, Occupation Assistant Veterinary Surgeon, in the O/o Deputy Director, Veterinary Services, Janjgir, R/o A/10, Ambika Niwas, Arya Residency, P.S. Janjgir, Janjgir (Chhattisgarh).

---- Petitioner**Versus**

1. The State of Chhattisgarh through Station House Officer, Kotwali, Police Station, Raigarh , District Raigarh, Chhattisgarh.
2. The Additional Collector, Raigarh, District Raigarh, Chhattisgarh.
3. Dr. Satyendra Singh Baghel, the then Deputy Director, Veterinary Services, Raigarh, District Raigarh, Chhattisgarh, R/o Shiv Nagar, Ward No. 10, behind Look House, Rewa, District Rewa (Madhya Pradesh).
4. Anand Vikas Mehra, New Friends Colony, Telikot, P.S. Kharsiya, Kharsiya, District Raigarh, Chhattisgarh.

---- Respondents

For Petitioner	:	Shri Sunil Ku. Soni, Advocate
For Respondent/State	:	Shri Ashok Swarnkar, Panel Lawyer

Hon'ble Shri Justice P. Sam Koshy**Order On Board****15/11/2016**

The present petition has been filed assailing the charge sheet filed in Crime No. 936 of 2012 before the Court of JMFC, Raigarh.

2. The case of the prosecution in brief is that the petitioner along with other accused persons have been charged for having done irregularity and illegality at the time of selection of the candidates for the post of Swachhakarta/Paricharak-cum-Chowkidar, IVth Class (Contingency fund).
3. Counsel appearing for the petitioner made a twofold argument firstly the nature of dispute which has been alleged by the respondents clearly indicates

to be a civil dispute and therefore, the FIR could not have been lodged. The second limb of argument is that if the entire complaint is taken into consideration even then the ingredients as is required for making an offence under Sections 420, 468 & 471 are not made out and the filing of the charge sheet on the part of the respondents is therefore bad in law. Counsel for the petitioner refers to the decision of the Supreme Court in the case of **Union of India (UOI) and Anr. vs. J. S. Khanna** reported in **(1972) 3 SCC 873** and relying upon the observations made by the Supreme Court in paragraph-14 submits that such a procedure might not be in accordance with the rules prescribed for purchases. But a breach of that procedure does not surely mean fraud or any other criminality. Relying upon the said judgment counsel for the petitioner further submits that even if the entire version of the prosecution is accepted, the only case which is made out against the selection committee is of having committed the irregularity in the course of recruitment and the irregularity cannot be said to be illegality so as to bring home the offence under Sections 420, 468 & 471 of IPC.

4. At this juncture, State counsel referring to the documents to the charge sheet submits that so far as the present petitioner is concerned, there are serious allegations leveled against him in as much as the petitioner is alleged of having applied whitener in the answer sheet of certain candidates and rectified the answers so as to give more marks. Likewise, the allegation is also of providing marks to the candidates who have given wrong answers only with an intention to give favour to those candidates, which definitely is an act which would fall within the definition of fraud and cheating committed in the course of the recruitment process. Therefore, prima facie, there are sufficient materials available against the petitioner so as to file the charge sheet. He further submits that this Court in exercise of its powers under Section 482 CrPC would not conduct a roving enquiry or a mini trial in reaching to the conclusion whether an offence against the petitioner is made out or not. He further submits that the

petitioner would be at liberty to raise all these grounds before the Court below at the time of framing of charge which yet has not been done and therefore at this juncture, the petition is premature and deserves to be dismissed.

5. Having considered the rival contentions put forth by the counsel appearing on either side and on perusal of the records, this Court is of the opinion that in view of the specific strong allegation made against the petitioner, it cannot be said that the filing of the charge sheet against the petitioner was improper or illegal in any manner. So far as the offence under Section 420 IPC is made out or not is concerned, the same is a matter of fact which would be considered by the Court below during the course of trial and the petitioner shall also get an opportunity to convince the court that the said offence is not made out against the petitioner at the time of framing of charge.

6. Thus, the present Cr.M.P. being devoid of merit deserves to be and is accordingly dismissed.

**Sd/-
(P. Sam Koshy)
JUDGE**