

THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT

21.11.2016

CRL.P.NO.2177 OF 2016

S.R.TEWARI

PETITIONER

AND

STATE OF ANDHRA PRADESH AND ANOTHER

RESPONDENTS

Counsel for the petitioner: Sri Mr. Badri Premnath

Counsel for the respondents: Additional Public Prosecutor

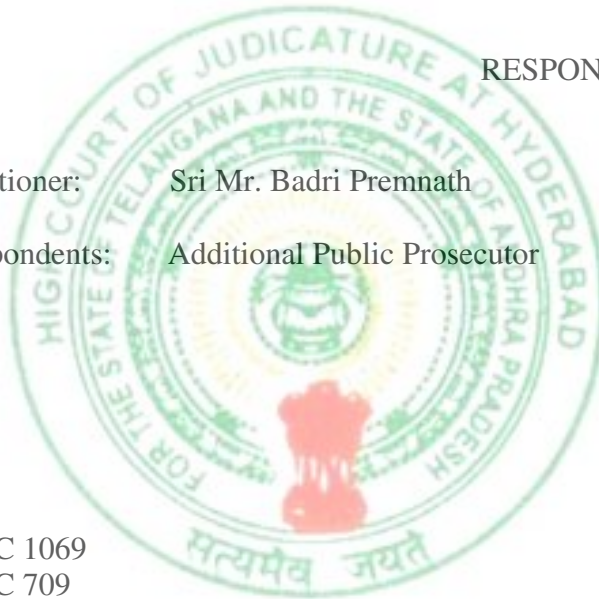
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?Cases Referred:

1. AIR 2003 SC 1069
2. AIR 1988 SC 709
3. AIR 2015 SC 3760



THE HON'BLE SRI JUSTICE SURESH KUMAR KAITCRL.P.NO.2177 OF 2011O R D E R

This petition is filed under Section 482 of Cr.P.C. to quash the proceedings against the petitioner / accused No.15 in C.C.No.664 of 2007 on the file of VI Additional Chief Metropolitan Magistrate, City Civil Courts, Nampally, Hyderabad, being tried for the offence punishable under Section 420 I.P.C.

2. The petitioner worked as Commandant, SAR, CPL, Amberpet, Hyderabad during the period from 11.11.1993 to 5.1.1995. The allegations against him are that he made appointments of 23 posts of class-IV employees and out of the said posts, 16 posts were never sanctioned by the State Government, nor any permission was obtained from the Government and thus issued appointment orders by cheating the Government.

3. Initially, based on the complaint lodged by Mr. P.Chandra Sekhar Reddy, Commandant, SAR-CPL, with CID, Crime No.1/1998 under Section 420 IPC and Sections 5 read with 13(1) read with Section 4 of Andhra Pradesh (Regulation of Appointments to Public Services and Rationalization of Staff Pattern and Pay structure) Act, 1994 (for short 'Act 2 of 1994') read with 120-B of IPC, was registered. Vide G.O.Ms.No.275 dated 24.4.2007 the Government sanctioned prosecution and after filing of the charge sheet, the following charge has been framed against the petitioner by the court of VI Additional Chief Metropolitan Magistrate, City Criminal Courts, Nampally, Hyderabad in C.C.No.664/2007 :

"That you (A-1, A-2, A-4 to A-7, and A-15) on or about prior to 1.1.1998 of Commandant of Special Armed Reserve / Central Police Lines, Amberpet, Hyderabad, you cheated complainant P.Chandra Sekhar Reddy, IPS Retired Commandant, SAR CPL, Amberpet, Hyderabad by appointing six persons and also A-6 to A-9 of you and some others in 23 posts of Class-IV employees out of these 23 posts, 16 posts were never sanctioned by the State Government nor any permission was obtained from the Government to make the said appointments and got their appointment orders by cheating the Government and that you thereby committed an offence punishable under Section 420 IPC and within my cognizance."

4. Based on the averments made in the affidavit filed in support of the petition, the learned counsel appearing on behalf of the petitioner submits that in April, 1993 on the note file approved by the then Commandant SAR-CPL, Amberpet, there were 23 vacancies in the category of Class IV in CPL and PTC, Amberpet as verified from records. On 27.4.1993 the then Commandant SAR- CPL, Mr. Balakondaiah IPS notified vacancies to Employment Exchange, Hyderabad. The said incumbent held the post during the period from 9.9.1992 to 28.8.1993. Thereafter, Mr. Gopi Krishna IPS held the said post of Commandant SAR – CPL, from 21.8.1993 to 10.11.1993. The petitioner functioned in the said post during the period from 11.11.1993 to 5.1.1995. The learned counsel would submit that the allegations are with regard to cheating for making recruitment during ban period and without taking permission from the Government. He stated that the process started during April, 1993 and the posts have already been notified to employment exchange, as Public Service Commission does not undertake recruitment of class-IV posts and the recruitment has been made as per the procedure. He stated that the de facto complainant made complaint on 29.12.1997 alleging that recruitment was made in excess of the sanctioned strength, for the offences punishable under Sections 420 and 120-B of IPC and under the provisions of Act 2 of 1994. But after sanction from the Government under G.O.Ms.No.275 dated 24.4.2007, the trial court

has taken cognizance only for the offence punishable under Section 420 of Cr.P.C. and the other allegations were not taken cognizance by the court.

5. Learned counsel argued that a perusal of the allegations made against the petitioner does not make the ingredients for the offence punishable under Section 420 IPC. He further submits that when the Government sought to terminate the employees who were recruitment under the impugned process, they approached the Andhra Pradesh Administrative Tribunal by filing O.A.No.6645/2004 and when their claim was dismissed by order dated 9.12.2004, filed W.P.No.23217/2004 and 26982/2008 and a Division Bench of this court by order dated 9.12.2013 set aside the order of the Tribunal and directed the Government to regularize the services of the employees. Moreover, the Governments of the States of Andhra Pradesh and Telangana also issued orders for withdrawal of prosecution in exercise of jurisdiction under Section 321 of Cr.P.C. He stated that Government of Andhra Pradesh issued Memo No.275/SC.D/A1/2005-12 dated 22.7.2015 and Government of Telangana issued G.O.Ms.No.398 General Administration (Spl.C) Department dated 11.11.2016. Therefore, he sought to set aside the proceedings in C.C.No.664/2007 pending on the file of VI Additional Chief Metropolitan, Magistrate, Nampally, Hyderabad.

6. On the other hand, the learned Additional Public Prosecutor while not disputing the proceedings issued by the Government under Section 321 of Cr.P.C. for withdrawal of the prosecution against the petitioner in C.C.No.664/2007, sought to pass appropriate orders.

7. From the facts noted above, the admitted facts are that the process for recruitment to class IV posts was started during April, 1993 when the

present petitioner was not holding the post of Commandant SAR –CPL, Amberpet. Though initially based on the complaint lodged by Mr. P.Chandra Sekhar Reddy, Commandant SAR-CPL, Crime No.1/1998 on the file of C.I.D. was registered for the offences punishable under Sections 420 IPC and under Section 5 read with Section 13(1) of Act 2 of 1994, and 120-B of IPC, however, after sanction of prosecution under G.O.Ms.No.275 dated 24.4.2007 and filing of the charge sheet, the trial court has taken cognizance only for the offence punishable under Section 420 IPC and other alleged violations under the provisions of Act 2 of 1994 were not taken cognizance. Thus it is an admitted fact that the prosecution has not protested for not taking cognizance of other offences.

8. A perusal of the allegations in the charge, which is extracted above, prima facie shows that the ingredients for punishing the petitioner/accused No.15 under Section 420 of I.P.C. are not forthcoming, since there is no allegation of guilty intention on the part of the petitioner in making the recruitment and issuing appointment orders. The above averments would reveal that the recruitment process started prior to the petitioner taking charge of the said post and thereafter recruitment procedure was followed. In order to convict a person for the offence under Section 420 of IPC, 'guilty intention' has to be established. In *AJAY MITRA v. STATE OF M.P.*¹, the Apex Court held as under:

15. A guilty intention is an essential ingredient of the offence of cheating. In other words 'mens rea' on the part of the accused must be established before he can be convicted of an offence of cheating (See *Jaswantrao Manilal Akhaney v. The State of Bombay*, AIR 1956 SC 575). In *Mahadeo Prasad v. State of West Bengal*, AIR 1954 724 it was held as follows:

" Where the charge against the accused is under S.420, is that he induced the complainant to part with his goods, on the understanding that the accused would pay for the same on delivery but did not pay, if the accused had at the time he promised to pay cash against delivery an intention to do so, the fact that he did not pay would not convert the transaction into one of cheating. But if on the other hand he had no intention whatsoever to

¹ AIR 2003 SC 1069

pay but merely said that he would do so in order to induce the complainant to part with the goods then a case of cheating would be established.”

16. In Hari Prasad Chamaria V. Bishun Kumar Suresh and others, AIR 1974 SC 301, it was held that unless the complainant showed that the accused had dishonest or fraudulent intention at the time the complainant parted with the money it would not amount to an offence under Section 420 IPC and it may only amount to breach of contract. In G.V.Rao v. L.H.V. Prasad and others, 2000(3) SCC 693 it was reiterated that guilty intention is an essential ingredient of the offence of cheating and, therefore, to secure conviction ‘mens rea’ on the part of the accused must be established. It has been further held that in order to constitute the offence of cheating the intention to deceive should be in existence at the time when the inducement was offered.”

9. A reading of the above judgments would clearly indicate that in order to constitute the offence of cheating, the intention to deceive should be in existence at the time when the inducement was offered. In the present case, a reading of the charge, which is extracted above, does not make out guilty intention on the part of the petitioner in continuing the process of recruitment, which has started prior to his taking charge, and, therefore, the ingredients to punish the petitioner for the offence under Section 420 of IPC. are not forthcoming.

10. Further, it is also to be noticed that when the Government sought to terminate the services of the employees recruited under the present recruitment, they filed O.A.No.6645/2004 and when their claim was rejected by the Tribunal by order dated 9.12.2004, approached this court by filing W.P.No.23217/2004 and 26982/2008 and a Division Bench of this court by order dated 9.12.2013 set aside the order of the Tribunal and allowed the writ petition. The operative portion of the Division Bench judgment of this court is extracted as under:

“15. For the aforesaid reasons, W.P.No.23217 of 2004 is allowed and the order of the Tribunal passed in O.A.No.6645/2004 and the proceedings dated 07.12.2004 issued by the 1st respondent in C.No.A1/554/SAR 2004, are set aside with a direction to the respondents to regularize the services of petitioners in the existing vacancies, and in case there are no vacancies, their services shall be regularized by creating super-numerary vacancies with the permission of Government, and to extend all the service benefits from the date of their initial appointment.”

11. The learned counsel for the petitioner submitted that services of some of the employees were regularized and some of them also retired from services by receiving all the emoluments, but the petitioner is made to face the prosecution for no fault of his. Moreover, he lost one promotion also.

12. As noted above, a prima facie reading of the charge does not make out the ingredients of 420 of Cr.P.C. A Division Bench of this court directed the Government to regularize the services of the employees. Further, the trial court while framing charge has not taken into cognizance for the allegations of the provisions of Act 2 of 1994. These circumstances would suggest that the chances of conviction are bleak and the continuing prosecution against the petitioner would be rendered futile and amounts to abuse of process of law. The Apex Court in *MADHAVRAO JIWAJI RAO SCINDIA v. SAMBHAJIRAO CHANDROJIRAO ANGRE*² held that as under:

“7. The legal position is well-settled 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 prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the Court cannot be utilized for any oblique purpose and where in the opinion of the court chances of an ultimate conviction are bleak, and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the Court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at the preliminary stage.”

13. In another judgment in *D.P.GULATI, MANAGER ACCOUNTS, M/ S JETKING INFOTRAIN v. STATE OF UTTER PRADESH*³, the Apex Court held that the object of exercise of power under Section 482 of Cr.P.C. is to prevent abuse of process of law and to secure ends of justice.

² AIR 1988 SC 709

³ AIR 2015 SC 3760

14. The allegations in the present case against the petitioner, at the cost of repetition, are that he along with others, appointed six persons and some others in 23 posts of class IV employees without sanction or permission from the Government and thus got their appointment orders by cheating the Government. As per the facts noted above, the procedure for recruitment started prior to petitioner taking the charge of the post of commandant SAR-CPL, which posts were notified to employment exchange. Though initially crime was registered for violations under Act 2 of 1994 and Section 120-B IPC, while taking cognizance, charge is framed only under Section 420 of I.P.C. A prima facie perusal of the charge does not make out the guilty intention on the part of the petitioner for the offence punishable under Section 420 IPC. Further, as noted above, when the employees approached this court, this court directed the Government to regularize their services and accordingly their services were regularized and some of the employees were also said to have retired from service by taking their emoluments. In these circumstances, it is established that the petitioner neither cheated the Government, nor the de facto complainant. Therefore, allowing the criminal prosecution to continue against the petitioner, would be abuse of process of law. In view of the facts and circumstances and the law laid down by Apex Court in the decisions cited supra, in exercise of jurisdiction under Section 482 of Cr.P.C., I am inclined to quash the proceedings against the petitioner.

15. The learned counsel for the petitioner has brought to the notice of this court that the Government of Andhra Pradesh issued MemoNo.275/SC.D/A1/2005-12 dated 22.7.2015 ordering for withdrawal of the criminal prosecution against the petitioner. The relevant portion of the

said memorandum issued by Secretary to Government (Political), is extracted as under:

3. The Director General of Police (HoPF), Andhra Pradesh, Hyderabad in his letter in the reference 4th cited has stated that it is a fit case to recommend for withdrawal of prosecution in public interest against Sri S.R.Tewari, IPS (Retd.) considering the fact that there is hardly any evidence in support of charge and in consideration of the services he rendered during his service. Further, no useful purpose will be served in pursuing prosecution in this long pending case and in view of the judgment of the Division Bench of Hon'ble High Court and requested to consider the request of Officer for withdrawal of prosecution against him, on legal as well as on humanitarian grounds.

4. After careful examination of the matter, Government have decided that the prosecution against Sri S.R.Tiwari, IPS, formerly Commandant of Special Armed Reserve / Central Police Lines, Hyderabad be withdrawn. Accordingly, Government hereby order for withdrawal of the prosecution pending against Sri S.R.Tiwari, IPS (Retd.), formerly Commandant of Special Armed Reserve / Central Police Lines, Hyderabad."

16. The Government of Telangana also issued G.O.Ms.No.398 General Administration (Spl.C) Department dated 11.11.2016 for withdrawal of prosecution. The relevant portion is as under:

"5. The Director General of Police, Telangana has requested the Government to consider the case in view of the judgment of High Court and observation made that merely because there was ban on recruitment at relevant point of time and there is no permission from competent authority cannot be said that the appointments are illegal.

6. Government, after careful examination of the matter and keeping in view the reasons noted in reference 1st read above, as well as reports received in the reference 5th read above and the representation made in the reference 3rd read above requesting for orders on point of jurisdiction as per A.P. Reorganization Act, 2014, have decided to withdraw prosecution in exercise of power conferred under Section 321 of Criminal Procedure code, 1973 against Sri S.R.Tewari, IPS (Retd) in Crime No.01/98 under Sections 420 and 120-B of IPC and under Section 13(2) of A.P. Regularization of Appointments to Public Services and Rationalization of Staff Pattern and Pay Structure Act, 1994, for the offences under Section 13(1) read with Sections 3,4 and 10 of the said Act, which is pending trial before the Hon'ble VI Additional Chief Metropolitan Magistrate, Nampally, Hyderabad, in C.C.No.664/2007. Accordingly, Government hereby order for withdrawal of prosecution pending against Sri S.R.Tiwari, IPS (Retd.), and sanctioned vide reference 1st read above.

7. The Director General of Police, Telangana / Addl. DGP (CID), Telangana shall take necessary further action accordingly to direct the Assistant Public Prosecutor concerned to take necessary action under Section 321 of Criminal Procedure code, 1973 in C.C.No.664/2007 before the competent Court of Law under intimation to the Government."

17. Having regard to the above facts and circumstances, I do not find any reason to interfere with the decision taken by the respective Governments for withdrawal of the criminal prosecution pending against the petitioner under Section 321 of Cr.P.C.

18. For the foregoing reasons, in exercise of the jurisdiction under Section 482 Cr.P.C., the proceeding pending against the petitioner /A-15 in

C.C.No.664/2007 on the file of VI Additional Chief Metropolitan Magistrate,
City Criminal Courts, Namapally, Hyderabad is hereby quashed.

19. The criminal petition is accordingly allowed.

20. I hereby make it clear that though the petitioner is retired from
service, is entitled to claim all his service benefits as per law.

SURESH KUMAR KAIT,J

DATE:21—11—2016

AVS

Note:

L.R. copy to be marked.

B/O

