

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.53683 of 2013

Arising Out of PS.Case No. -70 Year- 2013 Thana -JAYNAGAR District- MADHUBANI

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Amrika Kumari Choudhary @ Amerika Kumari @ Amerika Devi Wife Of Shri Yamuna Prasad Choudhary Resident Of Village- Barhi, P.S.- Jainagar, District- Madhubani

.... Petitioner/s

Versus

1. The State Of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Vijay Kumar, Adv.

For the Opposite Party/s : Mr. Murlidhar, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
CAV JUDGMENT

Date: 24-08-2017

Heard learned counsel for the parties.

This application under Section 482 of the Code of Criminal Procedure has been filed by the petitioner for quashing of an order dated 22.08.2013 passed by the learned C.J.M., Madhubani in TR. No. 4672 of 2013 arising out of Jay Nagar P.S. Case No. 70 of 2013/G.R. No. 904 of 2013, whereby the learned court below took cognizance against the petitioner under Sections 420 and 468 of the Indian Penal Code and Section 125(ka)(1) and (3) of the Bihar Panchayat Raj Act, 2006.

The brief facts of this case is that the petitioner was appointed as Assistant Teacher in Primary School, Barhi Musahari on 16.03.2017. It is alleged that the petitioner has suppressed the fact, that her appointment on the post of Panchayat Teacher was cancelled on the ground that her academic certificates have been



found to be forged and fabricated, while she was filing nomination to the post of Mukhiya and accordingly, the candidature of the petitioner was disqualified in terms of Rule 117 of the Bihar Panchayat Election Rules, 2006.

Learned counsel for the petitioner has submitted that petitioner has not committed any offence as alleged in the F.I.R. In fact, the petitioner has resigned from the post prior to filing nomination for the election of Mukhiya. The petitioner has falsely been implicated in this case due to dirty village politics. The court below has not properly appreciated the material on record and has taken cognizance in a routine manner. On the above ground it is submitted that the cognizance order is bad in law and is fit to be quashed.

Learned counsel appearing for the State opposes the application by contending that there are allegations against the petitioner and the court below after going through the materials available on record has found a prima facie case made out against the petitioner and rightly taken cognizance for offence under Sections 420 and 468 of the Indian Penal Code and Section 125(ka)(1) and (3) of the Bihar Panchayat Raj Act, 2006. Therefore, the order taking cognizance does not require any interference.

From perusal of the material on record and looking into the facts of the case at this stage, it cannot be said that no offence is made out against the petitioner. All the submissions made at Bar relate to a disputed question of fact, which cannot be adjudicated upon by this Court in exercise of power conferred under Section 482



Cr.P.C. Only a prima facie satisfaction of the Court about the existence ground to proceed with the matter is required. At this stage, only prima facie case is to be seen in the light of the law laid down by the Supreme Court in cases of *R.P. Kapur Vs. State of Punjab*, *A.I.R. 1960 SC 866*, *State of Haryana Vs. Bhajan Lal*, *1992 SCC (Cr.) 426*, *State of Bihar Vs. P.P. Sharma*, *1992 SCC (Cr.) 192*, *Zandu Pharmaceutical Works Ltd. Vs. Mohd. Saraful Haq and another (Para-10) 2005 SCC (Cr.) 283* and recently in *A.R.C.I. Vs. Nimra Cerglass Technics (P) Ltd. (2016) 1 SCC 348*. The submission made by the learned counsel for the petitioner call for adjudication on pure question of fact which may be adequately gone into by the trial court in this case. This Court does not deem it proper, and therefore, cannot be persuaded to have a pre-trial before the actual trial begins. The disputed defense of the accused cannot be considered at this stage. Moreover, the petitioner has got a right of discharge through a proper application for the said purpose and he is free to take all the submission in the said discharge application before the trial court. The prayer for quashing the order taking cognizance is refused.

The application accordingly stands dismissed.

(Arvind Srivastava, J)

Brajesh/-

AFR/NAFR	NAFR
Uploading Date	
Transmission Date	

