

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.11833 of 2014

Arising Out of PS.Case No. -184 Year- 2001 Thana -MAKHDUMPUR District- JEHANABAD

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Ramesh Kumar Singh @ Ramesh Singh S/o Banshi Singh, resident of village-
Udhan Bigha, Police Station- Madanpur, District- Aurangabad..... Petitioner/s
Versus

1. The State of Bihar.
2. Ram Lakhan Prasad S/o Late Than Singh Mahto, resident of village- Kudwa,
Police Station- Kizarsarai, District- Gaya. Opposite Party/s

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Appearance :

For the Petitioner/s : M/s Sandeep Kumar and R.P.N. Tiwari, Advs.

For the Opposite Party/s : Mr. H. Ahmad, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 22-08-2017

Heard the parties and perused the record.

2. This criminal miscellaneous application under section 482 of the Criminal Procedure Code, has been filed to quash the order dated 19.04.2008 passed by the learned Chief Judicial Magistrate, Jehanabad in G.R. No. 1371 of 2001, arising out of Makhdumpur Police Station Case No. 184 of 2001. The learned Chief Judicial Magistrate, as per impugned order, took cognizance under sections 419, 420, 468 and 471 of the Indian Penal Code.

3. The fact of this case, in brief, is that a police case was registered on the basis of written report of Incharge Head Master of Gandhi High School Prabhatnagar, Jehanabad. It has been alleged *inter alia* that one Ramesh Kumar Singh was appointed as Teacher in Adarsh High School Kaithi, Aurangabad under letter no. 176 dated



02.12.1991. The said Ramesh Kumar Singh was transferred to the school of informant by the Deputy Regional Director, Special Magadh Division, Gaya under Memo. No. 2021 dated 01.10.1996 and he joined in the school on 21.11.1996. As per direction of the Committee of Bihar Legislative Assembly, an enquiry was conducted with respect to the appointment of the said Ramesh Kumar Singh and it was found that he was appointed on the basis of fake and fictitious documents and by withdrawing salary from the Government Treasury, has caused loss to the Government and so liable to be prosecuted for defalcation. The case was accordingly, registered against Ramesh Kumar Singh.

4. The learned counsel for the petitioner submits that neither the petitioner was appointed as Teacher under the aforesaid Memo. nor he was transferred to the school of informant. He neither joined the service nor received any payment. The Investigating Officer of the case without any basis, has submitted charge sheet against the petitioner, who is son of Banshi Singh whereas the FIR named accused, Ramesh Kumar Singh has been described as son of Balchand Singh. This petitioner and accused are different persons. This petitioner cannot be held liable for alleged fraud and forgery, which was committed by another person of the same name. The learned Court below without going through the case diary, took



cognizance against the petitioner in mechanical manner and so, the order taking cognizance is fit to be quashed.

5. The learned Additional Public Prosecutor, on the other hand, opposed the submission.

6. On going through the impugned order and material in case diary, I find that the matter was enquired and it was found that it was the petitioner, who got appointment on the basis of forged document and the Police submitted charge sheet against him for the offences under the aforesaid sections. The learned Magistrate, after perusing the case diary, found *prima facie* case against this petitioner and has rightly taken cognizance against him. The defence of the petitioner is that he is not the accused, who had joined in the school of informant. This defence has to be considered at the time of trial.

7. In view of the aforesaid facts, I do not find any merit in this criminal miscellaneous application and the same is accordingly, dismissed.

(Sanjay Kumar, J)

Mahesh/-

AFR/NAFR	NAFR
CAV DATE	N/A
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