

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.22791 of 2017

Arising Out of PS.Case No. -9 Year- 2008 Thana -HILSA District- NALANDA (BIHARSHARIFF)

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1. Kumari Pushpa Sinha @ Pushpa Sinha Wife of Dinesh Prasad, Resident of Mohalla- Ravidas Tola Bihari Road, Hilsa, Police Station Hilsa, District Nalanda.

.... Petitioner/s

Versus

1. The State of Bihar
2. Arun Kumar Son of Bishundeo Prasad, Prakhanda Kalyan Padadhikari, Hilsa, Nalanda, Resident of Village+ Post- Parma, Police Station- Narsiganj, District- Nawada.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Anil Kumar Singh, Adv.

For the Opposite Party/s : Mr. Jharkhandi Upadhyay, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date: 05-12-2017

Heard Mr. Anil Kumar Singh, learned counsel for the petitioner and Mr. Jharkhandi Upadhyay, learned Additional Public Prosecutor for the State.

2. The petitioner has invoked the inherent jurisdiction of this Court under Section 482 of the Code of Criminal Procedure (for short 'Cr.P.C.') for quashing of the order dated 22.02.2017 passed by the learned Additional Chief Judicial Magistrate, 1st, Hilsa, Nalanda in Hilsa P. S. Case No. 09 of 2008 corresponding to G. R. No. 17 of 2008 registered under Sections 467, 468 and 420 of the Indian Penal Code (for short 'IPC'), whereby the application for discharge filed by the petitioner under Section 239 of the Cr.P.C. has been rejected.

3. The prosecution case, according to the first information



report instituted on the basis of written report of one Arun Kumar, Block Welfare Officer, Hilsa, is that on the complaint of one Anju Kumari against selection of Anganbari Sevika of Ravidas Tola under Ward No.10, an enquiry was conducted by the Sub Divisional Officer, Hilsa. He gave his report to the District Magistrate, Nalanda on 06.08.2007 in which he found that the selected Anganbari Sevika of Ravidas Tola did not belong to the *Posak Kshetra*, hence, her selection was contrary to Clause- 3(C) of the guidelines issued by the Director of Integrated Child Development Service (for short 'ICDS'). The enquiry report reveals that the name of the selected Anganbari Sevika of Ravidas Tola did not find place in the merit list prepared on the basis of Mapping Register. Hence, he recommended for cancellation of appointment of selected Anganbari Sevika and taking action in accordance with rules against the Chairman and other members of the Selection Committee.

4. It is submitted by Mr. Anil Kumar Singh, learned counsel for the petitioner that the petitioner is not named in the FIR. As a matter of fact, she had filed her application for appointment as Anganbari Sevika of Hilsa Nagar Panchayat Ward No. 10, as there was an advertisement for two posts for Ward No.10 of which one post was for Deep Nagar Kendra and the other one was for Ravidas Tola. The petitioner filed her application for selection as Anganbari Sevika in Deep Nagar Kendra. In the merit list prepared, her name was at the



second place. During the course of selection process, since the Selection Committee found that the petitioner a resident of Ravidas Tola *Poshak Kshetra*, they sent her application to Ravidas Tola and she was selected as Anganbari Sevika of Ravidas Tola. After her selection, the petitioner was sent for training and she obtained training from 28.07.2007 to 03.08.2007. Being aggrieved by the selection of the petitioner, one Anju Kumari, filed an application before the District Magistrate, Nalanda and after taking into consideration the application of the said Anju Kumari, the District Magistrate cancelled the appointment of the petitioner on 07.12.2007. Being aggrieved, the petitioner challenged the order dated 07.12.2007 passed by the District Magistrate, Nalanda before the Commissioner, Patna and after hearing the parties, the Commissioner set aside the order dated 07.12.2007 passed by the District Magistrate, Nalanda, vide order dated 29.08.2008. Thereafter, the petitioner filed an application before the District Magistrate, Nalanda for her appointment against the said post, but the same was rejected by the District Magistrate, Nalanda, vide order dated 22.08.2009.

5. He submitted that actually in Ward No.10 there are two Anganbari Centres and at the time when the application was filed, she had no knowledge that she is resident of Ravidas Tola and, therefore, she had submitted her application for appointment in Deep Nagar Kendra. He contended that the petitioner has committed no offence as



alleged in the FIR and none of the ingredients of the offences alleged are attracted in the present case. He further contended that the co-accused Kumari Anita Choudhary, the Child Development Project Officer had filed an application before this Court for quashing the order of cognizance, vide Cr.Misc. No. 3571 of 2009, which was allowed, vide order dated 08.09.2009. Another co-accused Sushma Sinha, who was Women Supervisor and has been sent up for trial, filed an application before this Court against the order passed by the learned Magistrate whereby her application for discharge was rejected, vide Cr.Misc. No. 29630 of 2013, which has also been allowed, vide order dated 12.07.2016. He submitted that the case of the petitioner stands either on identical footing or on better footing to that of the co-accused Kumari Anita Choudhary, who was the then Child Development Project Officer posted at Hilsa and Sushma Sinha, the then Women Supervisor of the Anganbari Centre.

6. On the other hand, Mr. Jharkhandi Upadhyay, learned counsel for the State submitted that as there is allegation against the petitioner that her selection as Anganbari Sevika was illegal, which was found true during investigation by the police, no illegality can be found with the order passed by the learned Magistrate whereby cognizance of the offence has been taken against her and the learned Magistrate has rightly rejected her application for discharge. He submitted that there are sufficient grounds for proceeding against the



petitioner in trial. He submitted that defence of the petitioner can be considered at the stage of trial only and, hence, the present application is pre-mature.

7. I have heard learned counsel for the parties and perused the record.

8. It is true that the petitioner was one of the applicants for the post of Anganbari Sevika and she was also selected for the post. However, there is no allegation that she had committed forgery in any document for the purpose of cheating in the process of selection as Anganbari Sevika. In the case of co-accused Kumari Anita Choudhary, Child Development Project Officer, Hilsa, while allowing her application and quashing the order of cognizance as far as she was concerned, this Court in Cr.Misc. No. 3571 of 2009 observed as under :-

“Considering that the enquiry report does not indicate that the petitioner was involved in the appointment of Aanganbari Sevikas or was in conspiracy with the Chairman of the Committee in question, coupled with the facts that the petitioner was the person who brought the anomaly in the alleged appointment to the notice of the Authority, it cannot be said that any offence is made out under Sections 467, 468 and 420 of the Indian Penal Code as far as it relates to the petitioner....”.

9. In the case of co-accused Sushma Sinha, while allowing her application filed under Section 482 of the Cr.P.C., vide Cr.Misc. No. 29630 of 2013, for quashing the order passed by the learned



Magistrate whereby her discharge petition was rejected, this Court, vide order dated 12.07.2016, observed :-

“The condition precedent for an offence under Sections 467 and 468 of the IPC is forgery. The condition precedent for forgery is making a false document. A person is said to have made a false document as described under Section 464 of the IPC, if he made or executed a document claiming to be someone else; or he altered or tampered a document; or he obtained a document by practicing deception, or from a person not in control of his senses. The allegations made against the petitioner clearly and obviously do not fall under any of the above categories. Similarly, for constituting an offence under Section 420 of the IPC there should not only be cheating, but as a consequence of such cheating, the accused should have dishonestly induced the person deceived (i) to deliver any property to any person; or (ii) to make, alter or destroy wholly or in part a valuable security. Apparently, there is no such allegation as against the petitioner.”

10. In view of the observations made in the case of charge-sheeted accused Sushma Sinha, when I look to the case of the petitioner, I find that the only allegation against the petitioner is that her appointment as Anganbari Sevika was contrary to clause 3(C) of the guidelines issued by the ICDS. There is no allegation that she obtained the appointment by making any false document. There is also no allegation that she made or executed a document claiming to be of someone else or that she altered or tampered a document or that she obtained a document by practicing deception to a person not in control of his senses. Thus, the conditions precedent for an offence



under Sections 467 and 468 of the IPC are clearly not attracted in this case. There is also nothing to show that the petitioner did anything, which would attract the offence of cheating punishable under Section 420 of the IPC.

11. Considering the nature of allegations made against the petitioner coupled with the fact that the order of cognizance in the case of co-accused Kumari Anita Choudhary (CDPO) and the prosecution of co-accused Sushma Sinha (Women Supervisor) have already been quashed by this Court, I am of the opinion that allowing the prosecution to continue against the petitioner would amount to an abuse of the process of the Court.

12. Resultantly, in view of the discussions made above, the impugned order dated 22.02.2017 passed by the learned Additional Chief Judicial Magistrate, 1st, Hilsa, Nalanda in Hilsa P. S. Case No. 09 of 2008, corresponding to G. R. No. 17 of 2008 is quashed. The petitioner is directed to be discharged from the aforesaid case.

13. The application stands allowed.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	07-12-2017
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