

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Miscellaneous No.44273 of 2017**

Arising Out of Complaint Case No. -1730 Year- 1998 District- EAST CHAMPARAN (MOTIHARI)

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Sudama Pandit, Son of Sri Ramchandra Pandit, Resident of Village- Rampurwa,  
P.S.- Harsidhi, District- East Champaran.

.... .... Petitioner

Versus

1. The State of Bihar.
2. Ambika Pandit, Son of Sri Ramchandra Pandit, Resident of Village- Rampurwa,  
P.S.- Harsidhi, District- East Champaran.

.... .... Opposite Party/s

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**Appearance :**

|                             |   |                                        |
|-----------------------------|---|----------------------------------------|
| For the Petitioner/s        | : | Mr. Umesh Chandra Verma, Advocate.     |
| For the State               | : | Mr. Jharkhandi Upadhyay, A.P.P.        |
| For the Opposite Party No.2 | : | Mr. Rajesh Ranjan, Advocate, Advocate. |
|                             | : | Mr. Pramod Kumar Pandey, Advocate.     |

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**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH**

**ORAL JUDGMENT**

**Date: 24-07-2018**

Heard learned counsel for the petitioner, learned counsel  
for the State and learned counsel for the opposite party no.2.

2. This application under Section 482 of the Code of Criminal Procedure (for short 'Cr.P.C') has been filed by the petitioner for quashing the order dated 29.06.2017 passed by the learned Judicial Magistrate 1<sup>st</sup> Class, Motihari, East Champaran in Trial No. 1922 of 2016 arising out of Complaint Case No. C-1730 of 1998 whereby and whereunder the petition dated 06.0-8.2016 filed under Section 245 of the Cr.P.C for discharge has been dismissed.

3. On 16.12.1998 the opposite party no.2 filed Complaint Case No. C-1730 of 1998 in the court of Chief Judicial Magistrate,



East Champaran, Motihari stating therein that the opposite party no.2 and the petitioner are full brothers and some litigation is pending in the court between the parties. At the time of occurrence, the petitioner was posted as Head Master in Rajkiya Prathmik Vidyalay, Bhutahan, Sangrampur and by virtue of being Head Master, he was the custodian of records of the school. On 05.07.1995, the petitioner was present in the court of Sub-Divisional Magistrate, Areraj in Case No. 87-M of 1995 instituted under Section 107 of the Cr.P.C, and being the opposite party he had filed P.R. Bond in the said case, whereas he had shown in the school attendance register that he was going to attend '*Guru-Goshthi*'. Thus, he had played fraud upon the State government and public. Likewise, on 08.06.1995, the petitioner being physically present as first party filed show cause in Case No. 407-M of 1995 instituted under Section 145 of the Cr.P.C in the court of Sub-Divisional Magistrate, Areraj, whereas he showed himself present in school attendance register. Thus, he misappropriated public money by drawing salary of the said day. He brought the aforesaid facts to the notice of the officers of the department, but in collusion of the petitioner, they did not take any action. Even the police refused to register case and, therefore, he filed the complaint in the court.

4. After examining the complainant on oath and recording the statements of some of the witnesses under Section 202 of the



Cr.P.C, the learned Chief Judicial Magistrate, Motihari found a prima facie case to be made out against the petitioner and summoned him to face trial for the offences punishable under Sections 420, 467 & 468 of the Indian Penal Code (for short 'IPC').

5. Being aggrieved by the summoning order dated 25.02.1999 passed by the learned Chief Judicial Magistrate, the petitioner filed an application under Section 482 of the Cr.P.C before this Court vide Cr. Misc. No. 22148 of 1999, which was rejected by this Court vide order dated 30.04.2010 with liberty to the petitioner to take all the points available to him at the stage of framing of charge and a direction was given to the learned Magistrate that if such an application is filed, he would examine the same without being prejudiced by the order of rejection and pass order in accordance with law.

6. At the stage of framing of charge, an application under Section 245 of the Cr.P.C was filed by the petitioner seeking discharge from the case, which was rejected vide impugned order dated 29.06.2017.

7. Assailing the impugned order dated 29.06.2017, learned counsel for the petitioner submitted that the learned Judicial Magistrate, 1<sup>st</sup> Class, Motihari failed to appreciate that on the basis of evidence of three witnesses, namely, Mahendra Sah, Kari Mahto and



Ambika Mahto, who were examined before charge, no ground for proceeding against the petitioner or for framing charge against him for any penal offence was made out. He submitted that the court of Magistrate failed to appreciate that the allegations leveled against the petitioner do not attract the ingredients of the offences punishable under Sections 420, 467 & 468 of the IPC. He further contended that on 05.07.1995 the petitioner was present at Middle School, Sangrampur in '*Guru Gosthi*', which is organized once in a month and on that day even the Block Education Officer was present and had presided the meeting, which continued from 10:00 a.m to 1:00 p.m and, after that, he was free from his duty and, thereafter, he went to the court of Sub- Divisional Magistrate and filed P.R Bond. Likewise, on 08.06.1995, even though he was not present in the court of Sub-Divisional Magistrate, due to inadvertence, his attendance was filed by his lawyer. Admittedly, the case in which attendance was filed was a proceeding under Section 144 of the Cr.P.C. The law did not require his physical appearance. He submitted that taking advantage of inadvertence of the counsel, a false complaint has been filed by the complainant out of personal grudge and malice in view of the fact that a dispute relating to property is going on between the petitioner and the complainant. He contended that since the complainant had also lodged a complaint before the authorities of the education department



in respect of the allegations made herein, a show cause was asked from the petitioner and on receipt of the explanation submitted by the petitioner, the authorities dropped the proceeding finding the complaint to be erroneous.

8. Per contra, learned counsel appearing for the complainant submitted that the allegations made in the complaint were duly supported by the witnesses examined before framing of charge. They have categorically stated that though the petitioner was physically present in the Court of Sub-Divisional Magistrate on 05.07.1995 in Case No. 87-M of 1995 instituted under Section 107 of the Cr.P.C and, being the opposite party, he had filed P.R. Bond, but he had wrongly shown in the school attendance register that he was going to attend '*Guru Gosthi*'. They have also stated that on 08.06.1995 the petitioner was physically present in Case No. 407-M of 1995, but he had shown himself present in the school attendance register. Thus, the ingredients of the offences punishable under Sections 420, 467 & 468 of the IPC are clearly attracted in the present case. He submitted that the order impugned passed by the learned Magistrate does not suffer from any illegality.

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

10. On the basis of the submissions made on behalf of the



parties, the moot question for consideration before this Court is whether the materials on record prima facie constitute any offence against the petitioner. The contention of the petitioner is that even if the allegations made in the complaint are accepted to be true, they do not attract the ingredients of Sections 420, 467 and 468 of the IPC.

11. Let me first consider whether the averments made in the complaint even assuming to be true attract the ingredients of the offences punishable under Sections 467 and 471 of the IPC.

12. Section 467 of the IPC provides that whoever forges a document which purports to be a valuable security or a will shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

13. Section 468 of the IPC provides that whoever commits forgery, intending that the document forged shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

14. The term forgery used in Sections 467 and 468 IPC is defined in Section 463 of the IPC, which provides that whoever makes any false documents or part of a document with intent to cause damage or injury, to the public or to any person, or to support any



claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.

15. Section 464 of the IPC defines making a false statement, which provides as under :-

**“464. Making a false document —**

A person is said to make a false document—

**First** — Who dishonestly or fraudulently makes, signs, seals or executes a document or part of a document, or makes any mark denoting the execution of a document, with the intention of causing it to be believed that such document or part of a document was made, signed, sealed or executed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed or executed, or at a time at which he knows that it was not made, signed, sealed or executed; or

**Secondly**— Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part thereof, after it has been made or executed either by himself or by any other person, whether such person be living or dead at the time of such alteration; or

**Thirdly** — Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document, knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of



deception practiced upon him, he does not know the contents of the document or the nature of the alteration.”

16. Thus, it would be evident from the reading of Section 464 of the IPC that where a person dishonestly or fraudulently makes, signs, seals or executes a document with the intention of causing it to be believed that such document or part of a document was made, signed, sealed or executed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed or executed, or at a time at which he knows that it was not made, signed, sealed or executed, it will be treated that he has created a false document. Similarly, where a person dishonestly or fraudulently by cancellation or otherwise, alters a document in any material part thereof without lawful authority or made or executed either by himself or by any other person, the same may amount to creating a false document. Again, where a person dishonestly or fraudulently causes any person to sign, execute or alter a document knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practiced upon him, he does not know the contents of the document or the nature of the alteration, the same would amount to making a false document.

17. In the present case the allegation is that though the



petitioner was physically present in the Court of Sub-Divisional Magistrate on 05.07.1995 and being the opposite party had filed P.R. Bond under Section 107 of the Cr.P.C, he had shown in the school attendance register that he was going to attend '*Guru Gosthi*' and, thus, he played fraud upon the State government and the public. Similarly, on 08.06.1995 the petitioner was physically present in the court of Sub-Divisional Magistrate in Case No. 407-M of 1995 under Section 145 Cr.P.C proceeding, whereas he showed himself present in the school attendance register and misappropriated public money by drawing salary.

18. In the opinion of this Court, the allegation made in the complaint would not fall within the ambit of making a false document as provided under Section 464 of the IPC. It is not the case of the complainant that the petitioner dishonestly or fraudulently prepared a document or a document was prepared by some other person or by the authority of some other person by whom or by whose authority it was made or executed. It is also not the case of the complainant that the petitioner dishonestly or fraudulently caused any person to sign execute or alter a document knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practiced upon him, he does not know the contents of the document or the nature of the alteration. It is also not a case of



alteration of a document in material part without lawful authority. The attendance filed by the petitioner is in his own name. The contention of the petitioner is that on 05.07.1995 he had attended '*Guru Gosthi*' and, after it was over at 1:00 p.m, he went to the court of Sub-Divisional Magistrate and furnished P.R. Bond at about 2:00 p.m. Likewise, his contention is that on 08.06.1995 the lawyer had inadvertently filed attendance on his behalf whereas he was represented through counsel and, in a proceeding under Section 145 of the Cr.P.C, his attendance was not required.

19. The allegation that the petitioner marked his attendance in the school register without being present in the school is primarily based on personal grudge of the complainant, who is admittedly not having cordial relation with the petitioner. The alleged action of omission or commission on the part of the petitioner in the background of the facts noted above do not fall within the category of forgery or preparation of false document. Hence, the petitioner could not be charged for the offence under Sections 467 and 468 of the IPC.

20. As far as the offence punishable under Section 420 of the IPC is concerned, its essential ingredients are as under :-

- i. Deception of a person either by making a false or misleading representation or by other action or omission;
- ii. Fraudulent or dishonest inducement of that person



to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived;

- iii. Such omission causing or is likely to cause damage or harm to that person in body, mind, reputation or property.

21. There is no allegation of deception of a person either by making false or misleading representation or by other action or omission in the instant case. There is also no allegation of dishonest inducement to any other person in the complaint. Hence, in the opinion of this Court, the allegations made in the complaint would not attract the ingredients of the offence punishable under Section 420 of the IPC.

22. The allegations apparently appears to be malicious in nature and has been brought out of personal grudge as the petitioner is in no way concerned with the day to day functioning of the school. The complainant being elder brother of the petitioner appears to be out to spoil his career due to ill-feeling and enmity arising out of partition dispute for which a suit is pending between the parties, which fact is admitted even by the complainant.

23 In the opinion of this Court, the court below on



consideration of allegations made in the complaint petition ought to have held that no sufficient ground is found even to infer that the petitioner has committed an offence of cheating or forgery.

24 For the reasons assigned hereinabove, the impugned order dated 29.06.2017 passed by the learned Judicial Magistrate 1<sup>st</sup> Class, Motihari, East Champaran in Trial No. 1922 of 2016 arising out of Complaint Case No. C-1730 of 1998 is set aside.

25. The application stands allowed.

**(Ashwani Kumar Singh, J)**

Pradeep/Sneha

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