

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.61543 of 2018

=====

Prem Kumar Jha son of Pitambar Jha, resident of village-Bangaon, P.S.-
Bangaon, District- Saharsa

.... Petitioner/s

Versus

1. State of Bihar
2. Arvind Kumar, Police Inspector, Vigilance Investigation Bureau, Bihar,
Patna deputed (charge), District- Katihar

.... Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Bimal Kumar, Advocate
For the Vigilance : Mr. Anjani Kumar, (L.O., Inc. Vigilance)
For the State : Mr. Md. Nazir Ansari, APP

=====

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

2 03-10-2018 This application under Section 482 of the Code of
Criminal Procedure has been filed for restoration of Cr.Misc.
No.3287 of 2018 which was dismissed for want of prosecution.

On the facts and in the circumstances of the case, Cr.
Misc. No.3287 of 2018 is restored to its original file.

Cr. Misc. No.3287 of 2018

Heard learned counsel for the petitioner and learned
counsel for the State.

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 02.09.2016 passed by the
learned Chief Judicial Magistrate, Katihar in Katihar (N) P.S. Case
No.705 of 2015 by which he has taken cognizance of the offences



under Sections 420, 467, 468, 471 and 409 of the Indian Penal Code (for short 'IPC').

3. The first information report (for short 'FIR') was instituted on the basis of typed information of Police Inspector, Vigilance Investigation Bureau, namely, Arbind Kumar submitted to the SHO, Katihar.

4. In his written report, the informant has stated that pursuant to the order dated 18.05.2015 passed by the High Court, Patna, in C.W.J.C. No.1459 of 2014, he was entrusted with the task of conducting inquiry into obtaining employment as teacher in Katihar district on the basis of forged and fabricated educational certificate. In course of preliminary inquiry, it was found that the petitioner was initially appointed in the Katihar Municipal Corporation in the year, 2006. Subsequently, he was appointed in Marwari Pathshala, Katihar on 24.10.2017. Since then, he is working as a teacher in the said school. He had submitted self attested documents relating to his educational qualification. In course of verification, it was found that his B.Ed. certificate issued from B.N. Mandal University was forged and fabricated. It was revealed that he had failed in B.Ed. Examination, 1996, but he had obtained a forged marks-sheet in order to show that he had passed the B.Ed. Examination.



5. On the basis of the aforesaid allegations made by the informant, S.H.O. Town Police Katihar registered Town Police Case No.705 of 2015 under Sections 420, 467, 468, 471 and 409 of the IPC.

6. After institution of the FIR, the investigation was carried out and the investigating officer also found the allegations made in the FIR to be true.

7. Accordingly, a police report under Section 173(2) of the Cr.P.C. was submitted in the court.

8. After going through the FIR, statements of the witnesses recorded under Section 161(3) of the Cr.P.C. and other materials including documents collected in course of investigation, the learned Chief Judicial Magistrate, Katihar vide impugned order dated 02.09.2016 took cognizance of the offences punishable under Sections 420, 467, 468, 471 and 409 of the I.P.C. and summoned the petitioner to face trial.

9. Assailing the impugned order dated 02.09.2016, learned counsel for the petitioner submitted that the investigation carried out by the police is perfunctory. The documents alleged to be forged were not verified by the investigating officer of the case. There was no material on the basis of which the Chief Judicial Magistrate could have taken cognizance of the offences.



10. He submitted that the petitioner had filed a petition under the Right to Information Act before the Registrar, B.N.Mandal University, Madhepura seeking photo copy of tabulation register. After much hesitation, the tabulation register was supplied to the petitioner only after the State Information Commission, Patna passed an order and imposed cost of rupees twenty five thousand on the University which would show that there were two tabulations register available with the University. In one of the register, the petitioner was shown 'Fail', whereas in the other register he has been shown to have secured 1st Division. He contended that in view of availability of two tabulation registers supplied by the University, it cannot be definitely said that forgery was committed by the petitioner. According to him, the University itself has created confusion in the mind of the investigating officer for which it would not be fair to put the petitioner on trial.

11. On the other hand, learned counsel appearing for the State submitted that the documents on which the petitioner is placing reliance are not unimpeachable documents. The *bona fide* of those documents are yet to be tested, which can be done only by the trial Magistrate at appropriate stage. The defence taken by the petitioner on merits cannot be a ground for holding the order of



cognizance to be bad as the learned Magistrate has taken cognizance on the basis of materials available on record and not on the basis of any other materials, which were not available before him.

12. I have heard learned counsel for the parties and perused the records.

13. From the allegations made in the FIR it would appear that prior to institution of the FIR, a preliminary inquiry was conducted by the officer of the Vigilance Investigation Bureau pursuant to the order passed by this Court in C.W.J.C. No.1459 of 2014 dated 18.05.2015. In the preliminary enquiry, it revealed that the petitioner had obtained service on the strength of forged and fabricated documents. After institution of the FIR, the investigating officer carried out investigation and the allegations made in the FIR were found to be true. The learned Chief Judicial Magistrate, Katihar took cognizance of the offences only after going through the materials available on record including statements of the witnesses recorded under Section 161(3) of the Cr.P.C. If there were sufficient materials before the learned Chief Judicial Magistrate on the basis of which he came to a conclusion that a *prima facie* case is made out, no error can be found in the impugned order. Learned counsel for the State has rightly



submitted that the defence taken by the petitioner on the basis of the documents, which are yet to be proved in course of trial cannot be a ground for assailing the order passed by the Magistrate taking cognizance of the offence. The probative value of defence document can only be tested at appropriate stage during trial. For the purpose of testing the legality of the order taking cognizance, it is not permissible for this court to hold a mini trial.

14. In that view of the matter, I see no merit in this application. Accordingly, it is dismissed.

(Ashwani Kumar Singh, J)

Md.S./-

U		T	
---	--	---	--

