

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 1487 of 2018

Ashish Agrawal S/o Shri N.R. Agrawal Aged About 44 Years R/o- Baijnathpara, Katcheri Ward No. 39, Behind Mukund Bhawan, Durg, Police Station Durg, Tahsil & District- Durg, Chhattisgarh., District : Durg, Chhattisgarh
--- Petitioner

Versus

1. Sukumar Bhattacharya S/o Sunil Bhattacharya Aged About 41 Years R/o- Near Arya Samaj School, Gaya Nagar, Durg, Police Station Kotwali, Durg, District- Durg, Chhattisgarh.
2. Raju Lal Dewangan S/o Samaliya Ram Dewangan Aged About 38 Years R/o- Village Mahmara, Police Station Pulgaon, District- Durg, Chhattisgarh.
3. Himanshu Wengad S/o Shri Dilip Wengad R/o- Budhwari Para Ward No. 12, Infront Of Masjid, Police Station Dongargarh, District- Rajnandgaon, Chhattisgarh.
4. Santosh Kumar Sahu S/o Late Udho Prasad Sahu R/o- Gaya Nagar, Near Dr. P.L. Sao Clinic, P.S. Kotwali, Durg, District- Durg, Chhattisgarh.
--- Respondents

For Petitioner : Mr. Tarendra Kumar Jha & Mr.
Prasoon Agrawal, Advocates

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

01.08.2018

1. The present petition is against the order dated 27.06.2018 passed by the third Additional Sessions Judge, Durg, in Criminal Revision No.191/2017 as also the order dated 27.06.2016 passed in Criminal Revision No. 170/2017.
2. The facts of this case are that respondents 1 to 4 have filed a complaint before the Court that the petitioner as also other

accused are managing the affairs of the Apollo College, Anjora in the capacity of Directors/Sanchalak and the said college is affiliated to Pt. Ravishankar Shukla University and Ayush Vishwavidyalay & Swami Vivekanand Vishwavidyalay. It is stated that the college has received certain amount of scholarships meant for SC/ST/OBC candidates granted by the State. It is alleged that such scholarship was not properly disbursed to the students and on the basis of various forged seals, the fake documents were prepared and the students who were not present, their presence was shown so as to obtain grant for uniform, books, registration, donation etc., in respect of 1200 students and further out of the grant of Rs.55,000/- of tuition fee, Rs.45,000/- was only being given, the hostel fee was being charged at Rs.35,000/- but it was never audited and the scholarship amounts are not paid to the Post-metric students and for inspection of the documents, forged documents were being prepared by putting forged signatures and sent to the universities. It is also alleged that out of the amounts so granted by the State Government for disbursement of scholarship for post-metric students, partial amounts were given to them and the and the rest of the amount was being distributed to their family members. It was further alleged that on 04.08.2015, the complainants were confined in a room and they were forced to admit and sign documents to show that they misappropriated Rs.21 lakhs. Therefore, the complaint was filed u/ss 420, 467, 468, 471, 120-B and 384 read with section 34 of IPC.

3. The learned JMFC after perusal of the prima facie statement, registered the case u/s 384 of IPC read with section 34 of IPC whereas in respect of section 420, 467, 468 471 & 120-B IPC the petitioners were exonerated. Being so the order dated 03.08.2017 whereby the offence was registered u/s 384 read with section 34 of IPC it was subjected to challenge in revision bearing Revision No. 191/2017 before the Addl. Sessions Judge by the accused against whom the offence was registered namely Sanjay Agrawal, Ashish Agrawal, Manish Jain & Mukesh Agrawal. Whereas another Criminal revision was filed by Sukumar Bhattacharya, Santosh Kumar Sahu, Rajulal Dewangan and Himanshu Vagad bearing Criminal Revision No.170/2017. The accused contended in their revision that offence u/s 384/34 of IPC is not made out whereas the complainant asserted that apart from section 384 & 34 of IPC, offence u/s 420, 467, 468, 120-B is also made out. Both the revisions were decided by separate orders dated 27.06.2018 and the revisional court has dismissed the revision filed by the accused Sanjay Agrawal, Ashish Agrawal, Manish Jain, & Mukesh Agrawal whereby the offence u/s 384/34 was framed whereas in Revision No.170/2017 filed by the complainants, the revisional Court directed for registration of offence u/s 420, 467, 468, 471, 120-B/34 of IPC.
4. Learned counsel for the petitioner would submit that initially the management of the college namely Apollo College, Anjora had filed a complaint against the respondents herein namely

Sukumar Bhattacharya, Santosh Kumar Sahu, Rajulal Devangan & Himanshu Vagad that they have misappropriated the scholarship/fee amount of SC/ST/OBC students to the extent of Rs.21 lakhs for which Crime was registered bearing no.0115 for the offence punishable under sections 420, 467, 468, 471 & 120-B and they were arrested. It is stated that they were arrested and being aggrieved by such arrest as a counter blast, the complaint was filed. It is further submitted that though the allegations were made that the scholarship of the students were misappropriated but neither any student of the College nor any relevant officer of the department was examined to prove the allegation. Only the statement of the complaint and their relatives were recorded as such it would amount to misuse of criminal law to set into motion so as to blackmail the petitioners.

5. Since both the issues are interlinked with each other as such the petition and the document thereof perused.
6. The documents would show that the complaint u/s 420, 467, 468, 471, 120-B, 384/34 of IPC was filed by the respondents herein against the people managing the affairs of Apollo College, Anjora as they are directors. Before the court of JMFC, complainant Sukmur Bhattacharya had stated that he was working in the College as an Administrative Officer from the year 2002 and he was looking after the admissions of students, but he was not in-charge of any other work/action. It is stated that the college imparts education in B.Sc. (nursing), B.Ed., M.Ed., etc. and the college has not

conducted any audit of the tuition fee and also it is stated that under donation/supply of books uniform, scholarship ATM and certain other heads, the College used to receive certain amounts but no balance was shown in the books of accounts from the year 2001 to 2014. It is further stated that the scholarship which is given by the State for the SC/ST/OBC students, the entire amount is not being paid to the students. He further stated that though the State was providing the entire amount for the study of students for the SC/ST/OBC students including their hostel fee, but the information was given that only tuition fee was being paid and the hostel fee was separately received by the College. He further stated that the students who have left the college, the scholarship was being sanctioned and further other guidelines were not followed about the sanction and strength of teachers and forged accounts were opened by making forged bio-datas of teachers and the amounts were being withdrawn. It is further stated that forged seals of SDM, Sarpanch, Bank of India, State Nursing Council and district Hospital, Durg were prepared and they were being used for preparing forged documents and the amounts received on different heads were deposited in the accounts of different relatives. He further submitted that they were confined in a building and were made to sign that they have misappropriated the amount of Rs.21 lakhs.

7. Likewise respondent Rajulal Dewangan has also made similar statement alleging that from the grants received from the

State on account of scholarship/other fee meant for the students of SC/ST/OBC of Post-metric, certain part of the amount was being paid to the students and rest of the amount was being misappropriated by them. Respondent Himanshu Vagod has also made similar statement and further Santosh Kumar Sahu also corroborated the same line of statement. In addition, the statements of other witnesses were also recorded. Learned Court of JMFC has initially registered the complaint u/s 384 & 34 of IPC. Subsequently when it was challenged in revision, section 420, 467, 468, 120-B were added.

8. At this point prima facie while evaluating the facts whether the case is made out, this fact cannot be ignored that if certain serious allegations have been made against persons who are managing the system of the petitioners' college itself about the usurping and siphoning of grants given by the Government for the SC/ST/OBC students, then certainly only for the reason that the petitioner have lodged a counter case against the respondent/complainants, the allegation against the petitioner cannot be shelved. Prima facie, it appears that both the courts below have evaluated the evidence before it. The submission of the petitioner that no evidence exists to register the case at this stage cannot be tested which can be evaluated at the later stage of trial. The entire allegations pertain to documentary evidence and are in possession of College and the State, therefore, the allegations cannot be nipped in bud by branding them as false. Further more , the

reasons which have been assigned by the court below cannot be sidelined for the fact that this Court may arrive at a different opinion. Under the facts and circumstances, at this stage, it cannot be stated that the reasons given by the Magistrate were good or bad, sufficient or insufficient and the primary statement of the witnesses would show that there was enough material before the Magistrate and the court below to hold that there was sufficient ground for issuing the process.

9. The Supreme Court in *Eicher Tractor Ltd v. Harihar Singh (2008) 16 SCC 763* held as follows (SCC p.766 para 13) :

“13. '....8.... When exercising jurisdiction under section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial judge.'

The same view was reiterated in *State of Madhya Pradesh v. Surendra Kori (2012) 10 SCC 155 (Para 12)*.

10. In view of the facts and law discussed above, I do not find any merit in this case warranting interference in exercise of power u/s 482 of Cr.P.C. The petition has no merit and it is dismissed.

Sd/-
(GOUTAM BHADURI)
JUDGE