

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

Crl.P. No.6984 OF 2017

ORDER:

This petition is filed under Section 482 Cr.P.C. to quash the proceedings in C.C.No.592 of 2017 on the file of Additional Judicial Magistrate of First Class, Ananthapuram, registered for the offence punishable under Section 420 IPC.

The 2nd respondent, B.Somasekhara Babu lodged report with the police alleging that the petitioner/A5 created fake certificates and services of A1 was engaged as lecturer in the St Joseph College of Education and cheated the students, who got admission in the institution by collecting huge amounts and thus committed the offence punishable under Section 420 IPC. Based on the report dated 07.11.2015, the Sub-Inspector of Police, Garladinne Police Station registered a case and issued FIR No.114 of 2015 for the offence under Section 420 IPC. On the basis of FIR, the Sub-Inspector of Police took up investigation and examined as many as 11 witnesses and recorded their statements under Section 161(3) Cr.P.C. and after collection of various documents from the concerned department filed charge sheet having concluded that there is a *prima facie* material to proceed against the accused for the above offence.

Based on the charge sheet filed before the Magistrate against the five accused including the petitioners, who are A1 and A5, the present petition is filed contending that the allegations made in the complaint do not constitute the offence punishable under Section 420 IPC and the statements recorded by the police during investigation also does not disclose the commission of offence, if the allegations made in the complaint are accepted as true on its face value and requested to quash the proceedings against the petitioners.

During hearing learned counsel for the petitioners contended that unless there is fraudulent intention while inducing the students to admit themselves into the institution, the petitioners cannot be proceeded for the above offence since the intention at the very commencement of the prosecution is the basis for proceeding against the petitioners to constitute the above offence that too the 2nd petitioner/A5 cheated. Therefore, there is nothing to constitute the alleged offence.

Learned counsel for the 2nd respondent contended that the allegations made in the complaint not only constitute the above offence, but also the offence under Section 468 IPC, but the police filed charge sheet only for the offence under Section 420 IPC. Merely because the wrong section is mentioned in the charge sheet, the proceedings against the petitioners cannot be quashed and apart from that he also contended that the Court can alter the charge at any time under Section 221 Cr.P.C. and placed judgment of the Patna High Court in **Lalan Ram Son of Shri Shivji Ram Resident of Mirganj P.S. Begusarai Town, District Begusarai v State of Bihar** (Criminal Appeal (SJ) No.37 of 2015) and another judgment of the Apex Court in **Santosh Kumari v State of J & K and others** (Criminal Appeal Nos.1660 – 1662 of 2011) to contend that the Court can alter charges and that too the allegations made in the complaint discloses that a fake certificate created by the 2nd petitioner/A5 and the accused got employment as lecturers in St.Joseph College of Education and cheated the students, who got admission in the institution by collecting huge amounts falls under Section 468 IPC and requested to dismiss the petition.

It is an undisputed fact that the charge sheet was filed only for the offence punishable under Section 420 IPC, however, there is an allegation in the charge sheet that the 2nd petitioner/A5 created fake certificates as if A1 to A4 qualified, though they were not qualified to work as lecturers in the

college. This allegation may constitute the offence under Section 468 IPC, but the allegation made in the complaint does not constitute the offence punishable under Section 420 IPC since Section 420 deals with cheating and dishonestly inducing delivery of property. But, the word 'cheating' is defined under Section 415 of I.P.C as follows"

"Whoever by deceiving any person, fraudulently or dishonestly induces the person so deceived 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, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat"

The explanation to Section 415 of I.P.C specifies that a dishonest concealment of facts is a deception within the meaning of this section. Hence, to constitute an offence punishable under Section 420 of I.P.C, there must be a dishonest intention.

In **V.Y. Jose and another v. State of Gujarat and another**¹, the Apex Court highlighted the ingredients to constitute an offence punishable under Section 420 I.P.C in paragraph 14 and they are as follows:

"An offence of cheating cannot be said to have been made out unless the following ingredients are satisfied:

- i) deception of a person either by making a false or misleading representation or by other action or omission;
- (ii) fraudulently or dishonestly inducing any person to deliver any property; or
- (iii) To consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit.

For the purpose of constituting an offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. Even in a

¹ (2009) 3 Supreme Court Cases 78

case where allegations are made in regard to failure on the part of the accused to keep his promise, in absence of a culpable intention at the time of making initial promise being absent, no offence under Section 420 of the Indian Penal Code can be said to have been made out."

If these principles are applied to the facts of the present case, the allegations in the complaint do not constitute the offence under Section 420 IPC even if the allegations made in the complaint are accepted as true and correct on its face value. The allegation that the 2nd petitioner/A5 created fake certificates to engage services of A1 and other accused would constitute offence under Section 468 IPC.

Coming to the statement of witnesses recorded by the police during investigation under Section 161 (3) Cr.P.C., it is clear that the 2nd petitioner/A5 created fake certificates, but no record is available with the college. However, the evidence collected during investigation from the university supports the case of the 2nd respondent that the petitioner/A1 and A2 to A4 were not qualified to engage their services as lecturers in the college, but the certificates were allegedly not issued by the university as per the information furnished by the university authorities. Therefore, the allegations at best constitute an offence punishable under the proviso of IPC. The confessional statement of the accused further strengthen the contention of the 2nd respondent that A5 engaged services of other accused without any qualification based on fake certificates. Therefore, the allegations in the charge sheet if accepted on its face value it would constitute offence punishable under Section 368 IPC as defined under Section 463 IPC. Therefore, engaging services of A1 to A4 by A5 based on fake certificates and collection of fee from the students, who joined in the college and receiving aid from the Government would constitute offence under Section 468 IPC. Therefore, the proceedings against the petitioners for the offence punishable under Section 420 IPC are hereby quashed

leaving it open to the Magistrate to proceed further, if the material available on record is sufficient to frame a charge for any other offence punishable under the penal code. Learned counsel for the petitioners contended that though the Court is competent to alter charges at any stage, but it is not relevant since no charges are framed at this stage and it is for the Court below to decide the same.

With the above observation, the criminal petition is disposed of.

Pending miscellaneous petitions in the petition, if any, shall stand closed.

27.07.2018
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M.SATYANARAYANA MURTHY,J