

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.537 of 2019

Arising Out of PS. Case No.-37 Year-19 Thana- SHEKHPURA District- Sheikhpura *

Sri Bhupendra Kumar, Son of Late Nawal Kishore Prasad Singh, R/o Mohalla - Teacher Colony, Bengalipar near of South of Samudaik Bhawan, Police Station and District- Sheikhpura, A/P Clerk, Office of District Education Office Sheikhpura, at present of Deputation of Director, Madhyamik Siksha, Bihar, Patna- 9

... .. Petitioner

Versus

1. The State of Bihar through Principal Secretary, Dept. of Education(Secondary Education), Government of Bihar, Patna
2. The Director, Secondary Education, Government of Bihar, Patna
3. The Regional Deputy Director of Education, Munger Division, Munger
4. The District Education Officer, Shekhpura.
5. The District Magistrate, Shekhpura
6. The Additional Collector (Public Complaint Redressal) cum District Public Complaint Redressal Officer, Shekhpura,
7. The Special Officer, District Confidential Branch, District Magistrate Office, Shekhpura

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. Rajesh Kumar Singh, Advocate Mr. Anil Kumar Singh, Advocate
For the Respondent-State:		Mr. Bijay Bhushan Prasad, AC to SC-13

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 01-04-2019

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

2. This application under Articles 226 and 227 of the Constitution of India has been filed by the petitioner for setting aside the First Information Report (for short 'FIR') of Sheikhpura P.S. Case No. 37 of 2019 dated 31.01.2019



registered under Section 420 of the Indian Penal Code.

3. Learned counsel appearing for the petitioner submitted that even if the entire allegations made in the FIR are taken to be true at its face value, none of the ingredients of the offence punishable under Section 420 of the Indian Penal Code would be attracted. He submitted that the allegations made in the FIR may lead to misconduct for which a proceeding may be initiated against the petitioner departmentally but, the same would not give rise to any criminal case.

4. On the other hand, learned counsel appearing for the State submitted that the allegations made in the FIR may not attract the ingredients of the offence punishable under Section 420 of the Indian Penal Code but the same would certainly attract the ingredients of Section 406 of the Indian Penal Code, which is cognizable in nature. He contended that to hold investigation into cognizable offence is the statutory duty of the police. Hence, no illegality can be found with the investigation being conducted by the police on the basis of allegations made in the FIR. He further contended that mere levelling Section 420 of the Indian Penal Code in the FIR would not make the FIR bad if the allegations made therein would attract ingredients of some other cognizable offence.



5. Having heard learned counsel for the parties and carefully perused the FIR, as contained in Annexure-1 to this application, I find that the FIR against the petitioner instituted on the basis of written report submitted by the Special Programme Officer (Establishment) Sheikhpura to the Officer-in-Charge, Sheikhpura Police Station. In his written report, he has stated that vide Letter No. 73 dated 24.10.2019 issued by the Special Work Officer, District Confidential Branch, Sheikhpura and Letter No. 172 dated 25.01.2019 issued by District Education Officer, Sheikhpura he has been directed to lodge FIR against the petitioner who is a Clerk on deputation in the office of Director, Madhyamik Siksha, Bihar, Patna. The said written report also contains a report submitted by the Additional Collector-cum-District Public Grievance Redressal Officer, Sheikhpura to the District Magistrate, Sheikhpura. The said report would reflect that in an inquiry conducted by him, it was found that petitioner having been appointed on compassionate ground was not maintaining his mother Binda Devi and brother Gyanendra Kumar properly. In the said report, he has also disclosed that the petitioner has retained certain files and is not handing over the keys of the almirah of the officer. Save and except the aforesaid two observations made by the Public



Grievance Redressal Officer, there is no other allegation in the FIR against the petitioner.

6. It has been rightly been pointed by the learned counsel for the petitioner that the aforesaid allegations may be a subject matter of a domestic enquiry against the petitioner, but the same would not give rise to any criminal prosecution.

7. The FIR has been instituted under Section 420 of the Indian Penal Code. Section 420 of the Indian Penal Code prescribes punishment for the offence of cheating and dishonestly inducing the person deceived to deliver any property, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security.

8. As far as the allegations made in the FIR are concerned, there is no allegation of fraudulent or dishonest inducement to any person to deliver any property to the petitioner. In absence of the allegation of inducement or delivery of any property pursuant to such dishonest inducement, in the opinion of this Court, no offence punishable under Section 420 of the Indian Penal Code would be attracted.

9. Similarly, Section 406 of the Indian Penal Code prescribes punishment for the offence of criminal breach of



trust. In order to constitute a criminal breach of trust, prosecution must prove:-

- (i) that the person was entrusted with property or with dominion over it;
- (ii) that the person (a) dishonestly misappropriating, or (b) converting that property to his own use, or (c) dishonestly using it, or (d) disposing of that property; or
- (iii) that person did so in violation of (a) any direction of law prescribing the mode in which such trust was to be discharged, or (b) any legal contract, express or implied, which he had made touching the discharge of such trust.

10. Here, in the instant case, there is no allegation of dishonest misappropriation of any property rather the allegation is that the petitioner is not handing over certain files and is retaining the keys of almirah. These allegations would also not attract the ingredients of Section 406 of the Indian Penal Code.

11. In absence of any cognizable offence being attracted on the basis of the allegations made in the FIR, in the opinion of this Court, the police have no jurisdiction either to register FIR or to proceed with the investigation.

12. In that view of the matter, the FIR of



Sheikhpura P.S. Case No. 37 of 2019 as also the entire investigation conducted so far is set aside.

13. The application stands allowed.

(Ashwani Kumar Singh, J.)

Sanjeet/R.Ranjan-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	09.04.2019
Transmission Date	09.04.2019

