

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.24543 of 2018

Arising Out of PS. Case No.-93 Year-2008 Thana- PATNA CITY CHOWK District- Patna

Anju Kumari, W/o Late Binod Yadav @ Biond Kumar Yadav, R/o Killa,
Road, P.S.- Chowk, District- Patna.

... .. Petitioner/s

Versus

1. State Of Bihar and Anr.
2. Pratipal Kaur D/o Unknown, Address- Principal, S.G.G.S. College, Patna City, P.S.- Chowk, District- Patna.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Puneet Sidhartha, Advocate Mr. Ravi Kumar, Advocate
For the Opposite Party/s	:	Mr. Sri Shailendra Kumar -2
For the Informant	:	Mr. Ramakant Sharma, Sr. Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 22-09-2022

The instant petition has been filed for quashing the name of the petitioner from Patna City Chowk P.S. Case No. 93 of 2008 registered for offences under Sections 419, 420, 467, 468, 471 and 170 of the Indian penal Code on the basis of written report of the informant Pritpal Kaur, Principal of Sri Guru Gobind Singh College, Patna City against the petitioner and other co-accused persons.

Briefly stated, the prosecution case is that the informant received information about some of the employees working in the name of other employees for quite long time in her institution.



An inquiry was conducted by the informant and she named the co-accused persons against whom she had suspicion that they had been working in place of other persons. The informant further stated that in place of the petitioner and another co-accused, one Dinanath Singh had been putting his signature on documents including the salary bills.

It has been submitted by the learned counsel appearing on behalf of the petitioner that FIR was registered on 04.06.2008 and even after lapse of more than 12 years investigation has not been completed and charge-sheet has not been filed till date. Even otherwise the petitioner has been falsely named in this case. The husband of the petitioner was appointed on 26.06.1985 as Store Keeper in the Department of Psychology on permanent basis and he died in harness on 11.08.1997 leaving behind his wife and three minor children. The petitioner was appointed on compassionate ground on 17.07.1999 as a Routine Clerk in the institution of the informant. Since the date of her appointment, the petitioner has a non-blemished record and has been performing her duties to the best of her ability. However, on the basis of aforementioned FIR, the petitioner was suspended vide order dated 15.10.2008 issued by Registrar, Magadh University. But even after passage



of so much time neither a show cause has been issued to the petitioner nor there has been initiation of any departmental inquiry. The petitioner has been deprived of her right to hearing which is against the principles of natural justice and the same could have enabled her to prove her innocence. Meanwhile, the petitioner applied for anticipatory bail before the learned Sessions Judge, Patna vide A.B.P. No. 390 of 2008 wherein it has been observed that the compassionate appointment of the petitioner was legal and valid and the petitioner was granted privilege of anticipatory bail vide order dated 22.07.2008. After obtaining the anticipatory bail, the petitioner made representation dated 22.06.2010 to the informant regarding her innocence but no show cause has been issued to her even after filing of the representation. Learned counsel further submits that the Division Bench of Patna High Court vide order dated 24.04.2018 had disposed of LPA No. 236 of 2018 with the direction to the University to examine the claim of the petitioner for payment of subsistence allowance and also to take final decision on petitioner's suspension. When the University failed to comply the order dated 24.04.2018, the petitioner preferred a contempt petition vide MJC No. 3047 of 2018. During the pendency of the contempt petition, the University revoked the



suspension of the petitioner vide Memo No. 332/PPU/L/2019 dated 14.10.2019 and directed the petitioner to join her duties forthwith. Accordingly, the petitioner has joined the College on 21.10.2019 and since then discharging her duties with full satisfaction to the University. When no show cause or charge-sheet was issued to the petitioner, she asked the concerned college for status of her employment and the college issued her a certificate vide Memo No. GSC/303/17 dated 27.04.2017 stating therein that the petitioner is a working staff in the said College as a Routine Clerk on compassionate ground.

Learned counsel for the petitioner further submits that even after lapse of more than 12 years, no charge-sheet has been filed against the petitioner and the petitioner has been made to suffer the ignominy of criminal proceedings without any fault on her part. The petitioner has been an employee and there is no allegation against her for any wrong doing and only at the apprehension of the informant, she has been made accused in this case. So no useful purpose would be served in allowing the prosecution case to continue in absence of any culpability on part of the petitioner. Moreover, the present prosecution appears to be manifestly attended with mala fide and therefore it is liable to be quashed. In the given factual background no offence under



Section 419 or any of the Sections mentioned in the FIR is made out against the petitioner. Since her appointment was legal, there was no mens rea for committing any act as mentioned in the FIR. It has further been submitted on behalf of the petitioner that the allegations have been made with oblique motive and are not bona fide. So it is in the interest of justice to quash the aforesaid FIR and the criminal proceedings taking place against the petitioner.

The learned counsel has put his reliance on a number of decisions of the Supreme Court wherein right to speedy trial has been held to be flowing from Article 21 of the Indian Constitution and it has been stated to encompass all the stages, namely, the stage of investigation, inquiry, trial, appeal, revision and re-trial. Learned counsel relied in this regard the decision of Abdul Rehman Antulay vs. R.S. Nayak (1992) 1 SCC 225. The learned counsel further relied on decisions of the Supreme Court in Raghubir Singh and Ors. vs. State of Bihar (1986) 4 SCC 48, Santosh De vs. Archana Guha AIR 1994 SC 1129, Vakil Prasad Singh vs. State of Bihar (2009) 3 SCC 355 on this aspect. The learned counsel further submits that since the petitioner has been held to be legally appointed by the University and her suspension has been revoked, no case would be made out



against the petitioner.

Learned counsel submits that the Supreme Court in the case of P.S. Rajye vs. State of Bihar (1996) 9 SCC 1, has also held that if identical change has not been proved in departmental proceeding in view of the admitted discrepancies, nothing is left to proceed in criminal proceedings since standard of proof required to establish guilt in criminal case is higher than what is required in departmental proceedings. Further, considering the delay in criminal proceedings, i.e., even after 14 years since the institution of FIR, the prosecution has failed to submit charge-sheet, it is a fit case for quashing of the proceedings. Moreover, the case of the petitioner is clearly covered under one of the guidelines of State of Haryana and Ors. Vs. Bhajan Lal and Ors. AIR 1992 SC 604 wherein it has been held that when the FIR has been instituted and the allegations in the FIR are so absurd and inherently improbable on the basis of which no prudent person can ever reach just conclusion that there is no sufficient ground for proceeding against the accused, then the same is liable to be quashed. Thus, the learned counsel has submitted that from the facts of the case no prima facie case is made out and the allegations in the FIR are absurd and inherently improbable and that no charge-sheet has been filed even after



lapse of 14 years and hence there is violation of Article 21 of the Constitution of India as held in Santosh De vs. Archana Guha (supra) and Vakil Prasad Singh vs. State of Bihar (supra). Thus, it has been prayed that by invoking the inherent jurisdiction of this Court, the FIR bearing Patna City Chowk P.S. Case No. 93 of 2008 and criminal proceedings arising out of be quashed against the petitioner.

Learned senior counsel appearing on behalf of the informant as well as learned APP support the contention made on behalf of the petitioner. It has been submitted by the learned APP that if the petitioner was lawfully appointed, no offence would be made out in the given facts and circumstances.

Learned senior counsel appearing on behalf of the informant further submits that so far as the informant is concerned, she has superannuated and there remains nothing on her part in this matter and the facts point toward the mistake of fact in institution of FIR against the petitioner.

In Bhajan Lal's case (supra) the Supreme Court has given certain guidelines relating to the exercise of the inherent powers under Section 482 of the Cr.P.C. for quashing an FIR which includes.

“(1) Where the allegations made in the first information report or the complaint, even if they



are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156 (1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where



there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

I find sufficient merit in the case of the petitioner, the petitioner has been able to show that the FIR has been lodged under circumstances which cannot be said to be legal. Though this court would be reluctant to enter into the matters where question of fact have been disputed or controverted, but in the present case, it is apparent on the face on record the FIR has been registered against the petitioner based on completely wrong facts and the same could not be sustained.

Further, coming to the delay part I am aghast to see the working of the police department. During the pendency of this petition a report was called for from the Senior Superintendent of Police, Patna regarding the present status of the FIR in connection with the aforementioned FIR wherein he has submitted a report which shows that the final report, showing it to be a case under mistake of fact, has been directed to be submitted by the Superintendent of Police Town (East), Patna



on 30.01.2013 but it seems no final report has been filed in this case till date. Continuing with the criminal proceedings against the petitioner in the circumstances as discussed hereinabove would nothing but certainly be an abuse of process of law, if not any other thing. The right to speedy trial which encompasses every stage of a criminal trial is a valuable right flowing from Article 21 of the Constitution of India and the authorities cannot be allowed to curtail it in the manner they deem it fit.

Thus, I have no hesitation in holding that the present case would certainly be covered under more than one head of the guidelines enumerated in the Bhajan Lal's case (supra) to allow this Court to exercise the power to quash the criminal proceeding.

Hence, the FIR bearing Patna City P.S. Chowk No. 93 of 2008 and criminal proceedings arising out of it are hereby quashed against the petitioner and the instant petition is allowed.

(Arun Kumar Jha, J)

balmukund/-

AFR/NAFR	AFR
CAV DATE	NA
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