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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-35382-2016 (O&M)

Date of decision : 13.02.2023

Rohtash

...Petitioner

Vs.

Anil

...Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present: Mr. Chand Ram Olla, Advocate
for the petitioner.

Mr. Sanjeev Gupta, Advocate
for the respondent.

DEEPAK MANCHANDA, J.

Petitioner/complainant has filed this petition under Section 482 Cr.P.C for quashing of the order dated 02.08.2016 (Annexure P-3) passed by Additional Sessions Judge, Hisar whereby revision filed by the accused/respondent against the order dated 22.04.2016 (Annexure P-2) passed by JMIC, Hisar summoning the accused under Sections 420, 467, 468 and 471 IPC, has been allowed, summoning order has been set aside and criminal complaint filed by the petitioner stands dismissed.

The factual matrix of the present case are that petitioner was appointed as Technical Assistant on 13.02.2002 and was working in the office of Director, Technology Centre for Plant Bio-Technology, near HARSEC, CCS, Haryana Agricultural University, Hisar and the respondent played fraud with the department of Science & Technology along with his office by producing the fake and fictitious M.Sc.degree. Further, respondent on the basis

of said degree got admission in the Ph.D in Chaudhary Devi Lal University, Sirsa for the session 2012-13 and the petitioner along with respondent were working in the same department in the same office and at the same post. With the apprehension that the respondent submitted his fake M.Sc. degree to take benefit in his promotion and if he would have been promoted based upon the same, the petitioner could not have chance to avail the said opportunity as he did not possess the M.Sc. Degree. Thereafter, the petitioner moved application in this regard to police authorities as well as to the Chief Minister, Haryana, wherein inquiry was conducted. Thereafter, respondent withdrew his M.Sc degree alongwith his registration in Ph.D programe having fear of his fraud. The petitioner filed a complaint under Sections 420, 467, 468 and 471 IPC before Illaqa Magistrate, Hisar and the Magistrate summoned the respondent vide order dated 22.04.2016 (Annexure P-2) after careful perusal of material on record/documents. Dissatisfied by the said summoning order, respondent filed a revision petition before the Additional Sessions Judge, Hisar, which was allowed vide order dated 02.08.2016 (Annexure P-3) and summoning order was set aside.

Aggrieved with the revisional Court order dated 02.08.2016 (Annexure P-3) passed by the Additional Sessions Judge Hisar, present petition has been filed.

Learned counsel for the petitioner contends that the respondent was rightly summoned under Sections 420, 467, 468 and 471 IPC by the trial Court as he committed fraud by submitting the fake M.Sc degree just to obtain the admission in Ph.D course for taking benefit in promotion, but Additional Sessions Judge, Hisar has allowed the revision petition by exercising beyond

its jurisdiction and without appreciating the facts and material available on record as well as documents produced by the petitioner, which is illegal and liable to be quashed in the interest of justice.

Vide order dated 30.01.2018, notice of motion was issued and pursuant to the same, respondent filed reply dated 14.08.2018, which was taken on record vide order dated 12.11.2018.

Learned counsel for the respondent while referring to the reply submits that he was enrolled in M.Sc (Biotechnology) through Study Centre of EIILM University “Bharti School of Business Studies, Model Town, Hisar through Distance Education with the prior permission of the competent authority. After completion of 1st year of M.Sc. from EIILM University, Sikkim, he got transferred the credit of first year through migration to NIMS University, Jaipur and completed his degree from the same which was fully approved from UGC and DEC and obtained the degree in dispute. Thereafter, on completion of his M.Sc. Degree from NIMS University, he qualified the entrance examination of Chaudhary Devi Lal University, Sirsa and got admission in Ph.D. (Biotechnology). Learned counsel submits that the respondent tried to verify his documents from the EIILM University through post, however, no response was received from EIILM University and the communication made was received back with the remarks ‘*EIILM closed and hence RIO to sender*’.

Thereafter, the UGC notified EIILM University is dissolved by the Sikkim Government and the respondent came to know that EIILM University was not recognized either by DEC or UGC to run M.Sc. Biotechnology Programme through distance mode. Accordingly, the respondent withdrew his

Ph.D. Registration and surrendered his M.Sc.(Biotechnology) degree to NIMS University. It has also been stated in the reply that the petitioner also submitted a complaint before the Police, Civil Lines, Hisar, however, during investigation, the allegations were found false and in the fact finding report, it was observed as under:-

‘prima facie no offence has been found, rather it has been found that respondent Anil Kumar got the job on the basis of 10+2 qualification and for doing M.Sc. he gave examination from EIILM University, Sikkim in the year 2010 ad 2011, whereas this University was not recognized for conducting M.Sc in Biotechnology on distance mode, when respondent got this information from U.G.C, then he submitted application to the Higher Officers for withdrawing his certificate and doing it from some recognized University and the respondent on the basis of alleged fake certificate has not obtained any departmental/financial benefit. Besides this against the respondent, his department or University has not filed any complaint. With regard to complaint opinion has also been taken from the Deputy District Attorney. In the aforesaid circumstances, no prima facie offence has been found.’

Learned counsel for the respondent further submits that the proceedings under Section 182 IPC were also initiated by the Police against the petitioner and one Satbir s/o Jai Chand, however while filing the complaint before learned JMIC, complainant/petitioner concealed this fact. Apart from it, petitioner also filed Civil Suit against the respondent, wherein in the cross-examination, he conceded that respondent has not taken any benefit from NIMS University as the same has been withdrawn and appointment of the respondent is only on the basis of 10+2. Therefore, he prays for the dismissal of the present petition.

Having heard learned counsel for the parties.

The perusal of the order dated 22.04.2016 shows that while taking cognizance of the offence, as reported in the complaint case, the trial Court

devolved into merits and demerits of the case. Whereas, he was only to see as to whether allegations made in the complaint were *prima-facie* sufficient to proceed against the accused. The order passed by the trial Court should reflect application of mind but in the present case, the complaint of the petitioner has been disposed of apparently, on merits, after critical analysis of the evidence adduced by him, at preliminary stage.

It is the settled position of law that in determining the question whether any process was to be issued or not against accused, what the trial Court was to be satisfied was whether there was sufficient ground for proceeding and not whether there was sufficient ground for conviction. Whether the evidence was adequate for supporting the conviction, could be determined only at the trial and not at the stage of inquiry. At the stage of issuing the process to the accused, the Magistrate is not required to record reasons. There is also no requirement imposed on a Magistrate for passing a detailed order while issuing summons. It is impermissible, at the stage of taking cognizance of the offences in a complaint case, to go into the truthfulness or otherwise of the allegations made in the complaint and one has to proceed on a footing that the allegations made were true.

Hence, it is not the province of the Magistrate to enter into a detail discussion of the merits and demerits of the case, as done in the present case by the trial Court, while passing the order dated 22.04.2016 while summoning the respondent. The scope of enquiry under Section 202 of the Cr.P.C. is limited to finding out the truth of false-hood of the complaint in order to determine the question of the issue of the process. The Section does not say that a regular trial for adjudging the guilt or otherwise, of the person complained against should

take place at the stage, for the person complained against can be legally called upon to answer the acquisition made against him only when a process has issued and he is put on trial.

Thus, the scope of inquiry under Section 202 of Cr.P.C. is extremely limited. If the complaint does not appear to be probable out of evidence under Sections 200 & 202 of Cr.P.C. and the complaint is filed by the complainant just to harass his opponent then the judicial process cannot be allowed to be used as an instrument for harassment or oppression of his opponent and such a complaint should be dismissed.

The Additional Sessions Judge while allowing the revision petition gave its detailed findings, which are reproduced below:-

“7. From examination of record in light of aforesaid rival contention it is crystal clear that PW1 Rohtash reiterated pleadings of complaint and proved copies of application Ex.P1 to Ex.P5, statement of Mark Ex.P6 Ex.P7, Ex.P8, letter dated 2.6.2015 Ex.P9 to Ex.P12 and affidavit Ex.P13. Perusal of complaint, statement of Pwi Rohtash complainant and documents Ex. PI to Ex.P13 shows the accused obtained M.Sc.degree and got enrolled for [Ph.D.as](#) well as submitted copy of M.Sc.degree in department. Accused on basis of M.Sc.degree did not got promotion or any other benefit from his department. There is no evidence regarding forgery of any document ie, certificate, statement of Mark etc.

9 As per ratio of Inder Mohan Goswami & another Vs State of Uttaranchal & others's case(supra) it is well settled that essential ingredients of offence under section 467 IPC are: (1) the document in question so forged; (2) the accused who forged it; (3) the document is one of the kinds enumerated in the aforementioned Section. According to ratio of S.W.Palanitkar Vs. State of Bihar's case (supra), it is well settled that that ingredients of offence of cheating are (1)there should be fraudulent or dishonest inducement of a person by deceiving him (ii)(a)the person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property; or (b)the persons so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived; and (iii) in cases covered by (ii)

(b), the act of omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property. In view of above material facts and well settled principles of law it is apparent on record that accused has neither cheated anyone nor forged any document. So, prima facie there are no ingredients of offences under Section 420, 467, 468, 471 IPC for summoning of accused. As such, the passing of impugned order has led to miscarriage of justice which requires to be remedied.”

For the aforesaid reasons, there is no illegality in the order dated 02.08.2016 (Annexure P-3) passed by Additional Sessions Judge, Hisar as the complaint filed by the petitioner is nothing, but the misuse of process of law.

The present criminal petition lacks merit and accordingly, the same is dismissed.

(DEEPAK MANCHANDA)
JUDGE

13.02.2023
vanita

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No