IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.442 of 2019

Arising Out of PS. Case No.-44 Year-2017 Thana- AGAMKUAN District- Patna

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Hari Om @ Hariom Prasad, Son of Nageshwar Prasad Resident of Chandanpur, Police Station- Tilauthu, District- Rohtas

... ... Petitioner/s

Versus

The State of Bihar

... ... Respondent/s

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with

CRIMINAL REVISION No. 504 of 2019

Arising Out of PS. Case No.-44 Year-2017 Thana- AGAMKUAN District- Patna

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Awadhesh Kumar @ Prof. Awadhesh Kumar, Son of Radha Prasad Resident of University Quarter number 13, Saidpur, P.S.- Bahadurpur, District - Patna (Bihar)

... ... Petitioner/s

Versus

The State of Bihar

... ... Respondent/s

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Appearance :

(In CRIMINAL REVISION No. 442 of 2019)

For the Petitioner/s : Mr. Jitendra Singh, Sr. Advocate
Mr. Saket Tiwary, Advocate
Mr. Anuraj Singh, Advocate
Mr. Animesh Gupta, Advocate
Mr. Shivam Gupta, Advocate

For the Respondent/s : Mr. Ajay Mishra, APP

(In CRIMINAL REVISION No. 504 of 2019)

For the Petitioner/s : Mr. Jitendra Singh, Sr. Advocate
Mr. Saket Tiwary, Advocate
Mr. Anuraj Singh, Advocate
Mr. Animesh Gupta, Advocate
Mr. Shivam Gupta, Advocate

For the Respondent/s : Mr. Ajay Mishra, APP

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL JUDGMENT
Date : 26-02-2024

1. Both the revisions are directed against an order, dated 31st of January, 2019, passed in Special Case No. 11 of

2017, arising out of Agamkuan P.S. Case No. 44 of 2017, whereby and whereunder the Learned Special Judge, Vigilance 1st Court at Patna refused to discharge the petitioners from offences under Sections 419, 420, 467, 468, 120B, 471 and 34 of the IPC, read with Section 120B of the IPC, and Section 66D of the I.T. Act, as well as Sections 7, 8, 9, 13(i)(c)(d)(e) read with Section 13(2) of the Prevention of Corruption Act, 1988.

2. For the purpose of proper adjudication of the instant revision, the following facts are necessarily to be stated:-

"Police made a *suo motu* FIR, on the basis of which the above-mentioned P.S. case was registered, stating, *inter alia,* that police received secret information that some FIR named persons were engaged in cheating in order to get through Staff Selection Commission Examination by unfair means using electronic gadgets like Bluetooth, etc. In order to work out the said information, a team of police personnel conducted raid in the house of one Pappu Singh, situated at Kanti Factory Road and found three persons, namely, Pawan Kumar, Vipin Kumar and Navanit Kumar engaged in some suspicious activities in connection with the said examination. On interrogation, the above-named three persons disclosed the name of Atul Ranjan Sinha, Gorelal @ Kaushik and Bhola @ Nitesh that they helped the candidates to cheat in the SSC examination by using electronic equipment to get through the said examination with flying colour. They also disclosed that they took Rs. 6 lakhs each from the candidates on undertaking that they would hand over the questions with answers which would come in the examination. Moreover, the candidates were asked to use Bluetooth devices to be fixed under their vests through which they would dictate the answers of objective typed questions. Police seized certain electronic devices from the possession of the apprehended accused persons and the above-mentioned case was registered against the accused persons. Further case of the prosecution is that during the course of investigation, accused Ashish Kumar made confessional statement to the police stating the names of other accused persons. It is also alleged that the petitioner traveled with another co-accused to some place and met the mastermind of the entire scam who had access to the question papers of the examination which was scheduled to be held by Bihar SSC.

3. After investigation, police submitted charge-sheet against the petitioners and others, under the above stated penal provisions. The petitioners filed petitions under Section 227 of the Cr.P.C., praying for discharge on the ground that

police failed to collect valid evidence and material against the petitioners to frame charges. The said application having been rejected by the Trial Court, the petitioners have filed above-named two revisional applications alleging the same grounds, assailing order, dated 31st of January, 2019.

4. Learned Senior Counsel appearing on behalf of the petitioners submits before this Court that indisputably the case was instituted on police report. The learned Special Judge failed to appreciate that even if the prosecution case is accepted only on its face value, no charge under the above-mentioned penal provisions will attract against the petitioners. It is the case of the prosecution that the answers to the questions of Staff Selection Commission were leaked through WhatsApp. However, there is no allegation against both the petitioners that the petitioners either forwarded or received the questions and answers of the said examination through their WhatsApp. The petitioner of Criminal Revision No. 442 of 2019 is related to the family of co-accused Sudhir Kumar through his father-in-law. The said Sudhir Kumar was the Chairman of SSC, Bihar at the relevant point of time. However, police failed to collect any evidence to the effect that petitioner Hari Om Kumar came to know about the questions which were set up in the said

examination. The petitioner was implicated in the case on the basis of alleged confessional statement of accused Awadhesh Kumar, Ashish Kumar and Arun Kumar, who allegedly stated to the police that petitioner Hari Om went to Hazaribagh in order to get the questions and answers from co-accused, Sudhir Kumar before appearing in the said examination at Jehanabad Centre. However, the Investigating Officer failed to collect even a chit of paper to establish even *prima facie* that petitioner Hari Om went to Hazaribagh to collect questions and answers of the said examination from co-accused Sudhir Kumar. According to prosecution case, the petitioner is the person from whom the questions and answers were leaked. But in support of its contention, the Investigating Officer failed to collect any evidence.

5. It is stated on behalf of the accused Awadhesh Kumar, petitioner of Criminal Revision No. 504 of 2019, that the allegation against the petitioner is that he sent his relative to Hazaribagh to collect hand written questions and answers. However, the petitioner was busy in medical treatment of his mother at Patna between October, 2016 and February, 2017. During the same period he and his nephew Ashish Kumar had to travel regularly from Hazaribagh to Patna for medical treatment

of his mother. Parental house of the petitioner was searched during investigation by police personnel but no incriminating material could be seized from the possession of the petitioner or from his parental house. It is the case of the prosecution that petitioner Awadhesh Kumar had connection with two other co-accused, namely, Ranjan and Rameshwar through his mobile phone but Call Details Report (CDR) of the petitioner's mobile phone with a person having Mob. No. 7870477656 did not establish that he had any connection with Ranjan because of the fact that the above-numbered mobile phone did not belong to Ranjan. Co-accused Ashish Kumar and Arun Kumar are the elder brother and nephew, respectively, of petitioner Awadhesh Kumar. He had connection with the said Ashish Kumar and Arun Kumar over mobile phone. However, such connection with co-accused persons by their relative, i.e., the petitioner, does not mean that the petitioner was also involved in conspiring examination scam as alleged by the prosecution. Prosecution implicated him in the case because of his alleged connection with co-accused Rameshwar and Ranjan. However, the learned Judge in the Trial Court failed to appreciate that confessional statement of any person before the police is inadmissible in evidence. Therefore, charge-sheet was filed against the petitioners on the basis of inadmissible evidence and they are entitled to be discharged from the case.

6. Learned Senior Counsel appearing on behalf of the petitioners, submits that from the materials collected by the prosecution and kept in the case diary, it appears that the prosecution failed to collect any material in support of the allegation of cheating. Accused Hari Om is not an examinee in the said examination. The ingredients of an offence of cheating are:-

(i) 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 person 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.

7. Referring to a decision of the Hon'ble Supreme Court in ***S.W. Palanitkar & Ors v. State of Bihar & Anr.,***

reported in ***(2002) 1 SCC 241***, it is submitted by the Learned Senior Counsel, placing the ingredients of offence of cheating as contained in Sections 419 and 420 of the IPC that there is no allegation against any of the accused persons that they deceived any examinee who appeared in the relevant Staff Selection Examination. None of them were induced to deliver any property. They did not demand any money from any of the candidates of the said examination. Therefore, the Trial Court wrongly refused to discharge the accused persons from the charge under Section 420 of the IPC.

8. Learned Senior counsel appearing on behalf of the petitioners next refers to another decision of the Hon'ble Supreme Court in ***Hridaya Ranjan Prasad Verma & Ors vs. State of Bihar & Anr***, reported in ***(2000) 4 SCC 168*** and submits that Section 420 of the IPC postulates to different types of acts which the person deceived may be induced to do. In the first place, he may be induced fraudulently or dishonestly to deliver any property to any person. The second class of acts set forth in the Section is the doing or omitting to do anything which the person deceived would not do or omit to do if he were not so deceived. In the first class of cases, the inducing must be fraudulent or dishonest. In the second class acts, the inducement

must be intentional but not fraudulent or dishonest. If both the acts are committed, the offender is said to have cheated the victim.

9. In the instant case, neither Hari Om nor Awadhesh Prasad, the petitioners of the above mentioned two revisions, committed any act of deception of any person or never induced any person to do or omit to do anything which they were not legally bound to do or omit.

10. Similarly, there is no evidence *prima facie* collected by the prosecution to prove forgery of any documents purporting to be valuable security, using the forged document as genuine, making false documents as defined in Section 464 of the Code etc.

11. In this regard, the learned Advocate for the petitioner refers to another decision of the Hon'ble Supreme Court in ***Mohammed Ibrahim & Ors vs. State of Bihar & Anr***. reported in ***(2009) 8 SCC 751***. It is contended by the Learned Senior Counsel on behalf of the petitioners that there is a fundamental difference between a person executed a sale-deed claiming that the property conveyed is his property, and a person executing a sale-deed by impersonating the owner or falsely claiming to be authorized or empowered by the owner, to

execute the deed on owner's behalf. When a person executes a document convey a property describing it as his, there are two possibilities. The first is that he *bona fide* believes that the property actually belongs to him. The second is that he may be dishonestly or fraudulently claiming to be his, even though he knows that it is not his property. But to fall under first category of "false documents", it is not sufficient that a document has been made or executed dishonestly or fraudulently. There is a further requirement that it should have been made with the intention of causing it to be believed that such a document was made or executed by, or by the authority of a person, by whom or by whose authority he knows that it was not made or executed.

12. When a document is executed by a person claiming a property which is not his, he is not claiming that he is someone else nor is he claiming that he is authorized by someone else. Therefore, execution of such document (purporting to convey some property of which he is not the owner) is not execution of a false document as defined under Section 464 of the Code. If what is executed is not a false document, there is no forgery. If there is no forgery, then neither Section 467 nor Section 471 of the Code are attracted.

13. Learned Advocate for the petitioners next submits that if penal provisions under the IPC is held to be not attracted, it cannot be said that they committed offence under Section 66D of the I.T. Act or the penal provisions of the Prevention of Corruption Act.

14. According to the Learned Senior Counsel appearing on behalf of the petitioners, the Learned Special Judge failed to exercise his jurisdiction which has been vested to him by recording an order of discharge under Section 227 of the Code. The Learned Special Judge had the duty to consider whether there is any sufficient ground for proceeding against the accused. If there is no sufficient ground of proceeding, he is entitled to discharge the accused. In assessing these facts, it is not necessary for the Court to enter into the pros and cons of the matter or in to weighing and balancing of evidence and probabilities which is really his function after the trial starts.

15. At the stage of Section 227, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused, the sufficiency of ground would take within its fold, the nature of the evidence recorded by the police or the documents produced before the court, which *ex facie* disclosed that they are

suspicious circumstances against the accused so as to frame a charge against him. The learned Special Judge failed to discharge his duties to consider as to whether there was material to go for trial against the accused in the aforementioned case.

16. In support of his contention, he refers to a decision of the Apex Court in ***Union of India Vs. Prafulla Kumar Samal & Anr.*** reported in ***(1997) 3 SCC 4***.

17. On the same point, the learned senior counsel for the petitioners refers to another decision in the case of ***State of Orissa vs. Debendra Nath Padhi,*** reported in (***2005) 1 SCC 568***.

18. He also refers to ***Onkar Nath Mishra & Ors vs. State (NCT of Delhi) & Anr,*** reported in ***(2008) 2 SCC 561***.

19. The Learned Additional Public Prosecutor, on the other hand, submits that the incident in hand discloses a deep-rooted conspiracy and in pursuance to such conspiracy, there was widespread cheating in the examination of SSC, Bihar held in the year 2017. During investigation, the Investigating Officer collected materials against accused persons to the effect that they managed the question papers with answers of SSC Examinations and the question papers and answers were copied by some other person by her hand and the said handwritten

document was sent to the candidates from whom Rs. 6 lakhs were accepted on assurance of giving of the question papers and answers to the said candidates in lieu of a huge amount of money. It is found from the case-diary that the candidates who would not pay the entire sum of money as demanded by the accused persons, their original academic testimonials were taken away by the accused persons and they were told that the original testimonials would be handed over on payment of entire money. Thus, the incident appears to be illegal sale of questions and answers in consideration of huge amount of money. The questions and answers were of a competitive examination for employment to different posts under the Government of Bihar. Such competitive examination is naturally expected to be done maintaining utmost secrecy and following all measurements of fair examination. However, it was not done and a big racket of accused persons were involved in committing the offence by leaking the question papers and answers to some merit-less candidates, so that they may get through on payment of money.

20. The learned Senior counsel vehemently urges that there was no ingredient of cheating as there was no evidence of inducement of delivery of property.

21. In my considered view, the incident is a glaring

example of cheating where the innocent candidates were deceived by a racket, consisting of number of accused persons including the petitioners, by which the innocent candidates were deceived and merit-less candidates were admitted to be got through the examination. This case does not fall within the traditional meaning of cheating regarding delivery of some tangible property. It is the deception of intellectual competence of innocent candidates. Therefore, the incident is a deception by committing an act which the accused persons and the candidates who purchased the questions and answers spending lakhs of rupees were not legally permitted to do. Therefore, at the stage of disposal of application under Section 227 of the Cr.P.C., the Trial Court rightly held that the ingredients of Section 420 of the Indian Penal Code available from the case-diary.

22. It is to be noted that the accused persons did not circulate the original question papers and answers thereof. They made the question papers and answers reduced to writing by some other persons and the said documents were circulated by WhatsApp. The hand written documents are of course false documents within the meaning of Section 463 of the Indian Penal Code. It is found from the documents circulated to the candidates that out of 200 questions, 133 questions were found

to be in original question papers of the said examination and those were circulated beforehand in consideration of huge amount of money to the candidates. Thus, the candidates were deceived by the accused persons to deliver property, i.e., huge amount of money in lieu of a set of test booklet with answers. Thus, the candidates were induced to deliver property in return of question papers. Therefore, there are *prima facie* material to frame charge against the accused persons. It is repeatedly contended by the learned Sr. Advocate on behalf of the petitioners that the petitioners are not involved in committing any offence as alleged by the prosecution.

23. It is found from the case-diary that accused, Hari Om and accused Awadhesh Kumar had close relations with other accused persons, namely, Ashish Kumar, Ranjan and Sudhir Kumar and others. Before the examination, there were number of phone calls between the accused persons and call details report were collected by the Investigating Officers. It is surprising to note as to why repeated calls were sent from a particular mobile number to the other amongst the accused persons at the relevant point of time.

24. It is submitted by the learned Sr. Advocate for the petitioners that prosecution failed to prove that the

petitioners sent any WhatsApp message to any other accused or any candidate. In a case of criminal conspiracy, the offenders generally performs specific part of role as entrusted to them and sum total of the activities constitute the offence.

25. At the stage of disposing of a petition under Section 227 of the Cr.P.C., if upon consideration of the records of the case and the documents submitted therewith and after hearing the submissions of the accused and the prosecution on this behalf, the Judge considers that there is no sufficient ground for proceeding against the accused. He shall discharge the accused and record his reasons for doing so. As per Section 228 of the Cr.P.C., only thereafter and if after such consideration and hearing as aforesaid, the Judge also of the opinion that there is the ground for presuming that the accused has committed an offence, the Trial Court shall frame the charge. Thus, at the stage of 227 of the Cr.P.C., what the Trial Court is required to consider is as to whether there is sufficient material to presume that the offence charged has been committed by the accused persons or not.

26. The materials on record amply shows that the accused persons committed cheating, forgery of documents using forged documents as genuine, circulating the answers of

questions by illegal way of electronic devices and using corrupt practice in lieu of money to shatter the Staff Selection Commission Examination, 2016 by corrupt practice.

27. In view of the above discussion, I do not find any merit in the instant revision and the applications are liable to be dismissed.

28. Accordingly, both the revision applications being Cr. Revision No. 442 of 2019 and Cr. Revision No. 504 of 2019 are dismissed on contest.

(Bibek Chaudhuri, J)

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