

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1620 of 2022

Arising Out of PS. Case No.-127 Year-2019 Thana- HAJIPUR SADAR District- Vaishali

Amit Kumar, S/O Sri Suryabhushan Prasad, R/O Flat No- 201, Mirambika
Apartment, Boring Road crossing, P.S.- Budha Colony, District- Patna.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Home Department,
Government of Bihar, Patna.
2. The Senior Superintendent of Police, Hajipur at Vaishali.
3. The Officer In-Charge, Sadar, Hajipur.
4. The District Education Officer, Vaishali.
5. The Block Education Officer, Hajipur (West).
6. Bihar School Examination Board through its Secretary, Patna.

... .. Respondents

Appearance :

For the Petitioner	:	Mr. Rajesh Ranjan, Advocate Mr. Atul Shankar, Advocate
For the State	:	Mr. Suman Kumar Jha, AC to AAG-3
For the BSEB	:	Mr. Ajay, Advocate Mr. Pratik Kumar Sinha, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date : 19-01-2024

Heard learned counsel for the petitioner, learned counsel
for the State and learned counsel for the Bihar School Examination
Board (in short 'BSEB').

2. This writ application has been filed by a Professor of
Mathematics in R.P.S. College, Chakeyaj, Mahnar in the district of
Vaishali seeking quashing of the First Information Report registered
as Hajipur (Sadar) P.S. Case No. 127 of 2019 dated 06.03.2019 for
the offences punishable under Section 353 of the Indian Penal Code
and Section 9 of the Bihar Conduct of Examination Act, 1981

(hereinafter referred to as 'the Act of 1981'). The FIR has been lodged by the Block Education Officer, Hajipur (West) who is respondent no. 5 and represented by learned counsel for the State of Bihar.

3. The prosecution story is disclosed in Letter No. 11 dated 06.03.2019 submitted by respondent no. 5 to the Officer Incharge of Sadar Police Station, Hajipur. The contents of the letter which forms basis of the FIR would disclose that the allegation against the petitioner is that he had purposely not given his joining at the evaluation centre for evaluation of the answersheets of the Intermediate Annual Examination, 2019. This is the only allegation against the petitioner.

Submissions on behalf of the Petitioner

4. Learned counsel for the petitioner submits that this petitioner is a Professor in a constituent college under B.R.A. Bihar University. He was the Professor Incharge of the college during June 2017 and January 2020. The petitioner was not served with any letter for conducting the evaluation work after the Annual Examination of Intermediate in the year 2019. Since he was working as Professor Incharge of the college during the relevant time, he was not expected to join the evaluation work.

5. Learned counsel further submits that the petitioner had not received any request from the competent authority.

According to the BSEB Regulation, 1964, if the Head Examiner or the Examiner who have been appointed is not accepting the appointment then the same may be returned giving cogent and acceptable reasons. In the present case, since the petitioner had no knowledge of his appointment as Evaluator, therefore, he had valid reason for not joining the work of evaluation of answersheets.

6. Learned counsel for the petitioner has also pointed out that there is an inadvertent mistake towards the end of paragraph '8' which is a result of a cut and paste in the computer and the line "the petitioner after receiving the aforesaid information submitted an application before the Respondent 3 stating therein that due to ill health she was unable to perform assigned work" pertained to a case of a female teacher who had come to this Court in earlier round and this has remained inadvertently. Request has been made to ignore the same.

7. Learned counsel submits that by no stretch of imagination, the respondent no. 5 could have lodged a First Information Report as there was no element of criminality in the allegation as it is. It is submitted that the SHO of the Police Station has further acted unmindfully and imposed Section 353 IPC which would be attracted when a person assaults or uses criminal force to any person being a public servant in the execution of his duty as

such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant. Learned counsel submits that if the allegation is that the petitioner did not participate in the evaluation work and did not join at the evaluation centre, there would be no question of causing any assault or use of criminal force against any person. There is no whisper to that extent in the letter which forms part of the FIR. Learned counsel submits that the lodging of an FIR of this kind is nothing but criminalising a civilised person causing mental agony to him and sheer harassment.

8. Learned counsel for the petitioner further submits that so far as lodging of the FIR under Section 9 of the Act of 1981 is concerned, this Court had occasion to consider several cases of identical nature in earlier round of litigations in Cr.WJC No. 1112 of 2018 and other analogous matters which were heard and disposed of by a common judgment dated 27.08.2018. This Court having examined the Sections 9 to 12 of the Act of 1981 in detail concluded that no case under Section 9 of the Act of 1981 would be made out and it would not constitute an offence under Section 10 of the Act of 1981. A copy of the judgment of this Court passed on 27.08.2018 in Cr.WJC No. 1112 of 2018 has been enclosed as Annexure '2' to the writ application.

9. Learned counsel for the petitioner further points out that in Cr.WJC No. 1650 of 2019 and other analogous cases when an identical issue was raised by the petitioners in those cases, this Court called upon the then Superintendent of Police, Central, Patna and Dy.SP, Town, Patna to address this Court. The City SP, Patna produced a copy of Memo No. 4283 dated 07.09.2022 issued under the signature of the Senior Superintendent of Police, Patna whereunder after analysing the judgment of this Court passed in Cr.WJC No. 1112 of 2018 dated 27.08.2018, a decision was taken that in all the cases/FIRs registered under Section 10 of the Act of 1981, a final form saying a 'mistake of law' shall be submitted. This Court was given to understand that in the said case, by mistake chargesheet had already been filed. In view of the said stand taken by the official respondents, this Court quashed all the FIRs and the subsequent proceedings including chargesheets filed in the matter.

10. It is submitted that so far as the present case is concerned, no final form has been submitted as yet and the petitioner is facing harassment for last more than four years as the burden of there being a criminal case against him looms large over his head. It is submitted that it is a case in which the official respondents have misused their power which has caused

harassment to the petitioner and that would make the State liable to pay cost and compensation to the petitioner which should be realised from the official respondents because of whose misuse of power and authority, a citizen has been harassed. Reference in this regard has been made to the judgment of this Court in the case of **Ravi Shankar Singh versus The State of Bihar and Others** reported in **2019 (1) PLJR 917**. It is submitted that the judgment of this case in the case of **Ravi Shankar Singh** (supra) was subject to challenge before the Hon'ble Supreme Court in Special Leave to Appeal (Crl.) No. 10025-10031 of 2018, however, the judgment was not interfered with, hence, the same principle would apply in the present case.

Stand of the State.

11. Mr. Suman Kumar Jha, learned AC to AAG-3 appears for the State. Learned AC to AAG-3 for the State has, after thoroughly perusing the records and the relevant provisions of the IPC, taken a stand that in the nature of the allegations made in the letter of respondent no. 5, by no stretch of imagination, Section 353 IPC would be attracted. It is not a case of causing physical assault or use of criminal force against a public servant with an intention to stop him from discharging his duty.

12. Regarding applicability of Sections 9 and 10 of the Act of 1981, learned counsel submits that from the pleadings in the writ application, it appears that the case would be covered by the judgment of this Court rendered in Cr.WJC No. 1112 of 2018 and other analogous matters.

Stand of the BSEB

13. The BSEB is represented by Mr. Ajay, learned Advocate who has placed before this Court the counter affidavit. It is his submission that the petitioner was appointed as an examiner, he was issued letter no. 13069 of 2019 dated 21.02.2019 calling upon him to join at the evaluation centre to evaluate the answersheets of Mathematics but he did not join the evaluation centre. It is further submitted that after sending the appointment letters to the selected co-examiners and its consolidated list to the District Education Officer of the concerned district, the BSEB has issued a fresh communication bearing P.R. No. 95 of 2019 with a clear instruction to the Heads of all the concerned colleges and institutions to collect the appointment letters and consolidated list of their respective institution and to hand over the same to the selected co-examiners. It is submitted that the BSEB had also uploaded the district-wise, evaluation centre-wise and subject-wise list of the selected co-examiners on its official website with clear

instruction that those teachers who could not receive the appointment letters for any reason would download the same from the website of the BSEB and would ensure their joining timely at evaluation centre.

14. Learned counsel submits that it is only when the petitioner failed to join at the designated evaluation centre by 03.03.2019, a decision was taken to lodge the FIR. As regards lodging of the FIR under Section 353 IPC is concerned, learned counsel admits at the Bar that Section 353 IPC would not be attracted in this case as the only allegation against the petitioner is that he had not joined at the examination centre for evaluation work.

15. Learned counsel submits that despite instructions when the petitioner did not join at the evaluation centre for the work, the FIR has been lodged.

Consideration

16. Having heard learned counsel for the petitioner, the State and the BSEB as also on perusal of the records, this Court finds at the outset that lodging of the FIR under Section 353 IPC is the result of unmindful misuse of power by the Station House Officer of the Sadar Hajipur Police Station at the instance of the Joint Secretary-cum-Controller of Examination (Higher

Secondary) BSEB, Patna. In fact, on the instruction of the Controller of the Examination, BSEB, the District Education Officer, Vaishali had instructed the Block Development Officer to lodge the FIR.

17. In the writ application, there is a categorical statement of the petitioner that he had not received any request from the competent authority or the BSEB and had no knowledge of his appointment as Evaluator, therefore, he had no reason to join the work of evaluation of the answersheets. The petitioner is a professor of a constituent college under BRA Bihar University, therefore, he is not an employee of the BSEB.

18. In the counter affidavit, though, the BSEB has said that a letter as contained in Annexure 'A' was issued but having said so, there is no statement that the said letter was actually dispatched to the petitioner by a proper mode of service. In the counter affidavit, in fact, there is no specific statement that the letter as contained in Annexure 'A' was served upon the petitioner. It is not the case of the BSEB that the letter was sent through the University.

19. While it is stated in the counter affidavit that the information was uploaded on the official website of the BSEB to those who have not received the appointment letter for any reason

may download the same from the website of the BSEB but it is not known as to how the petitioner being a professor of the University could have been placed under obligation to visit the website of the BSEB. The ultimate question arises for consideration in this case is as to whether a mere non-joining at the evaluation centre by this petitioner who is a professor of the BRA Bihar University would result in attracting a prosecution under Section 9 punishable under Section 10 of the Act of 1981.

20. While considering identically situated writ application being Cr.WJC No. 1112 of 2018, this Court came across certain facts situation. In those cases, the allegation was that some of the lecturers/professors, who were appointed for carrying on the evaluation work, had refused to submit their joining and rather boycotted the evaluation work which had affected the evaluation of the answersheets. This Court dealt with Sections 9 to 12 of the Act of 1981. The relevant part of dealing with those provisions may be found in paragraphs '21' and '22' of the judgment of this Court in Cr.WJC No. 1112 of 2018 which would read as under:-

“21.....The District Education Officer in the present case is said to have acted under Sections 9 to 12 of the Act, 1981 which read as under :-

“9. Bar to refuse to discharge duties by person concerned entrusted with proper conduct of examination, etc.- Whoever is

entrusted with invigilation or supervision or evaluation work of any examination, tabulation, publication of result and any work connected with examination and publication of result shall not refuse to discharge the duties entrusted with.

10. Penalty.- Whosoever contravenes any of the provisions in sections 3 to 9, shall be punished with imprisonment for a term of one month which may extend to six months, or with fine not exceeding two thousand rupees, or with both.

11. Nature of offence and trial.- Offences committed under this Act are cognizable and non-bailable, and Executive Magistrate who is duly and properly authorised, will dispose of the same by summary trial.

12. Investigation of the case.- Cases under the provisions of this Act will be investigated by an officer not below the rank of a Deputy Superintendent of Police.”

22. A bare perusal of the aforesaid provisions would show that according to Section 9 of the Act of 1981 whoever is entrusted with the evaluation work he cannot refuse to discharge the duty so entrusted. In the opinion of this Court, the ‘entrustment’ must be taken as some significant action on the part of the person entrusting in the matter of evaluation work of answer sheets, if the ‘entrustment’ is being done of a retired university teacher or of a professor in service of a University or College which is not under the command of the Controller of Examination of the B.S.E.B., such entrustment may be done only after doing a prior exercise by obtaining consent of a retired person and/or involving the head of the Institution under whom the person is working. The availability of that person and consent of the employer would be required to be ascertained. Further if entrustment has been done properly, it is only in the case of refusal to discharge the

duties Section 9 of the Act of 1981 would be attracted.....”

21. Having dealt with the aforesaid provisions, this Court observed inter alia as under:-

“**24.**.....Further it is found that the offence under Section 10 of the Act of 1981 has been made punishable by way of imprisonment up to 6 months but power has been vested with the Executive Magistrate to try the offence. This is not permissible being in complete conflict with the provision Section 3(4)(a) of the Code of Criminal Procedure, 1973. These are other reasons which necessitate quashing of the entire F.I.R. to secure ends of justice.”

22. In this case there is no whisper in the counter affidavit of the BSEB that the consent of the University was obtained before appointing the petitioner an examiner to evaluate the answersheets of Intermediate level.

23. In Cr.WJC No. 1650 of 2019 again some writ applications identically situated were placed for consideration. Those writ applications were disposed of after taking note of the stand of the City SP, Patna which are indicated in the order dated 12.09.2022 passed in Cr.WJC No. 1650 of 2019. Those are being extracted hereunder for a ready reference:-

“Pursuant to the order dated 18.08.2022 Mr. Ambrish Rahul, the Superintendent of Police, Central,

Patna and Mr. Ashok Kumar Singh, Dy.S.P., Town, Patna are present in person.

The City S.P. has produced before this Court a copy of memo no. 4283 dated 07.09.2022 issued under signature of the Senior Superintendent of Police, Patna whereunder after reviewing the judgment of this Court passed in Cr.W.J.C. No. 1112 of 2018 dated 27.08.2018 a decision has been taken that in all the cases/F.I.Rs. registered only under Section 10 of the Bihar Conduct Examination Act 1981 a final form saying a 'mistake of law' shall be submitted.

The City S.P. duly represented by Mr. N.H. Khan, learned S.C.-1 submits that in the present case in fact by mistake the chargesheet had already been filed prior to passing of the recent order in Cr.W.J.C. No. 511 of 2021.

It is submitted that henceforth in all such cases which will be covered by the judgment of this Court, the order issued by the Senior Superintendent of Police, Patna shall be followed.

Learned S.C.-1 has submitted in the aforesaid view of the matter that he will have no objection if this Court quashes the First Information Report as well as all subsequent action including chargesheet filed in the matter.

In the light of discussions made hereinabove, these writ applications are allowed. As a result, the First Information Report being Ara Town P.S. Case No. 129 of 2019 (in Cr.W.J.C. No. 1650 of 2019) and First Information Report being Kadamkuan P.S. Case No. 99 of 2020 (in Cr.W.J.C. No. 677 of 2021) and all subsequent proceedings including the chargesheet(s) filed in the matter are quashed.”

24. In the given facts and circumstances of the case, this Court is of the considered opinion that the BSEB being a party to Cr.WJC No. 1112 of 2018, having accepted the said judgment, could not have issued an identical kind of direction to lodge FIR against the petitioner and others. It appears that in the present case, list of 25 Lecturers/Professors were sent to the concerned Police Station for lodging of FIR and thereafter, a list containing names of 129 Lecturers/Professors were sent to him saying that those names are also to be included in the FIR. The respondent no. 5 was apparently acting at the behest of his Senior Officers and they were all being guided by the direction given by the Officers of the BSEB.

25. This Court is of the considered opinion that lodging of the FIR in the given circumstances is nothing but a tool of sheer harassment to the petitioner. The petitioner is a Professor and is facing the investigation for the last four years in a case in which there is no criminality involved. This Court has taken note of the stand of the State also, this case would be squarely covered by the judgment of this Court in Cr.WJC No. 1112 of 2018. Accordingly, the First Information Report being Sadar Hajipur P.S. Case No. 127 of 2019 is hereby quashed.

26. Since the petitioner has faced harassment and had to approach this Court for quashing of the FIR, this Court deems it just and proper to impose a cost of Rs. 25,000/- (Rupees Twenty Five Thousand Only) upon the BSEB. The BSEB shall pay the cost amount to the petitioner within a period of four weeks from today.

27. This application is allowed with cost.

(Rajeev Ranjan Prasad, J)

SUSHMA2/-

AFR/NAFR	
CAV DATE	
Uploading Date	22.01.2024
Transmission Date	22.01.2024