

Madhya Pradesh High Court

Ashok Kumar Sharma vs The State Of Madhya Pradesh on 10 May, 2022

Author: Arun Kumar Sharma

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IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE ARUN KUMAR SHARMA
ON THE 10th OF MAY, 2022
MISC. CRIMINAL CASE NO.22154/2022

Between: -

ASHOK KUMAR SHARMA, AGED ABOUT 57
YEARS, S/O. LATE RAMSWAROOP SHARMA,
R/O. WARD NO.1/3 SHENSHA ASHRAM, PALI
ROAD, SUHAGPUR, P.S. & TAHSIL
SUHAGPUR, DISTRICT SHAHDOL (MADHYA
PRADESH)

.....PETITIONER

(BY SHRI RAHUL DIWAKAR, ADVOCATE)

AND

STATE OF MADHYA PRADESH, THROUGH
POLICE STATION BUDHAR, DISTRICT
SHAHDOL (MADHYA PRADESH)

.....RESPONDENT

(BY SHRI MANOJ KUSHWAHA, PANEL LAWYER)

This petition coming on for final hearing at motion hearing stage this
day, the court passed the following:

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ORDER

(10-5-2022) This petition under Section 482 of the Code of Criminal Procedure has been filed by the petitioner for quashment of the FIR bearing crime no. 493/2021 registered at Police Station Budhar, district Shahdol for the offences punishable under Sections 409, 420, 467, 468 and 471 of the Indian Penal Code (for short "IPC" and other consequential proceedings arising thereof.

2. A brief recapitulation of the facts of the instant case is necessary. On 15.6.2021 the FIR in question has been got lodged by one Dilip Kumar Nigam, Block Education Officer, Block Budhar, District Shahdol, against the present petitioner, making allegations in writing that the present petitioner was posted as Block Education Officer at Budhar Block, District Shahdol from 2nd of June, 2014 till 3rd of February 2020 and during this period, besides departmental bank accounts, he had opened supposititious two additional bank accounts without prior approval of the authorities concerned in the name of Prabandhak Vyasayak Prakshishan Kendra, Budhar and another in the name of Block Education Officer, Budhar. He had transferred the funds from the original bank account to the accounts opened by him and had siphoned some amount of money from the same. Thus, the petitioner by opening the aforesaid bank accounts fraudulently committed cheating and forgery and also misappropriated the government funds to the tune of Rs.1,01,72,176/-. After inquiry into the matter, the FIR in question has been registered against the petitioner for the alleged offences.

3. By way of this petition, the petitioner has prayed for quashing of the FIR and other consequential proceedings arising thereof, inter alia on the grounds that he is in government service and presently he is holding the post of Lecturer. The entire allegations levelled against the petitioner is absolutely false, baseless and incorrect as the accounts were not opened in the private name of the petitioner rather the same were opened in the name of the government officials under the government seal only. There is no allegation in the FIR that the money has been transferred or siphoned by the petitioner for his personal use or in his personal gain. The only allegation against the petitioner is that he opened the bank accounts without sanction of the superior authorities and thus, it is clear that no offence under Sections 467, 468 and 471 of the IPC is made out because there is no allegation in the FIR that the petitioner had used any forged documents to open the bank account. Moreover, an offence under Section 420 of the IPC is also not made out because the petitioner has not even induced any person to do a particular act. If on the basis of the aforesaid FIR, his prosecution is continued it will amount to misuse of process of the court and also cause great injustice.

4. Learned Government Advocate appearing on behalf of the State has submitted that from the FIR, prima facie, commission of the aforesaid offences by the petitioner is made out. The petitioner is solely responsible for the fraud committed in the transaction. Hence, the petition be dismissed.

5. Having considered the contentions of learned counsel for the parties and on perusal of the record and the documents submitted by the petitioner as well as the case diary, it appears that there is no evidence that the money has been transferred by the petitioner for his personal use and there is also no evidence that the accounts were opened in the private name of the petitioner himself and in fact, the same were opened in the name of the government officials under the government seal. From the account statements alleged to have been opened by the petitioner it is clear that no amount has either been siphoned or used by the petitioner for his personal use. From the audit report itself vide AnnexureA/3 it is evident that the office of the Auditor General has got the accounts of the office of the Block Education Officer audited and no objection has been pointed out by the auditor and the petitioner has been found innocent and the accounts were found up to the mark. On earlier occasions also, similar allegations were levelled against the petitioner wherein a detailed inquiry

vide Annexure-A/4 was conducted by the department wherein the petitioner was clearly given a clear chit and none of the allegations were found to be true and no illegality, irregularity or taking illegal benefit by the petitioner has been found. Further, there is no averments in the FIR that the petitioner in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property. The necessary ingredients for constituting the alleged offences are missing in the FIR.

6. With regard to the quashment of the FIR or the criminal proceedings under section 482 of the Cr.P.C. the Hon'ble Apex court in the case of Hridaya Ranjan Prasad Verma and others vs. State of Bihar and another (2000) 4 SCC 168; it has been observed in paras 8, 9 and 10 which are as under :-

Para 8- In the case of State of Haryana and Others v. Bhajan Lal and Others 1992 Supp. (1) SCC 335; this Court in the back drop of interpretation of various relevant provisions of the Code of Criminal Procedure under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Cr.P.C. gave the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of the Court or otherwise to secure the ends of justice, making it clear that it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list to myriad kinds of cases wherein such power should be exercise :

(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.

Para 9- In the decision this Court added a note of caution to the effect that the power of quashing a criminal proceeding should be exercised 'very sparingly and with circumspection and that too in the rarest of rare cases'.

Para 10- The principles laid down in this decision have been followed in several decisions of this Court like *Rupan Deol Bajaj v. Kanwar Pal Singh Gill* (1995) 6 SCC 194; *Rajesh Bajaj v. State NCT of Delhi* (1999) 3 SCC 259; *State of Kerala v. O.C. Kuttan* (1999) 2 SCC 651; *P.S. Rajya v. State of Bihar* (1996) 9 SCC 1 and *State of Orissa v. Bansidhar Singh* (1996) 2 SCC 194.

7. Here it would be appropriate to see the provisions related to the offences under Sections 409, 420, 467, 468 and 471 of the IPC which read as under :-

409. Criminal breach of trust by public servant, or by banker, merchant or agent.

-- Whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with [imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

420. Cheating and dishonestly inducing delivery of property-Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, 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, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

467. Forgery of valuable security, will, etc.

--Whoever forges a document which purports to be a valuable security or a will, or an authority to adopt a son, or which purports to give authority to any person to make or transfer any valuable security, or to receive the principal, interest or dividends thereon, or to receive or deliver any money, movable property, or valuable security, or any document purporting to be an acquittance or receipt acknowledging the payment of money, or an acquittance or receipt for the delivery of any movable property or valuable security, shall be punished with [imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable

to fine.

468. Forgery for purpose of cheating.-- Whoever commits forgery, intending that the [document or electronic record forged] shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

471.-Using as genuine a forged [document or electronic record].-Whoever fraudulently or dishonestly uses as genuine any [document or electronic record] which he knows or has reason to believe to be a forged [document or electronic record], shall be punished in the same manner as if he had forged such [document or electronic record].

8. In view of the aforesaid provisions of law, in this case without hesitation it can be said that prima facie there is no material in the FIR to prosecute the petitioner for commission of offences under Sections 409, 420, 467, 468 and 471 of the IPC. In the aforesaid circumstances, in the light of the law laid down in the case of State of Haryana vs. Bhajan Lal, 1992 Suppl (1) SCC 335; the continuation of criminal proceeding against the petitioner will be an abuse of process of the court.

9. In view of the totality of the facts and circumstances, no alleged offence is made out against the petitioner. It appears that with the oblique motive and to wreck vengeance patently false, frivolous and vexation allegations have been made against the petitioner to put him to unnecessary harassment and it is nothing else but misuse of provisions of law. Further, very ingredients to constitute the offence is completely missing and there is no evidence on record to justify initiation of the aforesaid proceeding then the interest of justice requires to set - aside the entire proceedings arising out of registration of the FIR.

10. In the aforesaid circumstances, registration of the FIR cannot be continued and no purpose would be served. If on the basis of the aforesaid FIR, investigation is done, it would cause injustice to the petitioner. Therefore, to ensure the justice, the aforesaid FIR is required to be quashed. Hence, the petition is allowed and the FIR bearing crime no. 493/2021 registered at Police Station Budhar, District Shahdol for the offences punishable under Sections 409, 420, 467, 468 and 471 of the IPC against the petitioner is hereby quashed and the consequential proceeding, if any, has been initiated, is also quashed.

A copy of this order be sent to the concerned court below and the concerned Police station for information and necessary compliance.

(ARUN KUMAR SHARMA) JUDGE JP/-

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