

Satyendra Kumar Sinha Vs. State of Bihar

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Court : Patna

Decided On : Jun-27-2000

Judge : P.K. Sinha, J.

Appeal No. : Crl. Misc. No. 3454 of 1996

Appellant : Satyendra Kumar Sinha

Respondent : State of Bihar

Advocate for Pet/Ap. : Sri. M.S. Madhup

Disposition : Appeal Dismissed

Judgement :

P.K. Sinha, J.

1. This is an application under Section 482 of the Code of Criminal Procedure preferred by petitioner Satyendra Kumar Sinha praying therein to quash order dated 30.8.1995 recorded by the Chief Judicial Magistrate, Arrah in G.R. No. 1623 of 1994 whereby cognizance of offence against the petitioner under Sections 419, 420, 467, 468 and 471 of the Indian Penal Code was taken, as also to quash the entire criminal proceeding arising out of the aforesaid order which was then pending before Shri R.K. Tewary, the then Judicial Magistrate. 1st Class. Arrah.

2. The facts in brief are that the petitioner who claims to have been appointed as Basic Health Worker by the Chief Malaria Officer, Bihar, Patna. was working as such at Piro Block. It having transpired that the aforesaid appointment letter was fake and forged, F.I.R. for the same was lodged by the In charge Medical Officer at Piro in which the police, after investigation, submitted charge-sheet on which, after consideration of the same the learned Chief Judicial Magistrate, Arrah passed the impugned order.

3. The contentions of the learned Counsel for the petitioner are as follows:

(i) The erase diary, which has been received, shows that the Investigating Officer had time and again tried to obtain the signature of the then Chief Malaria Officer, Patna who is alleged to have signed over the appointment letter, but he failed to get the same. There-fore, there was no comparison of the admitted signature of the aforesaid official with the signature over the appointment letter, hence it cannot be said that the letter was forged.

(ii) Before appointment at Piro Block the petitioner was posted elsewhere from where he was transferred to Piro Block under genuine order of transfer issued by the then Chief Malaria Officer. Dr. D. Narayan, as admitted by the head clerk of that office. Devendra Prasad in para 41 of the case diary.

4. Learned Counsel also argued that in case of a public servant, a preliminary inquiry was necessary which was not done, for which learned Counsel has relied upon a decision reported in A.I.R. 1971 SC 520. It was also argued that since in the entire case diary, there is only opinion of the Investigating Officer that the signature on the forged letter was not that of the Chief Malaria Officer, without getting the two signatures compared by an expert, there was no chance of conviction in such a case, hence criminal proceeding against the petitioner was fit to be quashed. For this, learned Counsel has relied upon a judgment of the Supreme Court in the case of Madhavrao Jiwaji Rao Scindia and Anr. v. Sambhajirao Chandrajirao Angre and Ors. : 1988 CriLJ853 .

5. Learned Counsel for the State, on the other hand, has argued that scope of quashing a criminal prosecution at initial stage is limited one and can be exercised

only under extraordinary circumstances. Learned Counsel also submitted, with the help of the case diary, that there was enough material in the case diary to show that the letter was forged one. Taking through the statements of the present Chief Malaria Officer and other staff of his office as recorded in the case diary, the learned Counsel for the State has pointed out that from their statement, it was clear that memo No. 623 dated 2.4.1997 under which the letter of appointment purportedly was issued to the petitioner and some others was related, as per office documents and registers, to a letter issued to District Malaria Officer, Chaibasa in connection with sprinkling of D.D.T. Learned Counsel pointed out that it also was brought on the record that the aforesaid memo No. 623, which was issued to the District Malaria Officer at Chaibasa was actually dated 3.4.1987, not 2.4.1987 as shown in the alleged forged letter. Learned Counsel also pointed out that the Investigating Officer, as per case diary, itself, had obtained the admitted signatures of Dr. Narayan, the then Chief Malaria Officer, Patna which was sent by Dr. Naryana, through forwarding letter, to the Treasury Officer, Patna and to the Agent of the State Bank of India. The Investigating Officer then compared himself two signatures and has opined in the case, diary that the signatures were different. Insofar as the holding of preliminary inquiry is concerned, the learned Counsel for the State argued that since the officials concerned had found that the appointment letter itself was forged. the posting of the petitioner as a Government servant will be deemed to be illegal from the very beginning.

6. Now, it has to be seen as to whether on the evidence as aforesaid the prayer as made out in this petition can be allowed. In the case of Madhavrao Jiwaji Rao Scindia and Anr. (supra), it was also held by their Lordships that, the legal position was that when a prosecution at the initial stage was asked to be quashed, the test to be applied by the Court would be as to whether the uncontroverted allegations as made prima fade would made out an offence.

7. In the case of Rupan Deol Bajaj (Mrs) and Anr. v. Kanwar Pal Singh Gill and Anr. : 1996 CriLJ381 , their Lordships of the Supreme Court had cautioned that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection, actually in the rarest of rare cases. Their Lordships observed that the Court would not be justified in embarking upon an inquiry as to the

reliability or genuineness or otherwise of the allegations made in the F.I.R. or the complaint. It was observed that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice. For this, another decision of the Supreme Court in the case of *Stole of Maharashtra v. Ishwar Piraji Kalpatri and Ors.* : 1996 CriLJ1127 . may also be seen.

8. Learned Counsel for the State had submitted that it has come in the case diary that when compared with the documents available in the office of the Chief Malaria Officer, Bihar, the date of issuance of memo No. 623 differed and that the letter bearing the aforesaid memo number related to a letter sent to an Officer at Chaibasa relating to an altogether different subject.

9. it is true that it has come in the case diary that the subsequent transfer order was issued by the office of the Chief Malaria Officer but that transfer letter is not presently the matter in issue and its probative value can be assessed only in course of trial. There is some force in the argument of Sri M.S. Madhup. Sr. Advocate, appearing for the petitioner, that the admitted signatures of the then Chief Malaria Officer, which was obtained, should have been compared by an expert, but lack to that alone is not sufficient to hold that no prima facie case has been made out. The two sets of signatures may be considered by the trial Court, as submitted by Sri S.K.P. Sinha, A.P.P.

10. In the last, learned Counsel for the petitioner has drawn my attention to the order of this Court in C.W.J.C. No. 2167 of 1996 dated 28.11.1996 which was brought by this petitioner for payment of his salary, under which order the petitioner was also subsequently paid his salary, as submitted. However, the learned Counsel admitted that in that order this Court had not directed straightway for payment of the salary, but a direction was given to the competent authority to inquire into the matter relating to the forged appointment letter and if it was found that the letter was not forged, the petitioner should be allowed to receive salary, but if the contrary was found, the petitioner shall not be entitled to any salary-In that, order, criminal aspect of the matter was not in question.

11. In view of the aforesaid facts and circumstances of the case. I am of the view that this is not a lit case in which the powers of this Court under Section 482 of the

Cr.P.C. should be exercised.

12. In the result, this application fails and is dismissed.

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