

(2009) 01 PAT CK 0114

Patna High Court

Case No: Cr.WJC No. 1058 of 2007

Dr. Ashok Kumar

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision: Jan. 19, 2009**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 409, 420

Citation: (2009) 2 PLJR 781**Hon'ble Judges:** Samarendra Pratap Singh, J**Bench:** Single Bench

Judgement

@JUDGMENTTAG-ORDER

Samarendra Pratap Singh, J.

In the instant writ application the petitioner is the Principal of Kushwaha Somari Triloki College, Salempur (hereinafter to be referred to as "K.S.T. College"), in the District of Nalanda, established in the year, 1983. The College was granted affiliation by Magadh University on 14.3.1986. The College has been one of the centers for various examinations conducted by Bihar School Examination Board and other educational bodies. However, the District Magistrate, Nalanda, respondent No. 2, vide his letter dated 2nd March, 2006 blacklisted the College and cancelled the centre for holding Secondary Examination. The petitioner challenged the aforesaid order contained in Letter No. 824 dated 2.3.2006 passed in writ application being C.W.J.C. No. 4041 of 2006. The petitioner submitted therein that no irregularities in respect to any examination was ever complained by the Executive Magistrate or any of the Invigilators. In the aforesaid writ this Court observed that a college cannot by way of right claim its premises as centre for holding of Intermediate or Matriculation Examination. It is the discretion of the University or the concerned Board in consultation with the District Administration to choose a centre. However, if college is denied a centre for such examinations by the University or the Board on certain allegations, then this gives cause of action to it to challenge the same.

2. This Court vide order dated 29.8.2006 found that the allegations contained in the letter No. 824 dated 2.3.2006 was wholly unjustified and, as such quashed the aforesaid letter and directed the District Magistrate, Nalanda to compensate the college by making payment of Rs. 20,000/-. A copy of the order dated 29.8.2006 is annexed as Annexure-1 to this application.

3. The State filed L.P.A. No. 68 of 2006 which was dismissed for want of prosecution on 17.5.2007. It is not disputed that the M.J.C. application being M.J.C. No. 451/07 for its restoration is pending for consideration of this Court.

4. In the meantime, it appears that one Sanjay Kumar C/o Arjun Prasad, resident of Bharawn Par, Biharsharif, Nalanda, filed an application before the Collector, Biharsharif, making certain allegations against the petitioner, the Principal of the College. Pursuant to the aforesaid letter dated 11.10.2007, as contained in Annexure-1R/B, the District Magistrate, Nalanda, constituted an enquiry committee to look into the allegations against the Principal. The inquiry committee consisted of S.D.O., Biharsharif and two Executive Magistrates, Nalanda, namely, Sri Pankaj Kumar and Sri Manoj Kumar. The enquiry committee after making enquiry submitted its report dated 17.10.2007 which has been filed by the State Counsel. The Collector, in view of the report of the aforesaid enquiry committee vide his order dated 19.11.2007 contained in Memo No. 3417 dated 24.9.2007 directed to institute an F.I.R. Thereafter on the written report of the Executive Magistrates, Sri Pankaj Kumar and Sri Manoj Kumar, the F.I.R. being Noorsarai P.S. Case No. 177/07 dated 19.11.2007 was registered under Sections 409 and 420 of I.P.C. against the petitioner.

5. The petitioner has prayed for quashing the entire criminal proceeding including the F.I.R. on the ground that the same has been manipulated by the District Magistrate, Nalanda, in order to wreak vengeance, as he was directed to compensate the College by making a payment of Rs. 20,000/- in writ filed by him, within a period of one month from the date of the order. The petitioner had also filed contempt against him for violation of the order of the Court for not depositing the aforesaid amount. The D.M., Nalanda as such engineered an application against him for purpose of directing an enquiry against him.

6. The learned counsel submits that enquiry report submitted by the aforesaid three officers, too did not indict the petitioner as far as any financial discrepancy was involved. Furthermore the Enquiry team visited the College on 16.10.2007 and 17.10.2007, when the College itself was closed on eve of Durga Pooja. The enquiry report did not mention any financial irregularity. The LO. also not found any financial irregularity and the case diary prepared upto para 34 would also show that Sanjay Kumar was not examined till then.

7. An intervention application was filed by one Sanjay Kumar for being added as an intervenor-respondent being I.A. No. 575 of 2008.

8. In view of the fact that on his application an enquiry committee was set up, I deem it expedient that he be added as intervener-respondent and as such this interlocutory application stands allowed to the above extent.

9. After hearing the learned counsel for the petitioner, the State and the intervener-respondent, it cannot be completely ruled out at this stage that the F.I.R. was directed to be instituted not on account of bias as the D.M., Nalanda who ordered enquiry was directed to pay compensation on writ filed by the petitioner. This Court is of the view that the matter should be investigated by C.I.D. In the circumstances I direct the Secretary, Home Police as well as D.G.P., Bihar, to transfer the investigation of the case to the C.I.D.

10. In the facts and circumstances of the case, no coercive step would be taken against the petitioner till the submission of the final report. The C.I.D. will conclude the investigation preferably within a period of six months from the date of receipt of a copy of such notification transferring the case to it for investigation. This writ application is disposed of, with direction mentioned aforesaid.