

In Chamber

Case :- CRIMINAL MISC. WRIT PETITION No. - 4729 of 2024

Petitioner :- Suresh Kumar Mishra

Respondent :- State Of Up And 2 Others

Counsel for Petitioner :- Rudra Kant Mishra, Satya Prakash Pandey

Counsel for Respondent :- G.A.

Hon'ble Siddharth, J.

Hon'ble Vinod Diwakar, J.

(Per se Hon'ble Vinod Diwakar, J.)

1. Heard learned counsel for the petitioner, learned A.G.A. for the State and perused the record.
2. The petitioner has approached this Court through the instant writ petition to issue a writ, order or direction in the nature of mandamus to quash the impugned F.I.R. dated 27.4.20223 bearing Case Crime No.236 of 2023, under sections 419, 420, 467, 468, 471, 120B I.P.C., registered at Police Station Robertsganj, District Sonebhadra, and further not to take any coercive action against the petitioner.
3. On examination of the impugned F.I.R., it reveals that a written complaint was made to the S.H.O., P.S. Sonebhadra by the petitioner, who was working as Senior Assistant Clerk in the Court of learned Chief Judicial Magistrate, Sonebhadra- subsequently, the petitioner turned to be the main accused in the instant F.I.R.- *inter-alia* stating, in brief, a list of 629 case registered under Motor Vehicles Act by the ARTO Mirzapur for various violations was received in the Court of learned Chief Judicial Magistrate, Sonebhadra for conducting the

proceeding in accordance with the provision of Motor Vehicles Act. As per the instructions from the Court, he matched the list of 629 cases with the fine register, receipt book and other records of the Court and found that 304 cases had not been dealt with by the Court and the Challan/fine receipts were found to be forged. On further examination, in seven cases, clerical mistakes were observed; in the rest of the cases, it was revealed that a forgery had been committed in the original receipt, and the amount of the fine was found to be altered/modified clandestinely. In most cases, such forged receipts were issued on public holidays, during the pandemic, when the Court was in recess, or when the Presiding Officer was on leave.

4. On receipt of the written complaint by the petitioner, the police registered the impugned F.I.R. and started the investigation. On perusal of the case diaries produced by the State counsel, it's revealed that the roles of the eight persons have surfaced during the investigation, including the petitioner, and therefore, all of them have been arrayed as accused. Out of eight, two persons have been arrested by the police; two have got interim bail; one has died, and three accused persons' arrest is yet to be effected. The three accused, including the petitioner, are absconding and not cooperating with the investigation. Therefore, police are conducting raids at their residence and other places of possible hide-outs.

5. The gist of the allegation is that while working as Senior Assistant in the Court of Chief Judicial Magistrate, Sonebhadra, from October, 2020 till March, 2023, the petitioner, in connivance with the staff and officers of the ARTO, released 304 vehicles against forged receipts, and caused massive loss to the government treasury by playing fraud upon the court proceedings.

6. The co-accused Prabhat Kumar Sharma, who was working under the supervision of the petitioner, was arrested on 13.12.2023

and on his statement role of the petitioner has surfaced. In the account of accused Prabhat Sharma through e-banking, *phone-pe*, and *google-pe*, numerous truck owners and Advocates have deposited a considerable amount to the extent of Rs.20 lacs. It is further revealed that after depositing the cash in his account, it was withdrawn on the same day and handed over to the petitioner. The forged challan receipts used to release the vehicle by the office of ARTO were used as genuine and uploaded on the R.T.O. website by the petitioner and his staff in collusion with the staff/employee of the ARTO office.

7. A disclosure statement of the accused, Virendra Kumar @ Guddu Patel, was also recorded; he *inter-alia* confessed his role in the commission of a crime and stated that he has worked as a Clerk in the R.T.O. during 2020-2022, as he had good knowledge of the computer. Therefore, he assisted Vinod Srivastava, Harish Chandra, Ajit Mishra and Pankaj Patel, who also worked in the ARTO office. Ajit Mishra's work was to bring documents from the courts; on Vinod Srivastava and Harish Chandra's instruction, he collected fine from the vehicles' owners, and the same was distributed among the accused persons *inter-se*. A significant share was deposited with Suresh Mishra, the petitioner working in the C.J.M. court. After receipt of his share, the petitioner issued forged duplicate receipts to release the vehicles.

8. The Investigating Officer also recorded Jitendra Maurya's statement, which revealed the Petitioner's Specific Role. Mr. Jitendra Maurya was the owner of the motorcycle bearing UP-64-S-4904, along with other truck and bike owners, and in his statement, the petitioner's role has also been revealed.

9. Learned counsel for the petitioner *inter-alia* submits (i) the petitioner is a complainant in the present case; therefore, he cannot be implicated as an accused; (ii) the petitioner has been exonerated in the Departmental Inquiry conducted by Smt. Niharika Chauhan, learned

Special Judge, POCSO Act, Sonbhadra and relied upon a letter dated 26.7.2023 issued by the Confidential Section of this Court; **(iii)** there is no incriminating evidence come forth during the investigation against the petitioner; **(iv)** the petitioner has been falsely implicated in the instant case merely on the statement of co-accused Prabhat Sharma, who was working under the control and supervision of petitioner; **(v)** it is a case of malicious prosecution and there is no criminal history of any kind against the petitioner; **(vi)** petitioner is working as Central Nazir in the Judgeship of District Sonbhadra and undertakes to cooperate with the investigation.

10. Learned counsel for the petitioner has heavily relied upon a letter dated 26.7.2023 in which he was exonerated from all the charges in the administrative inquiry; therefore, sensing the seriousness of the issue, this Court deemed it appropriate to look into the inquiry report and summoned the proceedings of the inquiry vide order dated 15.4.2024 from the District Court, Sonbhadra, to reach a just and logical conclusion.

11. On examination of the record, it's revealed that the petitioner has been exonerated from the charges levelled by Shri Anil Kumar Singh, practising Advocate in District Court, Sonebhadra, on whose complaint the Hon'ble Administrative Judge, District Sonebhadra, directed the District Judge, Sonebhadra, to initiate inquiry against the petitioner. Needless to mention, Shri Anil Kumar Singh, Advocate, who was examined as CW-1 on 29.3.2023, resiled from his earlier statement dated 29.3.2023 and "*not pressed*" his complaint in his supplementary statement recorded on 27.4.2023.

12. The law is settled in this regard, and the Supreme Court has taken a consistent view in a series of judgments that it is beyond debate that criminal proceedings are distinct from civil proceedings. It is possible in disciplinary matters to establish charges against a

delinquent official by a preponderance of probabilities and consequently terminate his services. But the same set of evidence may not be sufficient to take away his liberty under our criminal law jurisprudence¹. Such distinction between standards of proof amongst civil and criminal litigation is deliberate, given the differences in stakes, the power imbalance between the parties and the social costs of an erroneous decision. Thus, in a disciplinary enquiry, strict rules of evidence and procedure of a criminal trial are inapplicable, like, statements made before enquiry officers can be relied upon in certain instances².

13. The nagging question before this Court is whether the petitioner's case falls under the category of cases illustrated by *State of Haryana and others v. Bhajan Lal and others*³ case for exercising the extraordinary power of the High Court under Article 226 of the Constitution of India.

14. We have gone through the entire materials placed before us scrupulously, but we are not persuaded to hold that the allegations made in the impugned F.I.R. and the material collected during the investigation lacks *bonafide* making the entire proceedings vitiated under law. The petitioner is on the run, and the police are conducting raids at the possible hide-outs of the petitioner. Such a large-scale organized fraud can't be executed without the active connivance of the office of the Chief Judicial Magistrate, Shonbhadra. As the investigation is at the pre-mature stage and the role of the petitioner has surfaced as a kingpin in executing the crime, therefore, it's not possible to anticipate the result of the investigation and render a finding on the question of malate ideas on the material at present available. Therefore, we are unable to see any force in the contentions

1 *Karnataka SRTC v. M.G. Vittal Rao*, (2012) 1 SCC 442

2 *Ajit Kumar Nag v. Indian Oil Corpn. Ltd* (2005) 7 SCC 764

3 *1992 Supp. (1) SCC 335*

of the learned counsel for the petitioner. Moreover, there are serious allegations which have to be weighed after the evidence is collected. It is a well-established proposition of law that a criminal investigation, if otherwise justifiable, does not become vitiated on account of the departmental inquiry.

15. In the backdrop of the material collected by the Investigating Officer *qua* petitioner, we are not persuaded to hold that the investigation is manifestly attended with *malafide* and/or the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the petitioner and with a view to spite him due to private and personal grudge. At this stage, we cannot embark upon a roving inquiry as to the reliability, genuineness, or otherwise correctness of the allegations made in the F.I.R., and the extraordinary and inherent powers do not confer an arbitrary jurisdiction on this Court to act to its whim or caprice.

16. The ramifications of fraud by the court staff are far-reaching and detrimental to the justice system and erode the public trust in the judiciary. When court staff abuse their authority for personal gain, it compromises the integrity of judicial decisions and raises questions about the legitimacy of legal proceedings.

17. Reverting to the materials placed before us, which surfaced during the investigation, in our considered opinion, the allegations against the petitioner do clearly constitute a cognizable offence justifying the registration of F.I.R. and the investigation thereon, this case does not fall under any of the categories of the cases formulated in *Bhajan Lal's case (supra)* calling for the exercise of extraordinary jurisdiction to the High Court to quash the F.I.R. itself.

18. As the petitioner is not cooperating with the Investigating Officer, the police are conducting raids on his hide-outs; there is

serious apprehension to the police that the petitioner may tamper with the evidence and influence the witnesses to be conversant with the proceedings of the criminal case, as had worked in the Court of Chief Judicial Magistrate and presently working/posted as Central Nazir in District Court, Sonebhadra; therefore, the prayer for a stay on arrest is hereby declined.

19. As delineated herein above, *prima-facie*, the allegations are serious, and the potential accused are resourceful. Therefore, a thorough and unbiased investigation shall be conducted without being influenced by external influences for extraneous reasons. The I.G. Police, Varanasi Zone shall supervise the overall investigation, and the Superintendent of Police, Sonebhadra in co-ordination with DIG Police, Mirzapur Range shall supervise the day-to-day investigation.

20. The instant writ petition is dismissed, with the direction to complete the investigation at the earliest. Furthermore, it is directed that the I.G. Police, Varanasi Zone shall ensure that the Investigating Officer avails all available scientific and forensic assistance in collecting evidence, as permissible under law. If allegations of corruption and criminal breach of trust by a government servant emerge during the investigation, all relevant aspects shall be thoroughly examined by the police.

21. The observations made herein above shall have no bearing on an ongoing investigation.

22. Let a copy of this order be transmitted to the I.G. Police, Varanasi Zone and SSP Sonebhadra for immediate and effective compliance.

Order Date :- 7.5.2024

Anil K. Sharma

(Vinod Diwakar, J.) (Siddharth, J.)