IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No.1058 of 2020

(Against the Order dated 30.09.2019 passed by learned A.J.C.-XVI-cum-Special Judge, C.B.I., Ranchi in R.C. Case No.04(A)/2013 R)

Dr. Satish Kumar Singh aged about 60 yrs., Son of Late Janardan Prasad Singh, resident of L-12, Harmu Housing Colony, Saket Vihar, P.O. & P.S.- Argora, District.- Ranchi .... …. Petitioner

Versus

The Union of India through C.B.I. ....Opposite Party

For the Petitioner : Mr. Rajiv N. Prasad, Advocate

For the C.B.I. : Mr. B. K. Prasad, Advocate

PRESENT

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

C.A.V. ON 18.01.2021 PRONOUNCED ON 17.04.2021

Anil Kumar Choudhary, J.

Heard the parties through video conferencing.

2. This Criminal Miscellaneous Petition has been filed with a prayer for quashing the entire criminal proceeding including the Order dated 30.09.2019 taking cognizance against the petitioner for the offences punishable under Section 120 B, 201, 420, 468, 471 of the Indian Penal Code and under Section 13 (2) read with Section 13 (1) (d) of the Prevention of Corruption Act in R.C. Case No.04(A)/2013- R passed by learned A.J.C.-XVI-cum-Special Judge, C.B.I., Ranchi.

3. The brief facts of the case is that the co-accused persons respectively being the member, examination controller-cum-secretary of the Jharkhand Public Service Commission thus public servants along with a private person of M/s. Global Informatics and inter alia the petitioner entered into a criminal conspiracy and in pursuance of the said criminal

conspiracy, the public servants in abuse of their respective official positions dishonestly and fraudulently manipulated/allowed to manipulate the merit list, assessment charts of the selection process of lecturers for the 3 universities of Jharkhand through Jharkhand Eligibility Test (JET),2006 to extend undue benefit to their preferred candidates including the petitioner and inter alia dishonestly and fraudulently the petitioner was declared qualified even though the petitioner got marks less than the minimum marks required for the said examination and for this purpose marks in the assessment charts of the petitioner was increased to extend undue favour to the petitioner which facilitated the selection of the petitioner as a lecturer of Psychology. The specific allegation against the petitioner is that the petitioner was declared selected on the basis of 54 marks for his career and 26.5 marks for interview i.e. total 80.5 marks. The Central Forensic Science Laboratory deciphered that the petitioner was initially given 26 marks by one expert which was manipulated to 36 in the Assessment Chart and as such, but for the said manipulation, the petitioner was only entitled to get 78 whereas the minimum marks required was 80 and only because of the said manipulation done in criminal conspiracy with the co-accused public servants the petitioner could succeed in getting selected as a lecturer in Psychology. The co-accused member of Jharkhand Public Service Commission who was the chairman of the interview board in respect of the interview of the petitioner for the said purpose, in criminal conspiracy with the petitioner, did the manipulation. After completion of investigation of the case, the Central Bureau of Investigation submitted charge sheet inter alia finding that the petitioner along with the co-accused persons having committed the offences punishable under Sections 120 B, 201, 420, 468, 471 of the Indian Penal Code and under Section 13 (2) read with Section 13 (1) (d) of the Prevention of Corruption Act, 1988. The learned trial court on perusal of the relevant documents found that offences punishable under Sections 120 B, 201, 420, 468, 471 of the Indian Penal Code and under Section 13 (2) read with Section 13 (1) (d) of the Prevention of Corruption Act is made out inter alia against the

petitioner and vide order dated 30.09.2019 took cognizance for the said offences inter alia against the petitioner.

4. It is submitted by the learned counsel for the petitioner that the petitioner was not named in the FIR and the allegation against the petitioner is false. It is then submitted that though after being appointed as a lecturer the petitioner has become a Public Servant but no sanction for prosecution has been obtained for prosecuting the petitioner. It is next submitted that none of the offences alleged is made out against the petitioner. It is also submitted that the order taking cognizance is cryptic and nonspeaking hence it is submitted that the impugned order be set aside.

5. The learned counsel for the petitioner relied upon the judgment of Hon'ble Supreme Court of India in the case of ***Sunil Bharti Mittal v. CBI, (2015) 4 SCC 609,*** paragraph 49 of which reads as under:

> ***"49.*** *Cognizance of an offence and prosecution of an offender are two different things. Section 190 of the Code empowered taking cognizance of an offence and not to deal with offenders. Therefore, cognizance can be taken even if offender is not known or named when the complaint is filed or FIR registered. Their names may transpire during investigation or afterwards."*

6. The learned counsel for the petitioner next relied upon the judgment of the Hon'ble Supreme Court of India in the case of ***State of W.B. & Another v. Mohd. Khalid & Others, (1995) 1 SCC 684,*** paragraph 44 of which reads as under:

> ***"44.*** *Cognizance is defined in Wharton's Law Lexicon 14th Edn., at page 209. It reads:*
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> *"Cognizance (Judicial), knowledge upon which a judge is bound to act without having it proved in evidence: as the public statutes of the realm, the ancient history of the realm, the order and course of proceedings in Parliament, the privileges of the House of Commons, the existence of war with a foreign State, the several seals of the King, the Supreme Court and its jurisdiction, and many other things. A judge is not bound to take cognizance of current events, however notorious, nor of the law of other countries."*
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> *It has, thus, reference to the hearing and determination of the case in connection with an offence. By the impugned judgment the High Court has quashed the orders of sanction and the Designated Court taking cognizance in the matter."*

7. The learned counsel for the petitioner further relied upon the order of a co-ordinate Bench of this court in the case of ***Amresh Kumar Dhiraj and Others vs. State of Jharkhand and Another*** reported in ***2019 SCC OnLine Jhar 2775***, the paragraphs 10, 14 and 22 of which reads as under :

> "**10.** *The word "cognizance" is not defined in the Code of Criminal Procedure. In the case of "S.K. Sinha, Chief Enforcement Officer v. Videocon International Ltd., reported in (2008) 2 SCC 492", the Hon'ble Supreme Court in Para-19 has held as follows:–*
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> > ***"19.*** *The expression 'cognizance' has not been defined in the Code. But the word (cognizance) is of indefinite import. It has no esoteric or mystic significance in criminal law. It merely means 'become aware of' and when used with reference to a court or a Judge, it cannot 'to take notice of judicially'. It indicates the point when a court or a Magistrate takes judicial notice of an offence with a view to initiating proceedings in respect of such offence said to have been committed by someone."*
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> ***"14.*** *It is clear that it is not necessary to pass a detail order giving detail reasons while taking cognizance. The order taking cognizance should only reflect application of judicial mind. If the Magistrate after going through the complaint petition and the statements of the other witnesses or after going through the FIR, case diary and charge sheet or the complaint, as the case may be comes to a conclusion that the offence is made out, he is bound to take cognizance of the offence. The order should reflect application of judicial mind to the extent that from the FIR, the case diary or complaint, offence is made out."*
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> ***"22.*** *In the case of "Sunil Bharti Mittal v. CBI, reported in (2015) 4 SCC 609", the Hon'ble Supreme Court has held that an opinion to proceed further against the accused is to be stated in the order itself. Further in the case of "Anil Kumar v. M.K. Aiyappa, reported in (2013) 10 SCC 705" at para-11 the Hon'ble Supreme Court while dealing with the scope of Section 156(3) Cr.P.C. has held that the application of mind by the Magistrate should be reflected in the order. The mere statement that he has gone through the complaint, documents and heard the complainant, as such, as reflected in the order, will not be sufficient. The order is liable to be set aside if no reason is given therein while coming to the conclusion that there is prima facie case against the accused, though detailed reasons need not to be given. The proper satisfaction should be recorded by the Judge."* (Emphasis supplied)

8. It is then submitted by the learned counsel for the petitioner that the impugned order being not sustainable in law be set aside and the entire criminal proceeding against the petitioner be quashed.

9. The learned counsel for the Central Bureau of Investigation on the other hand submitted that the average marks given by the experts in the interview to the petitioner was worked out at 26.5 and this average mark of 26.5 was calculated being the mean of the different marks given by different experts and was arrived at after manipulating the initially given 26 marks by one of the experts to 36. Hence there is no merit in the contention of the petitioner that no illegality was done in his selection

process. It is then submitted by the learned counsel for the Central Bureau of Investigation that as at the time of his selection when the offence was committed the petitioner was not a Public Servant hence no sanction for prosecution is required for prosecution of the petitioner. It is next submitted by the learned counsel for the Central Bureau of Investigation that the impugned order taking cognizance categorically reflects application of judicial mind on the part of the learned trial court and there is no illegality in the impugned order. It is lastly submitted that this petition being without any merit be dismissed.

10. Having heard the submissions made at the Bar and after going through the material in the record, it is crystal clear that this a clear cut case against the petitioner that the petitioner in criminal conspiracy with the co-accused public servant member and controller of examinations of the Jharkhand Public Service Commission got the marks awarded in the interview by one of the experts manipulated from 26 to 36 so as to bring the average of the marks given by the experts to 26.5.

11. It is a settled principle of law that cognizance is in regard to the offence and not the offender. At the stage of taking cognizance, the court concerned is not required to consider the defence version or materials or arguments in that respect nor is it required to evaluate the merits of the materials or evidence of the complainant, because the Magistrate must not undertake the exercise to find out at this stage whether the materials will lead to conviction or not. Taking cognizance does not involve any formal action or indeed action of any kind but occurs as soon as a Magistrate as such applies his mind to the suspected commission of an offence. Taking cognizance of an offence is not the same thing as issuance of process, as has been observed by the Hon'ble Supreme Court of India in the case of ***State of Karnataka & Another v. Pastor P. Raju, (2006) 6 SCC 728*** paragraphs 10 and 13 of which read as under:

> ***10.*** *Several provisions in Chapter XIV of the Code of Criminal Procedure use the word "cognizance". The very first section in the said Chapter viz. Section 190 lays down how cognizance of offences will be taken by a Magistrate. However, the word "cognizance" has not been defined in the Code of Criminal Procedure. The dictionary meaning of the word "cognizance" is – "judicial hearing of a matter". The meaning of the*

word has been explained by judicial pronouncements and it has acquired a definite connotation. The earliest decision of this Court on the point is R.R. Chari v. State of U.P. wherein it was held: (SCR p. 320)

"… 'taking cognizance does not involve any formal action or indeed action of any kind but occurs as soon as a Magistrate as such applies his mind to the suspected commission of an offence."

***13.** It is necessary to mention here that taking cognizance of an offence is not the same thing as issuance of process. Cognizance is taken at the initial stage when the Magistrate applies his judicial mind to the facts mentioned in a complaint or to a police report or upon information received from any other person that an offence has been committed. The issuance of process is at a subsequent stage when after considering the material placed before it the court decides to proceed against the offenders against whom a prima facie case is made out.* (Emphasis supplied)

It is needless to mention that in the case of ***Sunil Bharti Mittal v. CBI, reported in (2015) 4 SCC 609,*** the Supreme Court of India was also considering issuance of process in a complaint case.

12. Hence in view of the overwhelming material in the record, this court is of the considered view that there is ample material in the record for the learned trial court to take cognizance for the offence punishable under Sections 120 B, 201, 420, 468, 471 of the Indian Penal Code and under Section 13 (2) read with Section 13 (1) (d) of the Prevention of Corruption Act, 1988 and that the uncontroverted allegations, as made, establish a prima facie case against the petitioner of having committed the said offence. Accordingly, this criminal miscellaneous petition being without any merit is dismissed.

(Anil Kumar Choudhary, J.)

In the High Court of Jharkhand, Ranchi
Dated 17/04/2021
AFR/ Animesh