

Judgment reserved on 31.05.2019

Judgment delivered on 25.07.2019

Court No. - 70

Case :- APPLICATION U/S 482 No. - 16228 of 2019

Applicant :- Naval Dey Bharti

Opposite Party :- State Of U.P. And Another

Counsel for Applicant :- Upendra Kumar

Counsel for Opposite Party :- G.A., Satish Chaturvedi

Hon'ble Sanjay Kumar Singh, J.

1. Heard Sri Nipun Singh and Sri Upendra Kumar Verma, learned counsel for the applicant, Sri N.D.Rai, learned Additional Government Advocate for opposite party nos. 1 & 3 and Sri R.K.Ojha, learned Senior Advocate assisted by Sri Satish Chaturvedi, learned counsel appearing for the opposite party no.2 and perused the record with the assistance of learned counsel for the parties.
2. This application under Section 482 Cr.P.C. has been preferred by the applicant (Naval Dey Bharti) with a prayer to quash the charge-sheet dated 29.01.2017 arising out of Case Crime No.337 of 2016, summoning order dated 14.06.2017 as well as proceedings of Case No.396 of 2017 (State vs. Naval Dey Bharti), under Section 3/10 Examination Act, 1982, Police Station-Kydganj, District Allahabad, pending in the Court of Judicial Magistrate-I, Allahabad.

Basic Facts:-

3. Filtering out unnecessary details, brief facts of the case as emerges on record are that on written report of opposite party no.2 (Ram Nayan Dwivedi, the Principal of K.N. Katju Inter College, Kydganj, Allahabad), FIR was registered on 21.09.2016 as Case Crime No.0337 of 2016, under section 3/10 Examination Act, 1982 against the

applicant at Police Station- Kydganj, District- Allahabad. In the said FIR allegation has been levelled against the applicant that on 21.09.2016, the applicant appeared in Combined State/Upper Subordinate Services Main Examination, 2016 conducted in second shift between 2.00 p.m. to 5.00 p.m. in Room No.5 of K.N.Katju Inter College, Allahabad. On completion of examination she did not submit her answer sheet to the invigilators, instead left the examination room alongwith her answer sheet of essay. Such information was given by the assistant teachers namely Ashok Kumar Tiwari and Sapna Mazumdar, who were on duty as invigilators in Room No.5 to the Principal Satyendra Tripathi (Statics Magistrate) and representatives of the Commission. On the aforesaid information, immediately the main gate of the school was closed with the help of police personnel posted there. Thereafter efforts were made to trace the applicant but she had gone out of the gate by that time.

4. The opposite party no.3 was the Investigating Officer and conducted the investigation of this case. The detail of investigation in the matter are as follows:-
 - (i) On 21.09.2016 in C.D.No.I, the Investigating Officer has made an entry of FIR and statement of scribe of the FIR.
 - (ii) On 20.10.2016 in C.D.No.II, the Investigating Officer has made an entry that he went to the college to meet the Principal/opposite party no.2 but he was not there at that time.
 - (iii) On 14.11.2016 in C.D. No.III, the Investigating Officer has made an entry that he went to meet the

Principal of the College/opposite party no.2 but he was told that principal is not available.

(iv) On 03.12.2016 in C.D. No.IV, the Investigating Officer has made an entry of the statement under Section 161 Cr.P.C. of Ram Nayan Dwivedi (informant/opposite party no.2), in which he has mentioned the date of examination / incident as 03.10.2016, while the date of incident was 21.09.2016.

(v) On 16.12.2016 in C.D.No.V, the investigating officer has made an entry that he contacted the applicant on her telephone to record her statement but she said that she is out of station, therefore, she is unable to get her statement recorded.

(vi) On 05.01.2017 in C.D.No.VI, the Investigating Officer made an entry of the statement under section 161 Cr.P.C. of invigilators Ashok Kumar Tiwari and Smt.Swapna Majumdar as well as statement of accused/applicant.

(vii) On 29.01.2017 in C.D.No.VII, the Investigating Officer has made an entry of concluding the investigation by mentioning that after completion of investigation, offence under section 3/10 of Examination Act is made out against the accused/applicant (Naval Dey Bharti).

5. On 19.01.2017 the investigating officer submitted the impugned charge-sheet against the applicant under Section 3/10 of the Examination Act, 1982 on which Judicial Magistrate First took cognizance on 14.06.2017 and by separate order dated 14.06.2017 the applicant has been summoned by the Judicial Magistrate, Court No.1, Allahabad to face trial.

6. In the aforesaid background of the fact, the applicant has preferred the present application challenging the aforesaid impugned charge-sheet dated 29.01.2017.
7. The applicant has also filed impleadment application dated 28.04.2019 along with supplementary affidavit for impleading the Investigating Officer Shiv Charan Ram, Sub-Inspector through Director General of Police, U.P. as opposite party no.3, which was allowed vide order dated 30.04.2019 of this Court, which is reproduced herein below:-

“Impleadment application dated 28.04.2019 along with Supplementary affidavit filed on behalf of applicant for impleading Shiv Charan Ram, Sub Inspector, No. 960550137, through Director General of Police, Uttar Pradesh, as opposite party no. 3, is taken on record.

Learned AGA has no objection to implead Shiv Charan Ram, Investigating Officer of this case as opposite party no. 3. In view of the above, impleadment application dated 28.04.2019 is allowed. Applicant is directed to carry out the necessary amendment within three days in accordance with law.

On 25.04.2019 on the request of learned Additional Government Advocate, time was allowed to seek instructions in the matter whether on the date of lodging FIR dated 21.09.2016 Examination Act, 1982 was in existence or not. Pursuant to order dated 25.04.2019 learned Additional Government Advocate after seeking instructions from opposite party No. 3 (Investigating Officer) informed this Court that there was no Act like

Examination Act, 1982 at the time of lodging F.I.R. and submitting charge sheet in this case.

It is very strange that impugned FIR dated 21.09.2016 has been lodged against the applicant under Section 3/10 Examination Act, 1982, while no such Act was in existence at the time of lodging FIR dated 21.09.2016 and at the time of submitting the charge sheet dated 29.01.2017 under Section 3/10 of Examination Act.

Considering the facts and circumstances of the case this Court feels that before passing any order in the matter, it is necessary to give an opportunity of hearing to the opposite parties.

Notice on behalf of the opposite party no. 1 is accepted by the learned AGA.

Let notice be issued to the opposite parties no. 2 and 3 fixing 21.05.2019.

Opposite parties may file counter affidavit on or before the next date of listing, if they so desire.

Steps be taken within 4 days.

List this case on 21.05.2019 as fresh, before the appropriate Bench along with report of service of notice upon opposite party nos. 2 and 3.

Copy of this order be given to learned AGA for communication of this order to opposite party nos. 2 and 3. On the next date of listing, opposite party nos. 2 and 3 shall appear in person before this Court.”

8. On the next date i.e. 21.05.2019, the opposite party nos. 2 & 3 appeared in person before this Court but did not file counter affidavit, therefore on 21.05.2019 one more

opportunity was given to them to file counter affidavit in the matter. Thereafter opposite party no.2 has filed counter affidavit dated 30.05.2019 and opposite party no.3 Investigating Officer has filed short counter affidavit dated 30.05.2019. The applicant has also filed rejoinder affidavit/reply against the counter affidavit of opposite party no.2 and short counter affidavit of opposite party no.3.

Submissions on behalf of the applicant:-

9. Assailing the aforesaid impugned charge sheet dated 29.01.2017, summoning order dated 14.06.2017 and further criminal proceedings pursuant thereto against the applicant, learned counsel for the applicant submitted that :-

(9.1) The applicant has been falsely implicated in this case.

(9.2) The allegations levelled against the applicant are imaginary and based on concocted facts, which are against the evidence on record. In fact the invigilators and other person concerned did not discharge their duty and in order to save their skin lodged the impugned FIR without any material and corroborative evidence against the applicant.

(9.3) Much emphasis have been given on the point that there was no occasion for the applicant to take away the answer book of essay because the applicant is a meritorious student. It is submitted that the applicant has to her credit an unblemished academic record and she had achieved academic excellence after very hard work despite the fact that she belongs to lower strata. The academic achievements of the applicant are as follows:-

(a) Applicant passed her Bachelor of Science Degree Course (B.Sc) in 1st Division.

(b) Applicant passed her Master of Science (M.Sc) course from Babasaheb Bhimrao Ambedkar University, Lucknow and was also awarded Gold Medal alongwith certificate of merit by the University in the year 2010.

(c) Applicant passed the National Eligibility Test (NET) for Lecturer/Assistant Professor Examination in the year 2011.

(d) The Vice Chancellor of Babasaheb Bhimrao Ambedkar University, Lucknow awarded applicant the degree of Doctor of Philosophy (Ph.D.) after applicant successfully submitted her thesis and completed all the requirement for the degree course in year 2016.

(e) With effect from 04.11.2015 applicant is working as guest faculty at Babasaheb Bhimrao Ambedkar University, Lucknow for the course namely Bachelor of Vocational Course (B.Voc.) in Floriculture and Landscape gardening in the department of applied Plant Science.

(9.4) The applicant in pursuance of her ambition of becoming a civil service applied for PCS Examination, 2016 and cleared the preliminary examination in her first attempt and was appearing in the PCS Main Examination, 2016. She was allotted Dr. K.N. Katju College as her examination centre.

(9.5) On 20.09.2019 the applicant participated in the said examination for General Hindi (CONV) in first meeting,

thereafter she appeared in written examination in second meeting for the Hindi Essay (CONV) Examination between 2.00 p.m. to 5.00 p.m. and submitted her answer sheet to the invigilator concerned and thereafter she was permitted to leave the examination centre along with other candidates.

(9.6) It is further submitted that the applicant appeared in remaining optional subject of Botany Paper-Ist and Botany Paper-II on 03.10.2016 at the U.P. Public Service Commission, as such, she attended all her written examination and was very much hopeful of clearing the main examination also.

(9.7) On 15.12.2016, a highly belated notice was issued by the opposite party no.3 to the applicant making allegation that she while appearing in second meeting examination of PCS Main on 21.09.2016 for Hindi essay paper, had taken the answer booklet with her instead of depositing the answer booklet to the invigilators. The aforesaid notice dated 15.12.2016 was received by the applicant on 23.12.2016. The applicant after receiving and going through the contents of the said notice was shocked. She immediately submitted her reply on 24.12.2016 denying the allegations levelled against her. The said reply dated 24.12.2016 of the applicant is reproduced herein below :-

“महोदय,

कृपया आप अपने उपरोक्त संदर्भित पत्र का अवलोकन करने की कृपा करें। उक्त के संबंध में अवगत कराना है कि उक्त पत्र 22/12/2016 को काफी विलंब से मेरे स्थायी आवास रायबरेली पर मेरी मां को हस्तगत कराया गया क्योंकि मैं वर्तमान में बाबा

साहब भीमराव अम्बेडकर विश्वविद्यालय लखनऊ मे गेस्ट फेकल्टी के रुप में सहायक प्रोफेसर के पद पर कार्यरत हूं। पत्र प्राप्ति के बाद मुझको फोन से जानकारी हुई तो मै 23.12.2016 को अपने स्थायी निवास रायबरेली आई, इसलिए कारण बताओ नोटिस का स्पष्टीकरण कुछ विलंब से प्रेषित किया जा पा रहा है।

कारण बताओ नोटिस मे मुझ पर दिनांक 21.09.2016 को पी0सी0 एस0 मेन्स 2016 की द्वितीय पाली की परीक्षा मे अपनी निबंध विषय की उत्तर पुस्तिका को निरीक्षकों के पास जमा न करके उसे लेकर कथित रुप से भाग जाने का आरोप लगाया गया है। यह आरोप गलत है क्योंकि मै उत्तर पुस्तिका को कक्ष निरीक्षका मैडम को सौंप कर ही कक्षा के बाहर गई हूं। अगर मै उत्तर पुस्तिका लेकर भागती तो मैडम के शोर मचाने पर मुझे दूसरे कक्ष निरीक्षक द्वारा पकड लिया जाता और अगर किसी तरह कमरे के बाहर भी हो जाती तो सिक्योरिटी मे लगे पुलिस कर्मी पकड सकते थे। इस तरह से मेरे द्वारा सभी अनुदेशों का पालन पूरी तरह से किया गया है। और किसी भी अनुदेशों का उल्लंघन नहीं किया गया। इस तरह मेरे द्वारा कोई दुराशयपूर्ण कृत्य नहीं किया गया। जब तक कोई दोष सिद्ध नहीं किया जाता है तब तक किसी तरह के दण्ड का कोई औचित्य नहीं है। इस तरह मै पूरी तरह से निर्दोष हूं और मेरे विरुद्ध किसी तरह की कार्यवाही मेरे साथ अन्याय होगी। अगर कोई तथ्य आयोग की नजर में अस्पष्ट रह गया हो तो 05.01.2017 को व्यक्तिगत सुनवाई के समय मै उसे स्पष्ट कर दूंगी। न्याय की अपेक्षा में।”

(9.8) It is submitted that later on vide order dated 10.02.2017, the controller of the examination of U.P. Public Service Commission cancelled the candidature of the applicant for PCS Examination 2016 and debarred her for a period of one year with effect from 15.12.2016.

(9.9) The applicant has challenged the order dated 10.02.2017 in Writ Petition No.18667 of 2017 which is still pending. It is pointed that in the said writ petition, counter affidavit on behalf of Public Service Examination was sworn in August 2017 but in the said counter affidavit there was no mention about the impugned charge sheet dated 29.01.2017 submitted by the police under section 3/10 of the Examination Act, 1982 against the applicant.

(9.10)It is submitted that the investigating officer did not conduct fair investigation and without applying his mind submitted the charge sheet in arbitrary manner without any iota of credible evidence against the applicant.

(9.11)It is also submitted that there are major contradictions in the statement of informant and invigilators Ashok Kumar Tiwari and Smt. Sapna Majumdar. They have also improved the prosecution case by setting up a new story. They have further come up with the stand that the applicant ran away from Room No. 5 of the examination centre after opening the back door of the examination room, whereas in fact, there was no back door in Room No.5, as alleged by the invigilators, which is clear from the site plan prepared by the investigating officer.

(9.12)Learned counsel for the applicant has very much hammered on the issue that the impugned FIR was registered and charge sheet has been submitted under section 3/10 of the Examination Act, 1982 while in the State of U.P. there was no such Act in the name of Examination Act, 1982, therefore, the entire criminal

proceeding pursuant to impugned charge sheet dated 29.01.2017 is abuse of the process of the Court.

(9.13) Last plunk of the submission of the learned counsel for the applicant is that the Judicial Magistrate Court No.1, Allahabad also did not apply his judicial mind at the time of taking cognizance on the impugned charge sheet and has also passed the summoning order dated 14.06.2017 in arbitrary manner without applying his mind on an already printed proforma by filling up the gaps. Therefore, in the present case, the impugned charge sheet, summoning order and all further proceeding pursuant thereto is abuse of the process of the Court and is liable to be quashed by this Court. Lastly it is urged that the applicant is also entitled for damages , as she suffered irreparable loss and injury to her reputation and career.

Submissions on behalf of the opposite party no. 2:-

10. Learned counsel for the opposite party no.2 refuting the aforesaid submissions advanced on behalf of the applicant submitted that:-

(10.1)The opposite party no.2 being the Centre Superintendent/Supervisor, lodged FIR on the basis of oral information of invigilators responsible for collection of answer sheets, who were on duty in the examination room and after deliberations with Satya Dev Tripathi, Sector Magistrate, the representative of U.P. Public Service Commission Sri Sudhir Pant and Sri Sant Bahadur Patel as well as on the telephonic direction of Prabhu Nath (examination controller) and

as per instruction issued by the U.P. Public Service Commission for PCS Main Examination, 2016.

(10.2) After the examination was over, the invigilators came to the control room and intimated the opposite party no.2 in presence of Satya Dev Tripathi, Sector Magistrate, Sudhir Pant and Sant Bahadur Patel, representatives of U.P. Public Service Commission about the alleged act of the applicant. (10.3) It is also submitted that regarding the aforesaid incident explanation was called by the opposite party no.2 from the invigilators on 21.09.2016 who have submitted their explanation on 21.09.2016, thereafter on 21.09.2016 after getting the FIR lodged, written information about the said incident was given to the examination controller by the opposite party no.2 enclosing photocopy of the FIR, application given to the police station and photocopy of the admit card of the applicant.

(10.4) On 05.01.2017, the invigilators were called upon in the commission for their personal hearing, therefore, the opposite party no.2 cannot be held responsible in the matter because it is admitted case of the applicant that she had submitted the answer sheet to the invigilators and not to the opposite party no.2.

(10.5) So far as submission of charge sheet under section 3/10 of the Examination Act is concerned, it is submitted that the said act is part of duty performed by the police/ investigating officer (opposite party no.3). Merely by mentioning wrong section and wrong Act will not mitigate the gravity of the offence committed by the applicant. The opposite party no. 2 is not aware

as to under what circumstances date of the incident has been mentioned as 03.10.2016 by the investigating officer.

(10.6)It is also submitted merely by non-existence of Examination Act, 1982, the FIR, charge sheet and summoning order cannot be said to be bad in law.

(10.7)The sector magistrate Satya Dev Tripathi had informed the opposite party no. 2 that he had contacted the applicant at about 10.30 in the night but she did not turn up.

(10.8)The present application filed by the applicant is liable to be dismissed, as the offence committed by the applicant falls under section 378 I.P.C. It is submitted that as per guidelines laid down in para 42 of instruction dated 19.09.2016 using unfair means in the examination or running away with the answer sheet is an offence under Indian Penal Code and in case any candidate is intercepted or caught red handed while committing said act, First Information Report should be lodged by the centre superintendent.

11. Here it is apposite to mention that on behalf of the investigating officer/opposite party no.3, despite granting time by orders dated 30.04.2019 and 21.05.2019 only a short counter affidavit has been filed. The Investigating Officer did not given para wise reply to the application of the applicant.

Submissions on behalf of Opposite Party No. 1 and 3 :-

12. Sri N.D. Rai, learned Additional Government Advocate appearing on behalf of the State of U.P. and investigating officer/opposite party no.3 has submitted that :-

(12.1) There is no Act like Examination Act 1982.

(12.2) He has also submitted that FIR under Section 3/10 of the Examination Act, 1982 was lodged/registered under wrong section and Act.

(12.3) He has submitted that the investigating officer has filed the impugned charge sheet under section 3/10 of Examination Act, 1982 by mistake and for which unconditional apology has been tendered by the investigating officer in his short counter affidavit dated 30.05.2019 and has come up before this Court with a prayer to quash the entire proceeding against the accused/applicant including charge sheet dated 29.01.2017, cognizance order taken by magistrate concerned in the matter.

(12.4) Since the Investigating Officer/State has come up with the stand that impugned charge sheet in the matter has been wrongly filed against the applicant, therefore, here it would be relevant to quote paragraphs 4, 5, 6, 7, 8 & 9 of the short counter affidavit filed on behalf of investigating officer/opposite party no.3 before this Court, which are as follows:-

Para 4. That the opposite party no.2 has lodged a First Information Report on 21.09.2016 about 19.35 against the applicant which was registered as Case Crime No.337 of 2016 under section 3/10 Examination Act, 1982 and the investigation handed over to the deponent.

Para 5. That during course of investigation deponent recorded the statement of witnesses of facts and while preparing charge sheet on

29.1.2017, the deponent saw CCTNS with the help of computer operator, provided by Police Station and it was found that the said Act was shown on the computer screen, therefore, he was under bonafide belief that the present Act is in existence, so he submitted charge-sheet before concerned Court.

Para 6. That the deponent appeared before this Hon'ble Court on 21.05.2019 in compliance of the order dated 30.4.2019 and submitted his unconditional apology before this Honourable Court.

Para 7. That it is pertinent to mention here that the deponent always respectfully obeys any order, direction passed by this Honourable Court or any superior authority. He never does act wilfully, which are contemptuous or are intended to harm any person or reduce his dignity, in what so manner and during course of investigation try to perform to the best of his ability and act as per law and he does not want to harm the applicant, in any manner and during course of investigation he does not safeguard any person or authority.

Para 8. That in the present case during course of investigation if any mistake, error, omission on the part of the deponent appeared or found same may not be intentional, but bonafide human mistake which may be done, for that deponent is seeking unconditional apology before this Hon'ble Court for any act or omission or misunderstanding of any existing/non existing Act/law. Same due to bonafide mistake regarding facts/law.

Para 9. That in view of the facts and circumstances of the case, it is expedient in the interest of justice that this Hon'ble Court may graciously be pleased to quash the entire proceeding against the applicant including charge-sheet dated 29.01.2017 and cognizance order taken by learned Magistrate arising out of Case Crime No.337/2016, under Section 3/10 Examination Act, 1982, Police Station Kydganj, District Allahabad (Prayagraj), pending in the court of A.C.J.M.-V, Allahabad as well as discharge to the deponent (opposite party no.3) from any proceeding against the deponent which ought to be initiated by this Hon'ble Court in the interest of justice.

13. On behalf of the applicant, rejoinder affidavit has been filed against the counter affidavit of the opposite party no.2 denying the stand taken by the opposite party no.2 and similarly the applicant has also filed a separate rejoinder affidavit against the short counter affidavit of the investigating officer/opposite party no.3 by contending that grave miscarriage of justice has been done in this matter on account of false implication of the applicant by the opposite party nos. 2 and 3 only with a view to cover up the misdeeds of the invigilators in order to save them which has caused irreparable loss and injury to the applicant, as she has not only been debarred from appearing in any examination of UPSC but the same has been circulated across the country and merely tendering of unconditional apology by the investigating officer and accepting the mistake in wrongly filing the impugned

charge sheet against the applicant will not compensate the irreparable loss occurred to the applicant.

Discussion:-

14. After having heard the arguments of learned counsels for the parties and going through the record, I found that the investigating officer did not make any sincere effort in true sense to elicit the truth. It is apposite to mention here that the investigating officer did not record the statement of Satyadev Tripathi (Sector Magistrate), Sudhir Pant , Sant Bahadur Patel (representative of U.P. Public Service Commission) and Examination Controller, while as per the case of informant, F.I.R. was lodged on the information of invigilators and after deliberations with aforesaid Sector Magistrate, representatives and Examination Controller of the commission. The investigating officer did not even make effort to get the statements of the other candidates present in the said Examination room recorded. As per the prosecution case on receiving such information, immediately the main gate of the school was closed with the help of police personnel posted there but by that time applicant had gone out. The investigating officer did not make any effort to get the statement of those police personnel recorded. Not only this, but investigating officer also did not make any effort to ascertain whether any CCTV camera was installed there or not. Nowadays in all important examination like IAS and PCS, CCTV cameras are installed at the examination centre. The informant has also come up with the case that efforts to contact the applicant over mobile failed, but he was informed by sector Magistrate that the applicant could be contacted only at about 10:30 P.M. at night, but the investigating

officer did not make effort to collect the said call details to find out the truth.

After going through the case diary I find that except the oral statement of the informant and invigilators recorded on 13.12.2016 and 05.01.2017 respectively, there is no corroborative evidence in support of prosecution case. Under the facts and circumstances of this case, this court feels that the investigating officer did nothing except to bolster up the prosecution case and without applying his mind submitted the charge sheet in arbitrary manner under section 3/10 of Examination Act 1982, while there is no such Act in existence. Such investigation cannot be said to be fair, impartial and conscious investigation and is not liable to be approved in the eyes of law. In this case the principle of Fair and Proper Investigation has been comatosed by the investigating agency, which has crucified the concept of faith in the investigation which is expected to maintain loyalty to law and sustain fidelity to its purpose.

15. The Apex court in case of **Babubhai vs. State of Gujarat and others (2011) 1 Supreme Court Cases (Cri) 336** has ruled that the fair investigation is also a part of constitutional rights guaranteed under Article 20 and 21 of the constitution of India. Relevant paragraph no. 32 and 45 of the said judgment are reproduced herein below:-

32. The investigation into a criminal offence must be free from objectionable features or infirmities which may legitimately lead to a grievance on the part of the accused that investigation was unfair and carried out with an ulterior motive. It is also the duty of the

Investigating Officer to conduct the investigation avoiding any kind of mischief and harassment to any of the accused. The Investigating Officer should be fair and conscious so as to rule out any possibility of fabrication of evidence and his impartial conduct must dispel any suspicion as to its genuineness. The Investigating Officer "is not to bolster up a prosecution case with such evidence as may enable the court to record conviction but to bring out the real unvarnished truth". (Vide R.P. Kapur Vs. State of Punjab, Jaumuna Chaudhary v. State of Bihar, SCC at p.780 para 11 and Mahmood v. State of U.P.).

45. Not only fair trial but fair investigation is also part of constitutional rights guaranteed under Articles 20 and 21 of the Constitution of India. Therefore, investigation must be fair, transparent and judicious as it is the minimum requirement of rule of law. The investigating agency cannot be permitted to conduct an investigation in a tainted and biased manner. Where non-interference of the court would ultimately result in failure of justice, the court must interfere. In such a situation, it may be in the interest of justice that independent agency chosen by the High Court makes a fresh investigation.

16. The stand taken by the opposite party no. 2 is not liable to be believed because in such a high stake examination the candidates are usually allowed to leave the examination hall only after all the answer scripts have been collected and counted.

The opposite party no.2 has filed the copy of instruction issued for the invigilators by the UPPSC as annexure no.2

along with his counter affidavit dated 27.05.2019 . In para no. 8 of the said instructions similar directions have been issued to the invigilators. The said instruction is reproduced herein:-

परीक्षा संचालन हेतु अन्तरीक्षकों के लिए सामान्य अनुदेश

वस्तुनिष्ठ प्रकारक

1. अन्तरीक्षक सीटिंग प्लान या मिलान फोटो युक्त रोललिस्ट से करलें तथा अभ्यर्थी को उनके निर्धारित आवंटित सीट पर ही बैठायेंगे। कक्ष निरीक्षक अभ्यर्थियों के प्रवेश पत्र से उपस्थित पत्रंक का भी मिलान करेंगे, किसी भी दशा में अभ्यर्थी निर्धारित सीट के अतिरिक्त अन्य स्थान पर नहीं बैठेंगे।
2. अभ्यर्थियों द्वारा लाई गयी सामग्री केन्द्र व्यवस्थापक द्वारा की गयी व्यवस्था यथा क्लाक रूम में ही जमा होगी। अन्तरीक्षक द्वारा यह सुनिश्चित किया जाय कि कोई अभ्यर्थी कापी, किताब, थैला, मोबाइल फोन आदि लेकर कक्ष में प्रवेश नहीं करेगा।
3. अन्तरीक्षक द्वारा अनिवार्य रूप से नो रिलेशन सर्टीफिकेट (निर्धारित प्रारूप पर) केन्द्र व्यवस्थापक को प्रस्तुत किया जाय।
4. अन्तरीक्षक द्वारा 10 मिनट पूर्व ओ0एम0आर0 सीट का वितरण किया जायेगा, तथा उनके द्वारा यह सुनिश्चित किया जाय कि ओ0एम0आर0 सीट में निर्धारित स्थान पर परीक्षा नियंत्रक की मुहर लगी हो।
5. अन्तरीक्षक द्वारा 05 मिनट पूर्व कक्षवार ओपनिंग फार्म को जिसमें 02 अभ्यर्थियों के हस्ताक्षर उनके द्वारा करवाया जायेगा। तत्पश्चात प्रश्नपुस्तिका का वितरण (प्रदत्त सीटिंग प्लान द्वारा) ए, बी, सी, डी, के क्रमानुसार परीक्षा प्रारम्भ होने के 03 मिनट पूर्व किया जायेगा।

6. परीक्षा प्रारम्भ होने के 10 मिनट पश्चात सामान्य अध्ययन के प्रश्नपत्रों में बची हुयी उत्तर पत्रक एवं प्रश्नपुस्तिका को परीक्षा सहायक को सौंप देंगे। तत्पश्चात रोललिस्ट/फोटो युक्त सूची के सातों कालम में अभ्यर्थी द्वारा काले बाल प्वाइंट पेन से प्रविष्ट कराकर यथा प्रश्न पुस्तिका सीरीज, प्रश्न पुस्तिका क्रम संख्या एवं उत्तर पत्रक क्रम संख्या आदि का परीक्षण कर यह भी सुनिश्चित करेंगे कि सभी प्रविष्टियां अभ्यर्थी द्वारा ठीक प्रकार से तथा सही भरा गया है यह दायित्व कक्ष निरीक्षक का होगा। तत्पश्चात निर्धारित स्थान पर स्वयं द्वारा काले बाल प्वाइंट पेन से हस्ताक्षर करेंगे।

7. परीक्षा अवधि में अपने कक्ष में भ्रमणशील रहते हुए अभ्यर्थियों द्वारा आपस में बातचीत/उत्तर पुस्तिका का मिलान आदि करने से रोकना एवं नकल विहीन/शान्तिपूर्वक परीक्षा सम्पादित कराना सुनिश्चित करेंगे।

8. परीक्षा समाप्ति के पश्चात कक्ष में उपस्थित अभ्यर्थियों के उत्तर पत्रक प्राप्त करके उनकी गिनती कर ले तत्पश्चात ही अभ्यर्थियों को कक्ष से बाहर जाने दे। उत्तर पत्रकों को रोल नम्बर के आरोही क्रम में व्यवस्थित कर परीक्षा सहायक को सौंप दें।

परम्परागत प्रकारक

9. अन्तरीक्षक परीक्षा प्रारम्भ होने के 10 मिनट पूर्व कक्षवार ओपनिंग सर्टीफिकेट पर स्वयं एवं उस कक्ष के 02 अभ्यर्थियों से हस्ताक्षर करायेंगे। इसके पश्चात प्रश्नसह उत्तर पुस्तिका का शील्ड पैकेट खोलेंगे तथा उपस्थित अभ्यर्थियों को प्रश्नसह उत्तर पुस्तिका का वितरण परीक्षा प्रारम्भ होने के 05 मिनट पूर्व करेंगे। रोललिस्ट/फोटो युक्त सूची के चारों कालम में यथा स्थान अभ्यर्थी द्वारा काले बाल प्वाइंट पेन से प्रविष्ट कराकर उसका परीक्षण कर निर्धारित स्थान पर स्वयं द्वारा काले बाल प्वाइंट पेन से हस्ताक्षर करेंगे। परीक्षा समाप्ति के पश्चात

अभ्यर्थियों से प्रश्नसह उत्तर पुस्तिका अन्तरीक्षक द्वारा जमा करा लिया जायेगा तथा उसके अन्त में जुड़े प्रश्नपत्र अभ्यर्थी द्वारा अलग करके ले जाया जायेगा।

आज्ञा से,
परीक्षा नियंत्रक।

17. It is admitted facts on record that the applicant was neither intercepted at the spot (examination room / college) nor caught red handed out side the college. There is no recovery of answer sheet from the applicant. Except the oral allegations , there is no corroborative admissible evidence against the applicant. Therefore on the facts of this case, the guidelines as mentioned in para 42 of the instructions dated 19.09.2016, on which the opposite party no.2 placed reliance in his defence, is not applicable. It is apposite to mention that under the facts and circumstances of the case, possibility of misplacing of answer script from the level of invigilators cannot be ruled out. Since there is no provision of taking signature of the candidates after deposition of their answer sheet, therefore taking the benefit of this lacuna in procedure, the possibility of covering up of their mistake by getting the impugned FIR lodged as an afterthought version without any evidence on record cannot also be ruled out. The opposite party no.2 being centre superintendent did not make genuine effort to get the truth elicited for prima facie satisfaction in the matter before lodging First Information Report. The facts of this case is very peculiar and rare, because under section 3/10 Examination Act,1982 FIR was lodged by the opposite party no 2, Charge sheet has been submitted by

the opposite party no 3 and cognizance has been taken by the Magistrate concerned, while no such Act in the name of Examination Act,1982 is in existence. The investigating officer / respondent no. 3 after realizing his mistake tendered unconditional apology in para 8 of his counter affidavit and has come up with the prayer in para 9 of his counter affidavit to quash the entire proceedings against the applicant including charge sheet dated 29.01.2017 filed by him and cognizance order passed by Magistrate concerned.

18. This court feels that on account of false prosecution and tainted investigation, the applicant has suffered a lot, which has changed her career, as her ambition to achieve height in her career has been spoiled by the opposite party no. 2 and 3 as well as other persons associated with them in this matter by not discharging their duty in true sense.
19. From perusal of impugned summoning order dated 14.06.2017, I find that the imugned order dated 14.06.2017 has been passed by the Judicial Magistrate Court no. 1 Allahabad, on an already printed proforma order by manually filling up gaps in a very casual manner without applying his judicial mind. Certified copy of order dated 14.06.2016 is on record, appended as annexure no. 17 to the application. The blanks on the printed proforma order appears to have been filed by the court employee and the Magistrate thereafter put his initial. It is very unfortunate that Judicial order of taking cognizance and summoning the accused has been passed by the Judicial Magistrate Court No.1 Allahabad by manually filing up blanks on already printed order. It appears that the

Magistrate concerned did not bother to go through the allegation made against the accused and ascertain as to what offence prima facie being made out against the accused. The aforesaid summoning order dated 14.06.2016 is reproduced herein below :-

न्यायालय न्यायिक मजिस्ट्रेट, कक्षा संख्या 1 इलाहाबाद।

वाद सं० — 396/17

सरकार

बनाम नावल्दे भारती

धारा 3/10 परिक्षा अधि

थाना कीडगंज जिला इलाहाबाद।

अ०सं०— 337/16

14/6/17

आज आरोप पत्र प्राप्त हुआ। आरोप पत्र व केस डायरी व अन्य पत्रपत्रों के अवलोकन के प्रथम दृष्टया अभियुक्त द्वारा अपराध का कारित होना प्रतीत होता है। संज्ञान लिया गया दर्ज रजिस्टर हो। नकले तैयार हैं। अभियुक्त को सम्मन दिनांक 24/8/17 के लिये जारी हो।

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जे०एम० कक्ष सं० 1

इलाहाबाद।

On the said facts and circumstances, this Court feels that the manner, in which impugned summoning order dated 14.06.2017 has been passed by the Magistrate concerned, is not liable to be approved. The judicial order cannot be allowed to be passed in a mechanical manner. Such tendency must be deprecated and cannot be allowed to

perpetuate. It is well settled that before a Magistrate can be said to have taken cognizance of an offence, it is imperative that he must have taken notice of the accusations and applied his mind to the allegations made in the police report. Without applying judicial mind and without even looking at the facts of the case mechanically issuing process only on the basis of operative portion of the charge sheet, does not amount to application of mind by the Magistrate. In this case the magistrate concerned also did not take pain even to examine whether the Examination Act 1982 is in existence or not.

20. The Apex Court in **Madhavrao Jiwajirao Scindia and others vs. Sambhajirao chandrojirao Angre and others (1988) 1 SCC 692** observed in para 7 as under :-

“The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the Court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the Court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the Court cannot be utilized for any oblique purpose and where in the opinion of the Court chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the Court may while taking into consideration the special facts of a case also quash

the proceeding even though it may be at a preliminary stage.”

21. The Apex Court in **State of Harayana and others vs Chaudhary Bhajan Lal and others 1992 SCC (Cri) 426**, considering a series of decisions has laid down seven criterias for quashing the entire proceedings in exercise of powers under Section 482 Cr.P.C. by this Court, which reads as under:-

“(a) 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;

(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. 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;

(c) 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;

(d) 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;

(e) 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;

(f) 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;

(g) where a criminal proceeding is manifestly attended with malafide 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.”

22. The Apex Court in case of **Dilawar Babu Kurane Vs. State of Maharashtra 2002 (2) SCC 135**, has observed that:-

“ In exercise of jurisdiction under Section of Code of Criminal Procedure, the Judge cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court but could not make a roving enquiry into the pros and cons of the matter and weigh the evidence, as if he was conducting a trial.”

23. The Apex Court in the case of **Som Mittal vs Government of Karnataka, 2008 (3) SCC 753**, has held that :-

“When grave miscarriage of justice would be committed if the trial is allowed to proceed; or where the accused would be harassed unnecessarily if the trial is allowed; or when prima facie it appears to Court that the trial would likely to be ended in acquittal. Then the inherent power of the Court under section 482 of the Code of Criminal Procedure can be invoked by the High Court either to prevent abuse of process of any Court, or otherwise To secure the ends of justice.”

24. The Apex Court in case of **Ravinder Singh Vs. Sukhbir Singh & Ors, 2013 (9) SCC 245**, has held as under:-

"It may be so necessary to curb the menace of criminal prosecution as an instrument of operation of needless harassment. A person cannot be permitted to unleash vendetta to harass any person needlessly. Ex debito justitiae is inbuilt in the inherent power of the court and the whole idea is to do real, complete and substantial justice for which the courts exist. Thus, it becomes the paramount duty of the court to protect an apparently innocent person, not to be subjected to prosecution on the basis of wholly untenable complaint."

Conclusion:-

25. On the aforesaid discussion , this Court is of the view that criminal proceedings against the applicant by opposite party No. 2 is nothing but a clear abuse of process of

Court. Impugned summoning order dated 14.06.2017 is also not sustainable, as Section 3/10 Examination Act 1982 is not in existence, hence no offence is made out against the applicant. This Court under the facts and circumstances of this case, feels that it is the solemn duty of the Court to protect apparently an innocent person, not to be subjected to such frivolous prosecution on the basis of wholly untenable allegations and complaint, if criminal proceeding is allowed to go on, the same will tantamount to causing grave miscarriage of justice, therefore in order to secure the ends of justice, the impugned criminal proceeding against the applicant is liable to be quashed.

26. In the present case the court cannot shut its eyes to the flagrant violation of fundamental rights of the applicant guaranteed under Article 21 of The Constitution of India which provides for protection of life and personal liberty of the citizens .

It is well settled by the Apex Court in **Khatri and others Vs. State of Bihar and others 1981 (1) SCC 627**, **Mrs. Veena Sethi Vs. State of Bihar and others AIR 1983 SC 339**, **Rudal Shah Vs. State of Bihar and another AIR 1983 SC 1086**, **Bhim Singh Vs. State of Jammu Kashmir and others 1985 (4) SCC 677**, **Sant Bir Vs. State of Bihar AIR 1982 SC 1470** that Constitutional Courts can award compensation for violation of fundamental rights guaranteed under Article 21 of India. The Apex Court in case of **Babubhai Vs. State of Gujarat (supra)** has ruled that fair investigation is also a part of constitutional rights guaranteed under Article 20 and 21 of the Constitution of India. The expression “ miscarriage of justice” or “failure of justice”, include , violation of law or

procedure of such a nature that if it was to be corrected the procedure could not stand. Neglect of principles of law or procedure, a glaring mistake in the procedure or manifest error on a point of law also amounts to “miscarriage of justice”.

The present case is case of “miscarriage of justice” as it neither followed the “substantive due process doctrine” nor the “procedural due process doctrine”, which has led to clear violation of rights of the applicant guaranteed under Article 21 of the constitution of India. The damages which the applicant is likely to claim have to be founded on the pecuniary and non pecuniary losses suffered to the applicant. In the present case, however, there being no relief and no pleadings to establish the claim for the damages, this court deems it appropriate to permit the applicant to avail of the Constitutional remedies for claiming the damages to which the applicant may be entitled on the basis of the pleadings to be substantiated by evidence , thus, this court deems it proper to permit the applicant to initiate appropriate legal proceedings for claiming the damages, if so advised, in proper legal proceedings.

27. Under the facts of this case, this Court also feels that this is a fit case to impose cost upon the informant/opposite party No. 2 and Investigating Officer/opposite party no. 3. In the light of above, a cost of Rs. 50,000/- (Fifty thousand only) is imposed upon the opposite party No.2/ informant. (Ram Narayan Dwivedi , Principal, Dr. K. N. Katju Inter College Allahabad) and a cost of Rs. 50,000/- (Fifty thousand only) is imposed upon the opposite party No.3/ Investigating Officer (Shiv Charan Ram, Presently Posted

as Sub Inspector, Police Station Shiv Kuti Distric Prayagraj). The said cost shall be paid by the opposite party No. 2 and 3 on their own within a period of two months from today by way of demand draft in favour of Registrar General, Allahabad High Court. Upon deposition of above amount, a sum of Rs. 80,000/- shall be paid to the applicant within two weeks and remaining amount of Rs.20,000/- shall be transferred to High Court Legal Services Authority, Allahabad within the same period.

Result:-

28. As a fallout and consequence of aforesaid discussion, impugned charge sheet dated 29.01.2017 in case crime no. 337 of 2016 under section 3/10 Examination Act 1982 Police Station – Kydganj Distt. Allahabad, and summoning order dated 14.06.2017 passed by Judicial Magistrate Court no.1 Allahabad in case no. 396 of 2016 (State Vs. Naval Dey Bharti) as well as further proceedings of pursuant thereto against the applicant are hereby **quashed**. The present application stands **allowed**.
29. The Registrar General Of this court shall communicate this order to the District Judge Allahabad as well as to the Director General Of Police U.P. Lucknow, to issue suitable direction in the light of observations made in the order to all the authorities concerned in order to maintain the sanctity of law and faith of public in the investigation.

Order Date :- 25 July , 2019

SKD