

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-18392-2015

Date of Decision: December 8, 2015

Sukhdeep Kaur

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI

Present: Ms. Satinder Kaur, Advocate,
for the petitioner.

Mr. K.S. Pannu, DAG, Punjab.
for respondent Nos. 1 and 2.

Mr. Manpreet Singh, Advocate,
for respondent No. 3.

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| 1. | <i>Whether Reporters of local papers may be allowed to see the judgment?</i> | YES |
| 2. | <i>To be referred to the Reporters or not?</i> | YES |
| 3. | <i>Whether the judgment should be reported in the Digest?</i> | YES |

NARESH KUMAR SANGHI, J (Oral)

Present petition has been filed under Section 482, Cr.P.C., for quashing of FIR No. 24, dated 17.2.2015, for the offences punishable under Sections 420, 465, 467, 468 and 471, IPC, and Sections 31, 17 and 18 of the Representation of People Act, 1950 (for brevity, 'R.P. Act'), registered at Police Station, City,

Moga.

Learned counsel for the petitioner submitted that at the time of registration of the FIR, no offence was existing and, as such, registration of the FIR was wrong; it has not been disclosed in the FIR that at whose instance name of the petitioner was entered in different records; mere mentioning of wrong date of birth by itself would not be construed as cheating; as per Sub-section (3) of Section 32 of the R.P. Act, the offence punishable under Section 31 of the said Act would be non-cognizable and, as such, the police had no jurisdiction to register the FIR; and that once Special Act is there, then the provisions of General Law would not be applicable. In support of her contentions, learned counsel for the petitioner has placed reliance on **Keshav Lal Thakur v. State of Bihar**, 1997 SCC (Cri) 298 (SC); **Md Ibrahim and others v. State of Bihar and another**, 2009 (4) R.C.R. (Criminal) 369 (SC); and **Virender Kumar v. State of Haryana** (CRM-M-39776-2012, decided on 19.11.2013)[P&H].

Brief facts of the case are that multiple complaints were presented before the police by respondent No. 3, Jagsir Singh, which were entrusted by the Senior Superintendent of Police, Moga, to respondent No. 2, Deputy Superintendent of Police (H), Moga, for inquiry. After completion of the inquiry,

report was submitted before the Senior Superintendent of Police, Moga, disclosing that the petitioner, Sukhdeep Kaur, got prepared two voter cards, bearing Nos. SNQ0046862 and NBF0462135, belonging to 072-Bagha Purana and 073-Moga Vidhan Sabha constituencies, respectively, in her name. Similarly, her (petitioner) name was entered into separate voter lists. It also emerged on record that the petitioner got prepared the documents with her different dates of birth and used the same for getting her name entered at different places. It was found that as per the record of Government Primary School, Village Bhekha, the date of birth of the petitioner was 27.7.1997 and on her PAN Card No. BNQPK2745E, her date of birth was mentioned as 12.5.1980, while on Voter Card No. NBF0462135, in the name of Sukhdeep Kaur, her date of birth was 18.1.1980. The addresses mentioned in different documents were also different. On the basis of the above inquiry report, the Senior Superintendent of Police, Moga, obtained legal opinion from the Deputy District Attorney (Legal), Moga, and ordered for registration of the present case.

Notice of the present petition was issued to the respondents and in response thereof reply by way of affidavit on behalf of respondent Nos. 1 and 2, has been filed by the Deputy

Superintendent of Police (H), Moga. In para No. 1 of the preliminary submission of the reply it is alleged as under:-

“That present case bearing FIR No. 24 dated 17.2.2015 u/s 420/465/467/468/471 IPC and 31/17/18 of Representation of People Act, 1950, Police Station City Moga has been registered against the petitioner on the basis of complaint filed by respondent no. 3 Jagsir Singh. Brief facts of this case are that respondent No. 3 moved an application before SSP, Moga with the allegations that petitioner is very clever lady and in order to get illegitimate benefits and with intention to play a fraud with government departments she had prepared her several identity documents on different dates of birth and different addresses on the basis of fake documents. Petitioner prepared her driving license no. 754 dated 13.8.2003 in which her date of birth is shown as 27.9.1979, whereas in her voter card her date of birth is shown as 8.1.1980 and her address is mentioned as New Sodhi Nagar, Street no. 7 and petitioner got prepared her PAN Card in which her date of birth is mentioned as 12.5.1980, whereas in Adhar card her date of birth is mentioned as 1979. On the basis of said application enquiry was marked to respondent no. 2 for enquiry. Respondent no. 2 conducted a thorough enquiry and during enquiry it is also found that petitioner also got prepared two voter cards at two different addresses i.e. one is registered on vote no. 766 in voter list of Vidhan Sabha constituency

Baghapurana for the year of 2014 showing her address as resident of village Bhekha and another voter no. 142 in voter list of Vidhan Sabha Constituency Moga showing her address as House no. 1301, New Sodhi Nagar, Street no. 7, Zira Road Moga. It is further proved that petitioner got prepared documents with different dates of birth. After completion of enquiry respondent no. 2 submitted his report before the SSP, Moga, on the basis of said enquiry report opinion from DA(L), Moga was obtained and thereafter present case has been registered against the petitioner. Investigation of this case has already been completed and challan in this case has been prepared on 22.6.2015 and same will be produced before the Ld. Court of Illaqa Magistrate, Moga after completion of formalities. After that petitioner had against(?) moved an application before I.G. Zonal Bathinda for conducting the enquiry of present case, on the basis of said application enquiry was marked to SP (Inv), Faridkot. After conducting thorough enquiry SP (Inv) Faridkot had found that present case has been rightly registered against the petitioner and he recommended to present challan against the petitioner before court of Illaqa Magistrate, Moga. Now the investigation of this case is going on. Hence the present petition deserves to be dismissed.”

Respondent No. 3, Jagsir Singh, also filed his reply and asserted that disputed questions of facts have been raised in the present petition and the same have to be answered by the Court

below on the basis of the evidence to be led. He too prayed for dismissal of the present petition.

I have heard learned counsel for the parties and with their able assistance gone through the material available on record.

There appears to be no substance in the initial argument of learned counsel for the petitioner when she argued that on the date of registration of the FIR, no offence had existed since on her (petitioner) application the entry in the second voter list was cancelled, a day prior to the registration of the FIR. Learned counsel for the petitioner while making the said submission failed to consider that entries of the name of the petitioner in multiple voter lists would constitute an offence as enshrined in Section 31 of the R.P. Act. The deletion of her name at her instance from the second voter list would not exonerate her from the offence committed by her and, as such, the said argument is devoid of any force.

The second argument of learned counsel for the petitioner has also no basis to quash the impugned FIR at this stage since during inquiry/investigation it has emerged that the documents containing different dates of birth and different addresses were used to get the name of the petitioner entered in

different voter lists. During inquiry/investigation it has also emerged on record that not only in different voter lists, different dates of birth and different addresses were used, but it has been found that in the Aadhar card and other valuable documents, she got mentioned different dates of her birth and addresses.

Learned counsel for the petitioner had also raised the issue that Section 31 of the R.P. Act was non-cognizable offence and, as such, the investigating agency could not register the FIR for the said offence. In the considered opinion of this Court this argument is also devoid of any force since in addition to Section 31 of the R.P. Act, certain offences of Indian Penal Code, which are cognizable, have also been mentioned in the FIR. It is settled law that non-cognizable offence would become cognizable with the cognizable offences. To further elaborate the submission of learned counsel for the petitioner, this Court would refer to the judgment passed by Hon'ble the Supreme Court in the matter of **State of NCT of Delhi v. Sanjay, 2014 (4) R.C.R. (Criminal) 211**, wherein it has been held that there is no complete and absolute bar in prosecuting persons under the Indian Penal Code where the offences committed by the persons are penal and cognizable offence. The said judgment was passed by Hon'ble the Supreme Court while dealing with an issue

regarding commission of offence punishable under Section 21 of the Mines and Minerals (Development and Regulation) Act, 1957, and Section 55 of the Wild Life (Protection) Act, 1972. It was further held in the said case that if the person was illegally committing the theft of minerals, including sand, from river bed, then the police could take action without complaint by an authorized officer since there was no complete and absolute bar for taking action by the police.

Similar is the proposition regarding the provisions of the R.P. Act. For ready reference, provisions of Sections 31 and 32 of the R.P. Act are reproduced hereunder:-

“31. Making false declarations.- If any person makes in connection with –

- (a) the preparation, revision or correction of an electoral roll, or*
- (b) the inclusion or exclusion of any entry in or from an electoral roll*

a statement or declaration in writing which is false and which he either knows or believes to be false or does not believe to be true, he shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

32. Breach of official duty in connection with the preparation etc., of electoral rolls.-

(1) If any electoral registration officer, assistant electoral registration officer or other person required by or under this Act to perform any official duty in connection with the preparation, revision or correction of an electoral roll or the inclusion or exclusion of any entry in or from that roll, is without reasonable cause, guilty of any act or omission in breach of such official duty, he shall be punishable with imprisonment for a term which shall not be less than three months but which may extend to two years and with fine.

(2) No suit or other legal proceeding shall lie against any such officer or other person for damages in respect of any such act or omission as aforesaid.

(3) No court shall take cognizance of any offence punishable under sub-section (1) unless there is a complaint made by order of, or under authority from, the Election Commission or the Chief Electoral Officer of the State concerned."

From a conjoint reading of Sections 31 and 32 of the R.P. Act it is crystal clear that the exclusion clause as provided under sub-section (3) of Section 32 of the R.P. Act that "*No court shall take cognizance of any offence...*", is limited to the offences punishable under sub-section (1) of Section 32 and no such bar has been created by the Legislation by excluding the power of the Courts from taking cognizance of the commission of offences punishable under Section 31 of the R.P. Act. Thus, this argument

advanced by learned counsel for the petitioner is also devoid of merit and the same is rejected.

So far as other arguments raised by learned counsel for the petitioner are concerned, the same are based upon disputed questions of facts. The initial inquiry conducted by the Deputy Superintendent of Police (H), Moga, and the investigation after registration of the FIR would reveal commission of the offences by the petitioner for which the FIR has been registered against her.

In the matter of **State rep. by the Inspector of Police, 'Q' Branch C.I.D., Tirunelveli Range, Tamil Nadu v. Mariya Anton Vijay**, 2015 (3) R.C.R. (Criminal) 576, Hon'ble the Supreme Court held that material/factual questions, which had a bearing over the issues involved in the case, could be answered one way or other on the basis of evidence to be adduced by the parties in the trial but not otherwise. It was further held that the High Court had no jurisdiction to appreciate the materials produced like an appellate court while hearing the petition under Section 482 of the Code or/and Revision Petition under Section 397 *ibid*.

At present, further investigation is also going on, on the basis of an application moved by the petitioner, therefore,

this Court finds no reason to quash the impugned FIR at this stage.

As a sequel to the above discussion, present petition fails and is hereby dismissed.

(NARESH KUMAR SANGHI)
JUDGE

December 8, 2015
Pkapoor