

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

CRM-M-10086 of 2014.
Decided on:-07.09.2017.

Smt. Nusrat.

.....Petitioner.

Versus

Usman and another

.....Respondents.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Mr. Mohd. Arshad, Advocate
for the petitioner.

Mr. Sarfraj Hussain, Advocate
for respondent No.1.

Mr. Sandeep Vashisht, DAG, Haryana
for respondent No.2.

HARI PAL VERMA, J.

The petitioner has filed the present petition under Section 482 Cr.P.C. for quashing of order dated 26.07.2013 passed by learned Judicial Magistrate 1st Class, Nuh, whereby the petitioner has been summoned as an accused to face trial under Sections 419 and 465 IPC in a complaint case.

Challenge has also been laid to the judgment dated 24.12.2013 passed by learned Additional Sessions Judge, Nuh, whereby the revision petition filed by the petitioner-accused against the aforesaid order of summoning, was dismissed.

Briefly stated, the respondent No.1-complainant had filed a complaint under Sections 193, 419, 420, 467, 468, 471 and 120-B IPC against the petitioner-accused and five other accused. As per the complaint, the complainant is voter of Gram Sabha, Nijampur. An election for the post of Sarpanch of Gram Panchayat of the village was held on 09.06.2005. The petitioner-accused as well as other persons contested the said election after filing necessary nominations. The petitioner-accused had produced her school leaving certificate as her proof of age. However, the respondent-complainant submitted an application before the Deputy Commissioner, Mewat for cancellation of her election being based on forged date of birth.

The Deputy Commissioner got conducted an inquiry through Sub-Divisional Magistrate, Nuh and Additional Deputy Commissioner, Mewat, where the respondent-complainant had produced birth certificate of the petitioner-accused issued by the General Hospital, Gurgaon. In the said birth certificate, date of birth of the petitioner-accused was recorded as 20.07.1986, whereas as per the school leaving certificate produced by the petitioner-accused, her date of birth was 05.01.1983. Thus, the petitioner in collusion with other co-accused, as detailed in the complaint, submitted a forged and false school leaving certificate so as to contest the elections. In this manner, the Deputy Commissioner, Mewat cancelled the elections of Gram Sabha, Nijampur vide order dated 23.07.2008.

The trial Court, on the basis of inquiry submitted by the Sub-Divisional Magistrate, Nuh that on the date i.e. 09.04.2005, when the elections of Gram Sabha, Nijampur were held, the petitioner-accused was less

than 21 years of age, summoned the petitioner to face trial under Sections 419 and 465 IPC vide order dated 26.07.2013.

The petitioner-accused had challenged the aforesaid order of summoning by way of revision petition before the Court of Session. However, learned Additional Sessions Judge, Nuh vide judgment dated 24.12.2013 dismissed the said revision petition.

It is in these circumstances, the petitioner-accused has filed the present petition under Section 482 Cr.P.C. seeking quashing of the impugned orders passed by the Courts below.

Learned counsel for the petitioner-accused has argued that vide order dated 23.07.2008, the Deputy Commissioner, Mewat had removed the petitioner from the post of Sarpanch on the ground that she was not qualified to be elected as such being less than 21 years of age. However, said order was challenged by the petitioner by way of appeal under Section 51(5) of the Haryana Panchayati Raj Act, 1994 before the Financial Commissioner and Principal Secretary to Government, Haryana Development and Panchayats Department, Chandigarh, wherein the Financial Commissioner, vide order dated 02.12.2008 has held that the petitioner cannot be declared disqualified unless there is a declaration by a competent Court to the effect that she was not qualified to contest the election being under age. In this manner, removal order dated 23.07.2008 passed by the Deputy Commissioner, Mewat was set aside.

He has further argued that no loss has been caused to the respondent No.1-complainant and no offence under Section 419 and 465 IPC has been committed by the petitioner. The complaint is politically motivated

and is based on party factions in the village. There is nothing on record to suggest that the birth certificate of the petitioner placed on record by the respondent-complainant is genuine, as no official of the concerned department of the Registrar (Births and Deaths) has been examined before summoning the petitioner. The case is pending before the trial Court for the last more than 9 years, as the complaint was instituted by the respondent-complainant on 23.08.2008. The petitioner, who is a lady, has been harassed without there being any cause of action.

On the other hand, learned counsel for the respondent No.1-complainant has argued that the petitioner was elected as Sarpanch on the basis of a false school leaving certificate. The Additional Deputy Commissioner, Mewat has found the school leaving certificate of the petitioner as false and forged and, therefore, election of the petitioner was cancelled by the Deputy Commissioner, Mewat being the competent authority.

Having heard learned counsel for the parties, this Court finds that so far as the impugned summoning order dated 26.07.2013 passed by learned Judicial Magistrate 1st Class, Nuh and judgment dated 24.12.2013 passed by learned Additional Sessions Judge, Nuh are concerned, the same do not warrant any interference at this stage as the said orders do not suffer from any material illegality or irregularity.

The plea of the petitioner-accused that the appeal filed by her against the removal order dated 23.07.2008 passed by the Deputy Commissioner, Mewat has been accepted by the Financial Commissioner and Principal Secretary to Government, Haryana Development and Panchayats

Department, Chandigarh vide order dated 02.12.2008, is of no consideration as the said appeal was accepted with the observations that so long as there is no declaration by the civil Court that the petitioner was not qualified to contest the elections, she cannot be removed from the post of Sarpanch. That finding has no relevance in order to settle the controversy in hand. In the appeal filed by the petitioner under the Panchayati Raj Act, 1994, the legality of the removal order of the petitioner passed by the Deputy Commissioner, Mewat was subject matter of consideration. Even in that appeal, the Financial Commissioner has not returned any finding regarding date of birth of the petitioner.

Therefore, this Court does not find any merit in the present petition and the same is, accordingly, dismissed.

However, taking into consideration the fact that the complaint filed by respondent No.1 is pending before the trial Court since long, it is directed that the trial Court shall expedite the trial.

September 07, 2017
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No