

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of Decision: 2nd March, 2017**

+ **CRL.M.C. 1218/2015**

KANWAR SINGH GURJAR Petitioner

Through **Mr.M.M. Kashyap, Adv.**

versus

COMMISSIONER OF POLICE, DELHI & ORS Respondents

Through **Ms.Kusum Dhalla, APP for the State**
S.I. Puneet, P.S. Sarai Rohilla
Mr.J.K. Singh, Standing Counsel with
Mr.Praveen Kumar, Adv. for R-2 to
R-4

CORAM:
HON'BLE MR. JUSTICE I.S.MEHTA

JUDGMENT

I.S. MEHTA, J.

1. By virtue of the present petition filed under Section 482 Cr.P.C. the petitioner seeks to quash FIR no. 969 dated 27.09.2014 under Sections 419, 468 and 471 IPC registered at Police Station Sarai Rohila, Delhi.
2. The brief facts stated are that, the petitioner had applied for the post of Constable in Railway Protection Force on 28.03.2011, in pursuance of an advertisement issued by Chief Secretary, Commissioner, Railway Protection Force, Gorakhpur in the Employment Notification No. 01/2011. Subsequently, the petitioner

was called for written examination. After qualifying the written examination, he was called for physical efficiency test (*hereinafter referred to as PET*) in which he was declared eligible in the physical test. Thereafter, the petitioner was issued a call letter dated 02.06.2014 by the Respondent No. 3 i.e. Chief Secretary, Commissioner, North Eastern Railway, Gorakhpur to appear in viva voce and document verification. An objection was raised with regard to the thumb impression of the petitioner on the application form at the time of viva voce and document verification. It is pertinent to note that signature of the petitioner and other particulars in the form were correct.

3. The Application of the petitioner was rejected by a verbal order on 02.06.2014 at the time of verification of the documents.
4. On 19.08.2014, the petitioner filed a SB Civil Writ Petition No.8747 of 2014 before the High Court of Rajasthan at Jaipur Bench with the grievance that the candidature of the petitioner was wrongly rejected as the signature of the petitioner matched on the form. The Hon'ble High Court of Rajasthan, Jaipur Bench disposed off the said case on 19.08.2014 while giving direction to the petitioner to approach the Chief Secretary, Commissioner North Eastern Gorakhpur by submitting representation.
5. Subsequently, on 21.11.2014, the petitioner submitted representation by post to the Respondent No. 4 i.e. IG-Cum-Chief Security Commissioner, Railway Protection Force, Gorakhpur, who after consideration, rejected the same on 21.11.2014. It was only at the time of passing of the abovementioned order dated 21.11.2014 that the

petitioner was apprised of the fact that an FIR No. 969 dated 27.09.2014 has been registered against him.

Hence the present petition has been filed to quash the said FIR.

6. The learned counsel for the petitioner submits that the petitioner is a young boy and had filled up a Form for the post of Assistant Constable in North Eastern Railway and in that form the petitioner had affixed his own photograph, which was duly signed by him. He further submits that the allegation in the FIR of impersonation is wrong as the petitioner could not have been sitting in the examination without his photograph, signature and thumb impression and the aforesaid FIR be quashed.
7. The learned counsel for respondent No.2/Ministry of Railway submits that the advertisement for the post of Constable was made across the Country and more than 17,000 forms were filled up. He further submits that in the advertisement it was made very clear that the candidate must fill up the form himself and all the information in the application should be correct and that the same was to be used for the entire examination including at the time of interview when the documents along with thumb impression, signature and documents were verified. At the time of interview, when the documents along with the thumb impression and signature were verified, it was detected that the petitioner's thumb impression was not matching with that of the petitioner and the aforesaid FIR was registered qua against the present petitioner.
8. The learned APP for the State has submitted that the thumb impression which is stated to be of the petitioner did not tally during

the CFSL examination, however the photographs and the signatures are genuine. She further submits that there are four stages of filling up of the form i.e. (i) at the time of filling up of the form, (ii) at the time of written examination; (iii) at the time of physical examination; (iv) at the time of interview. For the written examination and the interview, his thumb impressions are the same, however at the time of filling up of the application form the thumb impression is not tallying with that of the present petitioner, which *ipso facto* indicates that there is no malafide on the part of the present petitioner.

9. In the instant petition, the FIR No. 969/2014 registered against the petitioner is under Sections 419, 468 and 471 IPC. The gist of the allegation qua against the present petitioner is that the petitioner misrepresented himself to be Kanwar Singh Gurjar as the thumb impression placed on the application form for the post of Constable in Railway Protection Force, did not match with his own thumb impression and thereby committed offence under Sections 419, 468 and 471 IPC.
10. The alleged offence stated to be committed by the petitioner is during the process of filling up of the Application Form for the post of Constable in Railway Protection Force. The respondent No.3 i.e. Chief Secretary, Commissioner, North Eastern Railway, Gorakhpur had issued Employment Notification No. 01/2011, for which the petitioner has filled up the Application Form and gave his identification and information. Thereafter, he was called for written examination. After qualifying the written examination, he was called for physical efficiency test in which he was declared eligible in the

physical test. Consequently, the petitioner was issued a call letter dated 02.06.2014 by the respondent No. 3 i.e. Chief Secretary, Commissioner, North Eastern Railway, Gorakhpur to appear in viva voce and for document verification.

11. At the time of document verification, the thumb impression and signatures of all the candidates were verified by the finger print experts of Railways. During the said process when the thumb impression of the petitioner was being verified, it was noticed that the thumb impression on the OMR answer sheet and PET are of the same person but on the application form, the thumb impression is of a different person.

12. The whole question hinges around whether the thumb impression on the OMR answer sheet and physical efficiency test is that of the petitioner conducted by the Department?

The answer is Yes.

13. As per the Status Report, during investigation carried out by Insp. Satya Prakash, SHO, Sarai Rohilla, Delhi, the petitioner was the person who remained present during his written test, physical efficiency test and also visited the RPF Line, Daya basti, Sarai Rohilla, Delhi for interview on 04.06.2014. The said investigation of the Investigation Officer is also supported with the original Application Form on which the petitioner's photograph and signature of Kanwar Singh Gurjar is present.

14. Further, similar photographs and signatures were part of written test, PET, and interview and none of those documents are bringing any complaint against the petitioner. It is not the case of the respondent

that the petitioner did not appear himself for the written examination, PET and interview.

15. The dispute is at the initial stage of filling up of the application form, in which the petitioner's photograph and his original signature does exist. However, the thumb impression of the present petitioner on the said form is not tallying with that of the petitioner.

16. In the instant petition, there were four stages i.e.

- i. At the time of filling up of the Application Form.
- ii. At the time of written examination.
- iii. At the time of physical efficiency test.
- iv. At the time of interview.

It is pertinent to note that, whenever the petitioner was required to be physically present for the written test, physical efficiency test and interview, he was stated to be present and the documents and Application Form were found to be genuine. What is not to be found genuine is the thumb impression on the Application Form at the initial stage, which is alleged to be belonging to the petitioner as per the information given in the Application. The said Application Form filled up by the petitioner is pasted with photograph of the petitioner and is duly signed by him and it is an admitted fact that he appeared in the written test, physical test, interview and all documents were stated to be matched except the thumb impression on the original Application Form.

17. In *Gian Singh v. State of Punjab [(2012) 10 SCC 303]*, the Apex Court has observed as under:-

“61. In other words, the High Court must consider

whether it would be unfair or contrary to the interest of justice to continue with the criminal proceedings or continuation of criminal proceedings would tantamount to abuse of process of law despite settlement and compromise between the victim and the wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceedings.”

18. The thumb impression on the original Application Form dilutes the act of mischief/any intention on the part of the petitioner as his photograph and his original signature does appear on the said Application Form. The thumb impression alone *ipso facto* does not leads to any logical conclusion as there were three subsequent stages, i.e. written test, physical efficiency test and viva voce, wherein similar application forms and his personal attendance were required. There is no mis-matching of signatures, thumb impressions and photographs in the subsequent stages and there is no complaint of non-participation in the subsequent three stages which otherwise means, the petitioner did appear in the written test, physical efficiency test and interview.
19. The only thing which is coming as a hurdle in the way of the petitioner is the non-matching of thumb impression in the initial stage of filling up of the Application Form only, which *ipso facto* does not reaches to any conclusion of commission of above offence.
20. Therefore, to meet the ends of justice I deem it appropriate to quash the FIR No. 969 dated 27.09.2014 under Sections 419, 468, and 471 IPC registered at Police Station Sarai Rohilla, Delhi, to remove the hurdle in the personal life of the present petitioner for leading better and peaceful life.

21. Consequently, the present petition is allowed.
No order as to costs.

I.S.MEHTA, J

MARCH 02, 2017

