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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-12187-2016 [O&M]

Date of Decision : September 02, 2019

Ram Lal Arora Petitioner

Versus

V.K.Bhardwaj and others Respondents

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

Argued by Mr. Ram Lal Arora, petitioner in person.

Mr. Sukant Gupta, Addl. PP, UT, Chandigarh,
for respondents No.1 to 3.

Mr. J.S. Chahal, Advocate,
for Mr. Saurav Bhatia, Advocate,
for respondent No.4.

SHEKHER DHAWAN, J.

Present petition under Section 482 of the Code of Criminal Procedure is for quashing of order dated 10.02.2014 (Annexure P/1) passed by learned Additional Sessions Judge, Chandigarh whereby criminal revision filed by the petitioner was dismissed, affirming the order dated 22.11.2012 (Annexure P/2), passed by learned Judicial Magistrate Ist Class, Chandigarh vide which Criminal Complaint No. 9871/2009 dated 28.10.2009 titled **Ram Lal Arora Vs. V.K.Bhardwaj and others** (Annexure P/3), filed by the present petitioner, was dismissed.

2. Facts relevant for the purpose of decision of the present petition; that the petitioner, who retired as Upper Division Clerk (UDC) from the office of Assistant Executive Engineer, Electricity Construction Sub Division No. 2, UT, Chandigarh on 30.04.2006, had grievance against one

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Ujjagar Singh, who has been arrayed as accused No.4 in the complaint (respondent No.4 herein). Respondent No. 4 was working as Lorry driver in the same division and retired from service on 31.03.2006. At the time of entry into service, respondent No. 4 had given his date of birth as 3.6.1947 and the same was recorded in the service book. No certificate of Matriculation or 8th pass was produced by respondent No. 4, either at the time of entry into service or at any subsequent stage for about 38 years. Later on, Respondent No. 4 entered into a criminal conspiracy with respondents No. 1 to 3 in order to cause wrongful loss to the Chandigarh Administration and wrongful gain to him by getting change of his date of birth from 3.6.1947 to 16.03.1948 and in order to commit fraud upon the Chandigarh Administration. He had produced false and fabricated certificate showing his date of birth as 16.03.1948. Same was referred to respondent No. 3, who recommended the change in date of birth of respondent No. 4 as only an error was committed by respondent no. 4 by not giving information to the department in time. Respondents No. 1 to 3, in collusion with each other, ordered for change of date of birth of respondent No.4 thereby causing wrongful loss to the Chandigarh Administration and gain to respondent no.4.

3. Respondents no.1 to 3 were acting as public servants and they had committed criminal mis-conduct, which is covered under Sections 7 and 13 of the Prevention of Corruption Act, 1988 (for short, "the Act"). The same respondent No. 3 had given different opinion in the case of the petitioner that as per the provisions and as per rules, the said request could be entertained upto two years from the date of entry into Government service, as such, the complaint was before the Court.

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4. The said complaint was dismissed by learned Magistrate vide order dated 22.11.2012 (Annexure P/2) on the ground that the petitioner had filed complaint before Chief Vigilance Officer, Chandigarh and after proper verification, the said complaint was dismissed. The petitioner also moved an application (Ex. C2) regarding said occurrence to the higher police officials and the matter was investigated and the allegations were found to be incorrect and as per learned trial Magistrate, the petitioner had filed this false case out of frustration and inimical relations as the respondents No.1 to 3 had not changed the date of birth of the petitioner.

5. Petitioner filed revision petition before the Court of Sessions and learned Additional Sessions Judge, Chandigarh vide detailed order dated 10.02.2014 (Annexure P/1) dismissed the revision petition on the ground that there was no scope for interference in the order passed by learned Magistrate because there was no illegal demand by any officer/official and the petitioner had come into action only when the complaint was dismissed. Learned Additional Sessions Judge also observed that there are allegations of conspiracy, but there is no material to support that and mere statement of complainant cannot be taken to be basis for passing an order against the respondents. Learned Additional Sessions Judge has also observed that no sanction was obtained for prosecution against government officers/officials and the correct of date of birth of respondent no. 4 was done by them in their official capacity and on those grounds, the revision petition was dismissed. The petitioner has challenged both the orders, Annexure P/1 and P/2, by way of this petition under Section 482 Cr.P.C.

6. Petitioner, while appearing in person, has filed written

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Synopsis detailing the above mentioned facts. He has taken the plea that his case is covered under Section 482 Cr.P.C. and on that point reliance was placed upon the judgments from Hon`ble Apex Court in **Krishanan and another Vs. Krishna Veni and another, 1997(4) SCC 241** and **Shakuntala Devi and others Vs. Chamru Mahto and another, (2009) 3 SCC 310.**

7. Petitioner has also taken the plea that learned Additional Sessions Judge while dismissing the revision petition has taken into consideration the material which was not even on record and as such, this Court has every reason and ground for invoking the extra ordinary jurisdiction in this case. He has also taken the plea that as per statements of PW-8, Bishambar Dass, PW-9, Sada Ram and PW-10, Jasjeet Kaur, it is established on the file that either the record regarding the change in date of birth of respondent no. 4 has been stolen with conspiracy of all the respondents or the same has been destroyed and that was a good ground for summoning the respondents as accused, the Courts below have not done so. As per information received by the petitioner under the Right to Information Act, respondent No. 4 had submitted duplicate Matriculation certificate in support of his request for change of date of birth and on that basis, service book of respondent No. 4 was forged and fabricated. But learned trial Magistrate did not take into account these facts and dismissed the complaint filed by the petitioner and learned Additional Sessions Judge dismissed the revision petition.

8. Learned counsel representing the respondents have submitted that the Courts below have rightly dismissed the complaint filed by the petitioner and there are no reason to interfere with the said findings

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recorded by the Courts below and the present petition be dismissed.

9. Having considered the submissions made by the petitioner as also the written submissions made by him as also learned counsel for the respondents and appraisal of record of this case file, this Court is of the considered view that it stands established that the main grievance of the petitioner is that respondent No. 4 in connivance with respondents No. 1 to 3, who were acting as public servants, had entered into conspiracy and had given undue benefit to respondent No.4 and caused loss to the Government whereas, the claim of the petitioner regarding change of date of birth was wrongly rejected. It is not disputed in any way that the main grievance of the petitioner is that his date of birth was not changed. The petitioner has not been able to make out any case that he was entitled to the change in his date of birth. In fact, the petitioner had filed Original Application No. OA-261/CH/2006 before Central Administrative Tribunal, Chandigarh Bench, Chandigarh and thereafter, the matter was pending before Hon`ble Division Bench of this Court in Civil Writ Petition No.10830 of 2009. The said writ petition was dismissed by this Court on 07.08.2009 and the Hon`ble Division Bench observed as under:-

The date of birth is a question of fact. Whether the petitioner was born on 20th April, 1948 or on 20th April, 1950, cannot be determined in proceedings while exercising writ jurisdiction. The veracity of the birth certificate, relied by the petitioner, cannot be vouchsafed. Even otherwise, we are of the view that no infirmity can be found in the order passed by the Tribunal. This Court, while exercising supervisory jurisdiction, is unable to find any fault with the order of the Tribunal, as the learned Counsel has failed to point out any patent irregularity or perversity in the order passed by the Tribunal.”

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10. However, the petitioner has not been able to establish his claim regarding change in date of birth before any Court of competent jurisdiction, rather he has filed criminal complaint against the respondents on the ground that they had entered into a conspiracy. It is settled proposition of law that the person aggrieved is required to establish and prove allegations levelled in the complaint and mere levelling of allegations would not make out a case to summon any person as an accused or to ask him to face the trial, especially when the grievance is against an act such persons in the discharge of their official functions.

11. Learned Magistrate had rightly come to the conclusion that the petitioner has levelled false allegations against the respondents and mainly the grievance of the petitioner is that his date of birth was not correct by the higher authorities and as such, the complaint was rightly dismissed by learned trial Magistrate. Learned Revisional Court had also dismissed the revision petition on those grounds and also observed that no sanction for prosecution was obtained for proceedings further against respondents No. 1 to 3. At any rate, no case is made out for interference by this Court while invoking the provisions and in exercise of powers under Section 482 Cr.P.C. in this case.

12. In view of the above, there is no merit in the present petition and the same stands dismissed.

(SHEKHER DHAWAN)
JUDGE

September 02, 2019

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Whether speaking/reasoned?	:	Yes
Whether reportable?	:	Yes