

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

IA No.:CRAN/3/2023

In

C.R.R 1915 of 2022

Sri. Biswanath Bera

Vs.

The State of West Bengal

For the Petitioner:

Ms. Minoty Gomes, Adv.,
Mr. Dilip Kumar Shyamal, Adv.,
Mr. Koushik Banerjee, Adv.

For the State:

Mr. Ranabir Roy Chowdhury, Adv.,
Md. Anwar Hossain, Adv.,
Mr. Mainak Gupta, Adv.

Heard on: 2 March, 2023.

Judgment on: 23 March, 2023.

BIBEK CHAUDHURI, J. : –

1. The order dated 11th November, 2021 passed in TR (409) 18/2012 arising out of Tamluk Police Station Case No.22 of 20112 dated 17th January, 2012 under Sections 420/409/120B of the IPC passed by the learned Additional Sessions Judge-cum Judge, Special Court, Tamluk thereby dismissing the petition under Section 228 of the Code of Criminal Procedure filed by the petitioner and framing of charges under Sections 409/420 of the IPC is assailed in the instant revision.
2. The background of the case leading to filing of the instant revision is as follows:-

3. One Surendra Nath Manna erstwhile Secretary of Harasankar Garkilla Santamoyi High School filed an application under Section 156(3) of the Cr.P.C being M.P. Case No.156 of 2011 on 22nd June, 2011 before the learned Chief Judicial Magistrate, Tamluk alleging, inter alia, that the petitioner was the Headmaster of the Harasankar Garkilla Santamoyi High School. Petitioner was recommended by the School Service Commission and he was appointed as Headmaster of the said school. At the time of his joining, date of birth of the petitioner was recorded as on 5th November, 1966 in the Service Book. It is alleged that the petitioner with the help of other accused persons had manipulated his date of birth at the time of admission in Class-V at Ram Tarakhat Chatra Kunjarani Bani Bhavan School, his date of birth was recorded as on 12th November, 1963. But before his Madhyamik Examination he wrongfully and with mala fide intention, recorded his date of birth as on 5th November, 1966. The petitioner was asked to produce authentic document with record to his date of birth but he failed to produce any document. It is alleged that the petitioner with the help of other accused persons had brought down his date of birth by the three years and cheated the school as well as the State Government.

4. The aforesaid application under Section 156(3) of the Cr.P.C was rejected by the learned Chief Judicial Magistrate, Tamluk, Purba Medinipur vide order dated 22nd June, 2011. The complainant preferred a revisional application being Criminal Revision No.683 of 2011 assailing the order of the learned Chief Judicial Magistrate dated 22nd June, 2011

passed in M.P. Case No.156 of 2011 before the learned Sessions Judge, Purba Medinipur. The learned Sessions Judge revised the order passed by the learned Chief Judicial Magistrate on 22nd June, 2011 in M.P. Case No.156 of 2011. Subsequently, by an order dated 7th November, 2021 the learned Chief Judicial Magistrate sent the said application to the Officer-in-Charge of the jurisdictional police station with a direction to treat the same as FIR and to cause investigation in terms of Section 156(3) of the Code.

5. On receipt of the said application, the Officer-in-Charge of Tamluk Police Station treated the same as a written complaint and registered Tamluk Police Station Case No.22 of 2012 under Section 420/409/120B of the IPC against the petitioner and other two accused persons. On completion of investigation police submitted charge-sheet against the petitioner under Section 420/409/120B of the IPC.

6. After filing of the charge-sheet the petitioner has approached this Court by filing a revision being CRR No.4070 of 2012 with a prayer to quash the charge-sheet. Other two accused persons also filed revisions praying for quashing of charge-sheet before this Court which was registered as CRR No.1334 of 2013 and CRR No.824 of 2013. The said revisional applications came up for consideration before a Coordinate Bench and vide order dated 6th December, 2016 a Coordinate Bench of this Court allowed the revisions holding, inter alia, that it would be a sheer abuse of process of court to continue proceeding in the trial court and this is a fit case where Section 482 of the Cr.P.C has to be invoked.

7. The criminal revision filed by the present petitioner being CRR No.4070 of 2012 was pending on the date of disposal of CRR No.1334 of 2013 and CRR No.824 of 2013. In the mean time, on 15th September, 2016 the complainant expired. Ultimately the said revisional application was taken up for hearing on 19th January, 2018 by a Coordinate Bench and the said revision was dismissed on the ground of the death of the complainant. In the mean time, vide order dated 12th September, 2012 the learned Magistrate took cognizance of offence against the petitioner on the basis of the charge-sheet which was impugned before this Court in CRR No.4070 of 2012. Subsequently, the case was transferred to the Special Court of the learned Judge, Tamluk for trial.

8. In the trial court, the petitioner filed an application under Section 228 of the Code of Criminal Procedure praying for his discharge on the ground that there is no material to frame charge against the petitioner. The learned trial judge by her order dated 11th November, 2021 rejected the said petition under Section 228 of the Cr.P.C and framed charge against the petitioner. The learned Judge then fixed 6th July, 2022 for evidence of the defacto complainant. The order dated 11th November, 2021 is assailed by the petitioner in the instant revision invoking inherent jurisdiction of this Court.

9. It is submitted by Ms. Minoty Gomes, learned Advocate for the petitioner that the allegation against the petitioner is that the petitioner manipulated his date of birth in his Service Record to continue his service for three years more. According to the defacto complainant his date of

birth was 5th November, 1963 but in the school record he recorded his date of birth as on 5th November, 1966.

10. The petitioner has submitted his certificate issued by the West Bengal Board of Secondary Education. In the school leaving certificate issued by the West Bengal Board of Secondary Education, date of birth of the petitioner is recorded as on 5th November, 1966.

11. The Investigating Officer could not collect any contrary document to show that the petitioner was born in 1963. It is no longer *res integra* that entry of date of birth in the Matriculation Certificate is relevant to determine the age of a person. A Matriculation Certificate specifying the date of birth of a student is an important document admissible under Section 35 of the Indian Evidence Act. Certificate issued by the West Bengal Board of Secondary Education mentioning the date of birth is an entry from the public record or official book, register or record. In the instant case the issue relating to date of birth of the petitioner is the only fact in issue or a relevant fact. The record of date of birth is maintained in the Board of Secondary Education of every candidate appearing in Madhyamik Examiantion by a public servant in discharge of his official duties. Thus, an entry relating to date of birth made in the Matriculation Certificate is relevant and admissible under Section 35 of the Act.

12. The petitioner recorded date of birth in his service book from the entry made in the school leaving certificate. Considering such circumstances and also having due regard to the fact that the defacto complainant died in the mean time, continuation of criminal case against

the petitioner will be sheer abuse of process of the court and relying on the decision of the Bhajan Lal's Case, this Court can invoke jurisdiction under Section 482 of the Code of Criminal Procedure.

13. For the reasons state above, the instant revision is allowed on contest, further proceeding in connection with TR (409) 18/2012 in connection with Tamluk Police Station Case No.22 of 2012 dated 17th January, 2012 under Sections 420/409/120B of the IPC is quashed.

(Bibek Chaudhuri, J.)