

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.R. 1158 of 2014

Abdul Wadud Khandkar

-Vs-

The State of West Bengal

For the Petitioner : Mr. Niladri Shekhar Ghosh
Mr. Sourav Mondal

For the State : Mr. Narayan Prasad Agarwala
Mr. Pratick Bose

Heard on :09.06.2023.

Judgment on : 27.09.2023.

Ananya Bandyopadhyay, J.:-

1. The instant criminal revisional application is filed by the petitioner praying for quashing of proceeding being Dinhata P.S. Case No. 625 of 2011 dated 19.09.2011 under Section 420/418/468/471 of the Indian Penal Code corresponding to G.R. No. 713 of 2011 pending before the Learned Additional Chief Judicial Magistrate, Dinhata, Cooch Behar and the orders passed by the Learned Additional Chief Judicial Magistrate, Dinhata, Cooch Behar in connection with the aforesaid case.

2. Petitioner stated that the petitioner was initially appointed as Assistant Teacher of Soulmari N.M. Junior High Madrasah, P.S. Dinhata, District - Cooch Behar on 17th October, 1977.
3. The appointment of the petitioner as Assistant Teacher of the said Soulmari N.M. Junior High Madrasah, P.S.- Dinhata, District - Cooch Behar was approved by the concerned District Inspector of Schools (SE) and subsequently said Junior High Madrasah was upgraded as 10 Class High Madrasah and consequently the appointment of the petitioner was also approved as Assistant Teacher of the said Soulmari N.M. High Madrasah, P.S. Dinhata, District - Cooch Behar (hereinafter referred to as the said High Madrasah).
4. While the petitioner working as Assistant Teacher of the said High Madrasah made an application to the District Registrar, Cooch Behar for appointment as Muslim Marriage Registrar and Kazi in the District of Cooch Behar within the jurisdiction of Dinhata Police Station, accordingly the then District Registrar, Cooch Behar vide his memo No. 3278(8)/MMR dated 7th October, 1986 issued an interview letter in favour of the petitioner for an interview on 31.10.1986 at the office of the District Registrar, Cooch Behar for preliminary selection for the post of Muslim Marriage Registrar and Kazi, Pundibari / Dinhata, accordingly the petitioner appeared in the said interview held on 31.10.1986.
5. On the basis of the recommendation of the District Registrar, South 24-Parganas the Deputy Inspector General of Registration, West Bengal vide his

memo No. 14,689/MR/M-H/86 dated 24.12.1986, certain persons were allowed to remain as honorary Marriage Registrar and Kazi as well as to hold the salaried posts of Assistant Teacher of respective Schools and Madrasah in addition to their duties as Muslim Marriage Registrar and Kazi.

6. On being selected in the interview held by the District Registrar, Cooch Behar, the personal assistant to Inspector General of Registration and Ex-Officio Secretary, Advisory Committee of the Registration Directorate vide his letter No. 11373 dated 14th October, 1987 requested the petitioner to appear before the Advisory Committee with all relevant papers showing his academic qualification on 29.10.1987 for an interview for the post of probationary Muslim Marriage Registrar and Kazi, accordingly the petitioner duly appeared in the said interview with all relevant papers including his academic qualification.
7. On the basis of the aforesaid interviews held by the respective competent authorities, the Deputy Secretary, Judicial Department vide his memo No. 654-Regn dated June 29, 1988 forwarded for presentation to the petitioner licence and sanad, authorizing him, on probation, to register Mahammadan Marriages and Divorces and also to perform the function of a Kazi within the jurisdiction of Dinhata Police Station in the District of Cooch Behar. The Inspector General of Registration, West Bengal thereby requested the said licences should be returned through the Inspector General of Registration, West Bengal for cancellation in due course, when occasion arises.

8. The Deputy Secretary, Judicial Department, West Bengal vide his memo No. 655-Regn dated June 29, 1988 informed the petitioner that the then Governor was pleased to appoint the petitioner on probation to be a Kazi of Dinhata Police Station in the District of Cooch Behar for celebration of marriages and the performance of other rites and ceremonies within the jurisdiction of Dinhata Police Station in the District of Cooch Behar with effect from the date on which the petitioner assumes charge of office and until further order.
9. The Deputy Secretary, Judicial Department vide his memo No. 657-Regn dated June 29, 1988 informed the petitioner that the then Governor was pleased to appoint the petitioner on probation to be a Mahammadan Registrar within the jurisdiction of Dinhata Police Station in the District of Cooch Behar with effect from the date on which the petitioner assumes charge of office and until further order.
10. The Deputy Secretary, Judicial Department, West Bengal vide his memo No. 659-Regn dated June 29, 1988 informed the petitioner that the then Governor was pleased to authorize the petitioner on probation, to register in the manner prescribed by the Act mentioned therein, all Mahammadan Marriages and Divorces which shall be effected within the jurisdiction of Dinhata Police Station in the District of Cooch Behar and the licence shall continue in force until revoked or suspended by the Governor.
11. Thereafter the Deputy Secretary, Judicial Department, West Bengal vide his memo No. 660-Regn dated June 29, 1988 informed the petitioner that the

then Governor is pleased to appoint the petitioner on probation, to be the Kazi of Dinhata in the District of Cooch Behar within the jurisdiction of Dinhata Police Station for celebration of Marriages and the performance of other rites and ceremonies and this sanad (letter of appointment) shall continue in force until it is revoked or suspended by the Governor.

12. The Deputy Secretary, Registration Department, Government of Assam issued an Office Memorandum vide memo dated July 20, 1988 whereby after careful examination of the Office Memorandum issued from the Education Department under No. EDG-508/86/36 dated 02.04.1987 on the holding of the assignment of the Muslim Marriage Registrar by the Madrasah Teacher, it was observed that the post of Muslim Marriage Registrar had been a responsible one representing important social and religious interest of the Muslim community. The post is purely honorary, seasonal and part time and qualification prescribed normally involve persons engaged in teaching in Madrasah. Moreover an unemployed qualified person will not accept this honorary post without salary. Hence it is considered that the present procedure be continued to perform the Muslim Marriage Registrars function until further orders.

13. Petitioner stated that the Inspector General of Registration, Registration Directorate, West Bengal vide his memo No. 2077 dated 27.02.1991 informed the District Registrar, Cooch Behar that he has sanctioned out of the annual book allotment of Rs. 1,160/- for the year 1991 for purchasing stationary articles by Muslim Marriage Registrar in which the allotment of

Rs. 50/- has been made in favour of the District Registrar, Cooch Behar, accordingly the District Registrar, Cooch Behar forwarded the said memo to the petitioner being the Kazi and Mahammadan Marriage Registrar (in short MMR) Dinhata.

14. Petitioner stated that the Inspector General of Registration, Registration Directorate, West Bengal vide his memo No. 3/91 accorded permission for Issuing xerox copy of Marriage Certificate after duly attestation to the concerned parties by the M.M.R. and Kazi provided there be no objection in receiving the same in public and the said memo was forwarded to the petitioner by the District Registrar vide memo No. 1032(3) dated 29.04.1991 being the MMR and Kazi of Dinhata Police Station for information and necessary action.
15. Petitioner stated that thereafter the Inspector General of Registration, Registration Directorate, West Bengal vide his memo No. 5468 dated 29.07.1991 requested the District Registrar, Cooch Behar to furnish the particulars of MMR's and Kazi's in the District of Cooch Behar with a further request to report in this connection whether any post of MMR and Kazi is lying vacant in his district and if proposal for opening of new MMR offices is pending with him, accordingly the District Registrar, Cooch Behar vide his memo No. 1644 (3) dated 05.08.1991 forwarded the memo dated 29.07.1991 to the petitioner with a request to fill up the columns in question properly and send the same immediately for taking necessary action for the same and

also requested to see to meet the undersigned with the relevant records for verification.

16. Petitioner stated that as the petitioner had not submitted particulars due to unavoidable circumstances as sought for vide memo No. 1644 (3) dated 05.08.1991 by the District Registrar, Cooch Behar in time, the District Registrar, Cooch Behar vide his memo No. 1782/Kazi dated 31.08.1991 directed the petitioner to submit the particulars as wanted for in the letter dated 05.08.1991 by return of mail positively, accordingly the petitioner submitted particulars as sought for and met the District Registrar, Cooch Behar with the relevant records.
17. Petitioner stated that since appointment and Sanad the petitioner performed as MMR and Kazi within the jurisdiction of Dinhata Police Station in the District of Cooch Behar in addition to his normal duty as Assistant Teacher of the said High Madrasah and being satisfied by the performance of the petitioner as MMR and Kazi the District Registrar, Cooch Behar vide his memo No. 1499(2) dated 02.06.1992 requested the petitioner to act temporarily as the MMR and Kazi of Suktabari in the District of Cooch Behar, in addition to his own duties until permanent arrangement for Suktabari is made.
18. Petitioner states that the Deputy Inspector General of Registration, West Bengal vide his letter No. 1121 dated 11.02.1993 allotted fund for purchasing stationary articles by the MMR's during 1992 1993 for the respective Districts including Cooch Behar District, the same was forwarded

by the District Registrar, Cooch Behar to the petitioner vide his memo No. 472(2) dated 26.02.1993.

19. Petitioner stated the Deputy Secretary, Judicial Department, West Bengal vide his memo No. 255-Regn dated July 28, 1995 informed the Inspector General of Registration, West Bengal and Commissioner of Stamp Revenue, West Bengal that all MMR and Kazi under his control may be advised to disclose a chart, as required under Rule 22 of the Notification No. 620- Regn dated August 14, 1929 in a conspicuous place of his office showing the fees levied by him for the performance of his duties for the formation of the members of the registrant public, willing to get their marriages and divorces registered as per the said Act and Rules, the said memo was forwarded by the District Registrar, Cooch Behar to the petitioner for information vide his memo No. 1840/MMR dated 24.01.1996.

20. Petitioner stated that the Deputy Secretary, Judicial Department, West Bengal vide his order No. 376-Regn dated October 19, 1995 informed the Inspector General of Registration and Commissioner of Stamp Duty, West Bengal that the books and forms could be printed by the Muslim Marriage Registrar and Kazi at his own cost after he had obtained prior permission from the concerned District Registrar. No books and forms could be printed by him unless he had received written permission from the concerned District Registrar and such privately printed books and forms would be used by the concerned Muslim Registrar and Kazi after proper attestation and scrutiny from the District Registrar concerned. Then he will give

appointment to the Naib Kazi under the counter signature of the concerned District Registrar and will prepare his statutory office seal inscribing "National Emblem" with the permission of the concerned District Registrar and will collect cyclostyled/xerox copies of Bengal Mahammadan Marriages and Divorces Registration Act, 1876, Kazi Act, 1880, West Bengal Marriage and Divorce Registration Rules, 1929 (Notification No. 620-Regn dated 14.08.1929) from the Registration Directorate and the said order dated October 19, 1995 was forwarded by the District Registrar, Cooch Behar to the petitioner for information and necessary action vide his memo No. 590(3) dated 04.03.1996.

21. Petitioner stated that the District Registrar, Cooch Behar issued an identity card dated 19.04.1996 in favour of the petitioner as MMR and Kazi of Dinhata.
22. Petitioner stated that in identical circumstances other Hon'ble High Court have also dealt with identical situation. One such case that can be referred directly of a judgment and order dated July 23, 1996 passed in Civil Rule No. 242 of 1991 in the case of Sadou Assam Muslim Bibaha Talak Aru Kaji Santha -VS.- The State of Assam & Ors., the Hon'ble Gauhati High Court directed the respondents therein to allow the petitioner therein to function as Kazi on honorary basis without claiming any other allowances of financial benefits besides working as School Teacher and thereby observed that if the petitioner therein functions as Kazi, he shall not be entitled to any monetary benefit for working as kazi as this should be totally an honorary post.

23. Petitioner stated that the District Registrar, vide his memo No. 2342 dated 04.11.1997 requested the petitioner being the MMR and Kazi of Dinhata Police Station to display a list in a conspicuous place of his office, showing the charges for parties who were willing to get their marriage and divorce registered and also intend to take certified copies as per provisions of the MMR and Kazi Act and Rules.
24. Petitioner stated that the Additional Inspector General of Registration vide his order No. 819/(20) dated 24.03.1998 requested the District Registrar, Cooch Behar to furnish the number of marriages registered by the MMR and Kazi under his District during last three financial years at an early date and also requested to furnish the date of appointment with G.O. Nos. and date of birth of the MMR's and Kazi's concerned. A copy of the same was forwarded by the District Registrar, Cooch Behar vide his memo No. 859(3) dated 20.04.1998 to the petitioner with a request to submit the statement immediately, accordingly the petitioner submitted the statements as sought for.
25. Petitioner stated that the District Registrar vide his memo No. 2333(3)/MMR dated 06.11.1998 requested the petitioner to submit the name and jurisdiction of Muslim Marriage Registrar and Kazi and Court cases concerning Muslim Marriage Registrar and Kazi pending at an earliest for onwards transmission to the Directorate.
26. Petitioner stated that the District Registrar, Judicial Department, West Bengal vide his memo No. 270(3) /MMR dated 20.02.2002 forwarded a copy

of the Gazette Notification No. 247- JL dated December 06, 2001 to the petitioner being the MMR and Kazi of Dinhata Police Station in the District of Cooch Behar for information and necessary action.

27. Petitioner stated that the District Registrar, Judicial Department, West Bengal vide his memo No. 1235/MMR dated 28.09.2002 instructed the petitioner to make over charge of his office to his nearest MMR and Kazi if he has completed the age of 65 years and to report to him as per the instruction of the Directorate of Registration and Stamp Revenue, West Bengal vide memo No. 2665(18)/MMR-22/02 dated 05.08.2002.
28. Petitioner stated that the District Registrar, South 24- Parganas vide his memo No. 2793 dated February 03, 2005 informed the Secretary, Tangrakhali PJP High School that Mohammadan Marriage Registers and Kazis do not get any remuneration from the Government.
29. Petitioner stated that District Registrar, Judicial Department, West Bengal vide his memo No. 121(3)/MMR dated 16.02.2006 directed the petitioner being the MMR and Kazi of Dinhata to meet him on 01.03.2006 at 12 noon with the appointment order of the petitioner in original for verification and also asked to intimate him as to the details of Muslim Marriage Registration filed with the office of the petitioner in the last year on that date.
30. Petitioner stated that the petitioner duly met with the District Registrar, Judicial Department, West Bengal on 01.03.2006 with his original appointment order for verification and after verification, the District Registrar, Cooch Behar instructed the petitioner to submit proforma report

in respect of Registration of Marriages for the year ending, accordingly the petitioner vide his memo No. 16 dated 10.03.2006 submitted proforma report of registration of marriages for the year ending from 01.04.2004 to 24.03.2005 with the office of the District Registrar, Cooch Behar.

31. Petitioner stated that the Governor had been pleased to make certain amendments of the Transferred Subjects (Temporary Administration) Rules, 1929 and thereby provided that the licence of a Mahammadan Marriage Registrar shall be in force until he attained the age of 65 years, or such licence revoked or suspended by the State Government, whichever was earlier by publishing a notification No. 545-JL dated October 15, 2009 in Kolkata Gazette.
32. Petitioner stated that not only the petitioner being approved Assistant Teacher of a recognized Madrasah but also a large number of approved Assistant Teachers of different recognized Madrasahs/ Schools were appointed as MMR and Kazi in the respective districts of the State and they were also performing as MMR and Kazi in accordance with the provisions of the Bengal Muhammadan Marriages and Divorces Registration Act, 1876 and Rules 27 and 63 of the Transferred subjects (Temporary Administration) Rules, 1929.
33. Petitioner stated that District Registrar (in charge) Cooch Behar, Finance (Revenue) Department, Cooch Behar vide his memo No. 857/MMR dated 12.09.2011 lodged a written complaint to the Inspector in Charge, Dinhata Police Station, Cooch Behar inter alia alleging therein that the petitioner had

been acting as Muslim Marriage Registrar and Kazi for a considerable span of time and the petitioner being an Assistant Teacher of Shoulmari Nachhiniah Junior High Madrasah, Dinhata. As per memo No. 2272-SE(S) dated 21.12.2001 of the School Education Department, Secondary Branch, Bikash Bhawan, Salt Lake City, Kolkata - 700 091, a school teacher could be in any kind of gain, occupation or so. This had been further confirmed by the District Magistrate, Cooch Behar, vide memo No. 502-SE(S)/10M- 26/2002 dated 22.04.2002, whereby directed the petitioner not to continue his work as Kazi. It was also alleged that the petitioner was in full practices of registration of Muslim Marriages etc, as MMR and Kazi by display of sign board and preparation self-styled identity card abusing the name of the Government of West Bengal without any authority and the petitioner, the alleged unauthorized MMR and Kazi was in a strange freak of professing the flagrant violation of Government norms and defying Government orders in all sequences to consummate his motive of sinister design. It was also alleged that certain charges had been framed against the petitioner like the petitioner had been acting as MMR and Kazi without any government order and contrary to government direction with a substantial dishonor to the government authority, the petitioner without any authority had put up sign board and prepared personal identity card abusing the name of government, the petitioner had printed different forms of so called registration of Muslim Marriages arbitrarily without any authority, the petitioner was issuing fake receipt and certificate of so called Muslim Marriages with seal having the

National Emblem, a symbol of honour, prestige and dignity of National Importance, the petitioner was extorting huge amount of money from the innocent people and the petitioner was defrauding the government and public in the style of a pseudo MMR and Kazi. Accordingly the Inspector-in-Charge, Dinhata Police Station treated the said complaint as FIR, started Dinhata Police Station case No. 656 / 2011 dated 19.09.2011 under Section 420/ 418/ 468/ 471 of the Indian Penal Code as against the petitioner.

34. Petitioner stated that though in the alleged complaint dated 12.09.2011, the District Registrar (in-Charge) Cooch Behar relied memo No. 2272-SE(S) dated 21.12.2001 but in the said memo it had been specifically held that no teaching or non-teaching staff of the School/Madrasah in practice of private tuition or engaged in any kind of business, trade or acting as agent of any company/corporation but from Rule 24 of the Transferred subjects (Temporary appointment) Rules, 1929 it had been specifically provided that a Mahammadan Registrar should not be debarred from holding any other salaried appointment provided that it did not interfere with the proper discharge of his duties as Muhammadan Registrar and provided also that he obtained previous permission of the Inspector General of Registration and in terms of Government Order dated January 20, 2005 it had been specifically provided that a teacher or non- teaching staff may, with the permission of his appointing authority, undertake any honorary work of social and charitable nature without hampering his duties towards the Institution and by Rule 23 of the Transferred subjects (Temporary appointment) Rules, 1929

act as a therefore neither the petitioner engaged in any kind of business, trade or acting as agent of any company/corporation as alleged in the written complaint which had been purportedly treated as First Information Report and started the case under reference as against the petitioner.

35. Petitioner stated that the petitioner apprehending of arrest in connection the Dinhata Police Station case No. 656/ 2011 dated 19.09.2011 under Section 420/ 418/ 468/ 471 of the Indian Penal Code corresponding to G.R. No. 713 of 2011, moved an application for anticipatory bail being Criminal Misc. case No. 1496 of 2011 before the learned Sessions Judge, Cooch Behar on January 04, 2012, considering the said application the learned Sessions Judge allowed the said application for anticipatory bail.
36. Petitioner stated that the investigating officer in connection with the aforesaid case submitted charge sheet / final report dated January 31, 2012 before the learned Additional Chief Judicial Magistrate, Dinhata, Cooch Behar.
37. Petitioner stated that the Secretary, Judicial Department, Government of West Bengal vide memo No. 622- JE/XIV dated 25.05.2012 appointed one Md. Mossaraf Hossain Ansari to act as Muslim Marriage Register temporarily with effect from 18.04.2014 for registering Mohammadan Marriage and Divorce for the Police Station Tufanganj by the District Registrar, Cooch Behar.
38. Petitioner stated that on the basis of an application under Section 6 of the Right to Information Act made by one Md. Kazi Mostafa Kamal Rabbarl, the

District Inspector of Schools (SE), Murshidabad vide his memo No. 586-G dated 12.02.2013 furnished information to the effect that Md. Mossaraf Hossain Ansari is also an assistant teacher of Arabic with qualification M.A., B.Ed. of Patkel Danga High School, Murshidabad.

39. The Learned Advocate for the petitioner submitted that the petitioner initially appointed as Assistant Teacher of a recognized Junior High Madrasah and while working as Assistant Teacher in terms of the provisions of Government Order No. 620-Regn dated August 14, 1929 made an application having requisite qualification for being appointed as MMR and Kazi and on the basis of such application the petitioner was appeared in the interview held by the competent authority and after being selected the competent authority issued licenece and Sanad in favour of the petitioner to act as MMR and Kazi within the jurisdiction of Dinhata Police Station, Cooch Behar in addition to his normal duties as Assistant Teacher of the concerned Junior High Madrasah, subsequently as High Madrasah without hampering his normal duty as Assistant Teacher of the said Madrasah.

40. The Learned Advocate for the petitioner submitted that from the series of documents annexed with this application it was apparent on the face of record that the petitioner was engaged as MMR and Kazi of Dinhata Police Station area in addition of his normal duty as Assistant Teacher of the concerned High Madrasah in terms of Rule 24 of the Rules, 1929 as well as in terms of Government Orders dated 21.12.2001 and 20.01.2005 to act as MMR and Kazi of Dinhata Police Station area as the performance of MMR

and Kazi is not a business, trade or acting as agent of any company / corporation and it is provided under Rule 24 of the said Rules, 1929 that a Mahammadan Registrar shall not be debarred from holding any other salaried appointment provided that it does not interfere with the proper discharge of his duties as Mahammadan Registrar and provided also that he obtained previous permission of the Inspector General of Registration but in the present case the petitioner was engaged as MMR and Kazi while working as Assistant Teacher of a recognized High Madrasah, thus previous permission of the Inspector General of Registration was not required.

41. The Learned Advocate for the petitioner submitted that in view of the Government Notification dated October 15, 2009 published in official gazette whereby provided that the licence of a Mahammadan Registrar shall be in force until he attains the age of 65 years, or such licence revoked or suspended by the State Government, whichever is earlier, thus the purported complaint lodged by the District Registrar (In Charge) Cooch Behar without having any order of the State Government thereby revoking or suspending the licence granted in favour of the petitioner, is in force as the petitioner has not attained the age of 65 years.

42. The Learned Advocate for the petitioner submitted that from the provisions of Notification dated January 14, 2005 issued by the West Bengal Board of Secondary Education that a teacher or non-teaching staffs may, with the permission of his appointing authority, undertake any honorary work of social and charitable nature without hampering his duties towards the

Institution and simultaneously in terms of Rule 24 of the Transferred subjects (Temporary Administration) Rules, 1929 provides that a Mahammadan Registrar shall not be debarred from holding any other salaried appointment provided that it does not interfere with the proper discharge of his duties as Mahammadan Registrar, thus the petitioner performed as MMR and Kazi while working as Assistant Teacher of a Recognized Madrasah, without hampering either in his duties as Assistant Teacher or as MMR and Kazi.

43. The Learned Advocate for the petitioner submitted that after the appointment of the petitioner as MMR and Kazi by Government Order dated October 19, 1995 the petitioner was empowered to print the books and forms at his own cost after obtaining prior permission from the concerned District Registrar and to prepare his statutory office seal inscribing "National Emblem" with the permission of the concerned District Registrar, accordingly the petitioner done the same with the permission of the concerned District Registrar being a duly engaged MMR and Kazi as per the procedure laid down by the statute, thus the allegation of illegal use of National Emblem in his office seal is totally vague, concocted and frivolous and particularly the petitioner was permitted to receive fees as per the provisions of Rule 23 of the Transferred Subjects (Temporary Administration) Rules, 1929 as MMR and Kazi as lawful remuneration not as salary or any emoluments, thus the purported allegation against the petitioner is not sustainable in the eye of law.

44. The Learned Advocate for the petitioner submitted that the petitioner being an Assistant Teacher of a recognized Senior Madrasah and as MMR and Kazi performed his duties and responsibilities with full satisfaction of all concerned and there is no allegation regarding collection of excess fees for performing the Muslim Marriage and Divorce ceremonies and for registration of Muslim Marriages and Divorces, thus the purported allegation as alleged against the petitioner is baseless, vague, concocted and misuse of colourable exercise of power.
45. The Learned Advocate for the petitioner submitted that neither in the statute of Mahammadan Marriages and Divorces nor in the statute of the Education Department of the State, restrained the MMR and Kazi to act as Assistant Teacher of any recognized Institution and restrained the Assistant Teachers to act as MMR and Kazi without hampering the duties either as MMR and Kazi as well as Assistant Teacher, thus purported allegation against the petitioner nothing but to lower down the prestige and dignity of the petitioner in the Muslim Society.
46. The Learned Advocate for the petitioner submitted that neither the petitioner committed any offence contrary to Government direction nor paid any substantial dishonoured to the government authority and the petitioner having authority to use the National Emblem in the receipt and certificate issued by him without hampering the prestige and dignity of National Importance and the petitioner never extorted any amount of money from any innocent people and never defrauded the government and public in any style

of a pseudo MMR and Kazi being a duly appointed MMR and Kazi by the competent authority under the law, thus the entire allegation as against the petitioner in the complaint dated 12.09.2011 is not only false but also vague, concocted and misrepresentation.

47. The Learned Advocate for the petitioner submitted that in view of the order of the Deputy Inspector General of Registration dated 24.12.1986 a Mahamman Marriage Registrar and Kazi can hold the salaried posts of Assistant Teacher of Schools and Madrasahs.

48. The Learned Advocate for the petitioner submitted that in view of the Government Order of the Government of Assam that the Madrasah Teachers holding the assignment of Muslim Marriage Registrar is a responsible one representing important social and religious Interest of the Muslim community and the posts is purely honorary, seasonal and part time, thus it is provided by the Government Orders of the Government of West Bengal particularly G.O. dated 14.01.2005 that an Assistant Teacher of a School or Madrasah can undertake any honorary work of social and charitable nature without hampering his duties towards the Institution, thus the petitioner being the Assistant Teacher of the concerned Madrasah duly appointed by the competent authority as Muslim Marriage Registrar and Kazi.

49. The Learned Advocate for the petitioner submitted that in view of the decision of the Hon'ble Gauhati High Court a School Teacher with full time pay and allowances can hold a license of Kazi since Kazi is a honorary post, thus the petitioner being an Assistant Teacher of the concerned Madrasah

can hold the post of MMR and Kazi being the honorary post and particularly social and charitable interest of the Muslim community.

50. The Learned Advocate for the petitioner submitted that the petitioner initially appointed as Assistant Teacher of a recognized Junior High Madrasah and while working as Assistant Teacher in terms of the provisions of Government Order No. 620-Regn dated August 14, 1929 made an application having requisite qualification for being appointed as MMR and Kazi and on the basis of such application the petitioner was appeared in the interview held by the competent authority and after being selected the competent authority issued licenece and Sanad in favour of the petitioner to act as MMR and Kazi within the jurisdiction of Dinhata Police Station, Cooch Behar in addition to his normal duties as Assistant Teacher of the concerned Junior High Madrasah, subsequently as High Madrasah without hampering his normal duty as Assistant Teacher of the said Madrasah.

51. The Learned Advocate for the petitioner submitted that from the series of documents annexed with this application it is apparent on the face of record that the petitioner was engaged as MMR and Kazi of Dinhata Police Station area in addition of his normal duty as Assistant Teacher of the concerned High Madrasah in terms of Rule 24 of the Rules, 1929 as well as in terms of Government Orders dated 21.12.2001 and 20.01.2005 to act as MMR and Kazi of Dinhata Police Station area as the performance of MMR and Kazi is not a business, trade or acting as agent of any company / corporation and it is provided under Rule 24 of the said Rules, 1929 that a Mahammadan

Registrar shall not be debarred from holding any other salaried appointment provided that it does not interfere with the proper discharge of his duties as Mahammadan Registrar and provided also that he obtained previous permission of the Inspector General of Registration but in the present case the petitioner was engaged as MMR and Kazi while working as Assistant Teacher of a recognized High Madrasah, thus previous permission of the Inspector General of Registration was not required.

52. The Learned Advocate for the petitioner submitted that in view of the Government Notification dated October 15, 2009 published in official gazette whereby provided that the licence of a Mahammadan Registrar shall be in force until he attains the age of 65 years, or such licence revoked or suspended by the State Government, whichever is earlier, thus the purported complaint lodged by the District Registrar (In Charge) Cooch Behar without having any order of the State Government thereby revoking or suspending the licence granted in favour of the petitioner, is in force as the petitioner has not attained the age of 65 years.

53. The Learned Advocate for the petitioner submitted that the provisions of Notification dated January 14, 2005 issued by the West Bengal Board of Secondary Education that a teacher or non-teaching staffs may, with the permission of his appointing authority, undertake any honorary work of social and charitable nature without hampering his duties towards the Institution and simultaneously in terms of Rule 24 of the Transferred subjects (Temporary Administration) Rules, 1929 provides that a

Mahammadan Registrar shall not be debarred from holding any other salaried appointment provided that it does not interfere with the proper discharge of his duties as Mahammadan Registrar, thus the petitioner performed as MMR and Kazi while working as Assistant Teacher of a Recognized Madrasah, without hampering either in his duties as Assistant Teacher or as MMR and Kazi.

54. The Learned Advocate for the petitioner submitted that after the appointment of the petitioner as MMR and Kazi by Government Order dated October 19, 1995 the petitioner was empowered to print the books and forms at his own cost after obtaining prior permission from the concerned District Registrar and to prepare his statutory office seal inscribing "National Emblem" with the permission of the concerned District Registrar, accordingly the petitioner done the same with the permission of the concerned District Registrar being a duly engaged MMR and Kazi as per the procedure laid down by the statute, thus the allegation of illegal use of National Emblem in his office seal is totally vague, concocted and frivolous and particularly the petitioner was permitted to act as per the provisions of Rule 23 of the Transferred Subjects (Temporary Administration) Rules, 1929 as MMR and Kazi and to charge for the registration of marriage not as salary or any emoluments.

55. The Learned Advocate for the petitioner submitted that the petitioner being an Assistant Teacher of a recognized High Madrasah and as MMR and Kazi performed his duties and responsibilities with full satisfaction of all

concerned and there is no allegation regarding collection of excess fees for performing the Muslim Marriage and Divorce ceremonies and for registration of Muslim Marriages and Divorces.

56. The Learned Advocate for the petitioner submitted that neither in the statute of Mahammadan Marriages and Divorces nor in the statute of the Education Department of the State, restrained the MMR and Kazi to act as Assistant Teacher of any recognized Institution and restrained the Assistant Teachers to act as MMR and Kazi without hampering the duties either as MMR and Kazi as well as Assistant Teacher.

57. Section 420 of the Indian Penal Code stated as follows:

“420. Cheating and dishonestly inducing delivery of property.—Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

58. Section 418 of the Indian Penal Code stated as follows:

“418. Cheating with knowledge that wrongful loss may ensue to person whose interest offender is bound to protect.—Whoever cheats with the knowledge that he is likely thereby to cause wrongful loss to a person whose interest in the transaction to which the cheating relates, he was bound, either by law, or by a legal contract, to protect, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.”

59. Section 468 of the Indian Penal Code stated as follows:

“468. Forgery for purpose of cheating.—Whoever commits forgery, intending that the 1[document or electronic record forged] shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

60. Section 471 of the Indian Penal Code stated as follows:

“471. Using as genuine a forged 1[document or electronic record].—Whoever fraudulently or dishonestly uses as genuine any 1[document or electronic record] which he knows or has reason to believe to be a forged 1[document or electronic record], shall be punished in the same manner as if he had forged such 1[document or electronic record].”

61. The activities of the petitioner was well within the knowledge of the Competent Authority. The credentials regarding the age, qualification and avocation of the petitioner was within the custody and records of the District Registrar. Repeatedly on yearly basis directions for compliance were issued to the petitioner under a notification which could not be obliterated.

62. The Concerned Authority was aware of the number of marriage registrations and did not object to or nullify the same. The functions of the petitioner dealing with the citizenry was conspicuous and not furtive with malicious intent. No complaint has been lodged by the concerned parties against the petitioner for fraudulent or extortionate transactions. The act of the petitioner does not attract the ingredients of the offences as aforesaid.

63. The petitioner cannot be allowed to be subjected to the rigour of trial to his predicament.

64. In view of the above discussions, the proceeding being Dinhata P.S. Case No. 656 of 2011 dated 19.09.2011 under Sections 420/418/468/471 of the

Indian Penal Code corresponding to G.R. No. 713 of 2011 pending before the Learned Additional Chief Judicial Magistrate, Dinhata, Cooch Behar and the orders passed by the Learned Additional Chief Judicial Magistrate, Dinhata, Cooch Behar in the aforesaid case is quashed.

65. Accordingly, the criminal revisional application being no. CRR 1158 of 2014 is allowed.
66. Accordingly, CRR 1158 of 2014 stands disposed of. Connected application, if there be any, also stands disposed of,
67. There is no order as to cost.
68. Let the copy of this judgment be sent to the Learned Trial Court as well as the police station concerned for necessary information and compliance.
69. All parties shall act on the server copy of this judgment duly downloaded from the official website of this court.

(Ananya Bandyopadhyay, J.)