

CRM-M- 38475-2017 (O&M)

- 1-

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M- 38475-2017 (O&M)

Date of Decision: 11.04.2023

Vikram Singh

... Petitioner

V/s.

State of Haryana and another

... Respondents

CORAM: **HON'BLE MR. JUSTICE DEEPAK MANCHANDA**

Present : Mr. Tejas Bansal, Advocate for
Mr. Amandeep Singh, Advocate
for the petitioner.

Mr. Karan Garg, AAG, Haryana.

Mr. Aditya Sanghi, Advocate
for respondent No. 2.

DEEPAK MANCHANDA, J.(Oral)

Prayer in this petition is for quashing of FIR No.206 dated 22.7.2016 registered under Sections 420, 467, 468 and 471 IPC at Police Station Sadar, Narnaul (Annexure P-1) and all consequential proceedings arising therefrom on the ground that there is no evidence of cheating and forgery against the petitioner.

As per the FIR, the allegations against the petitioner are that he attached forged 10th class certificate of Jharkhand Open School, Jharkhand as he was not able to pass the 10th from Haryana Education Board in the year 2004 and has brought 10th class certificate from Jharkhand under the greed of becoming Sarpanch and by producing forged certificate he has become Sarpanch.

The facts emanated from the pleadings are that the petitioner contested the elections of Sarpanch of Gram Panchayat village Kultajpur, Block Narnaul in 2016 and was elected as Sarpanch of the said village against one Parveen Mehta, s/o Shiv Kumar who was his opponent and had contested the election against the petitioner. It has also been alleged that father of Mr. Parveen Mehta, namely Sh. Shiv Kumar Mehta was the President of District Mahendergarh Unit of BJP, which was the ruling party and by misusing his position got lodged the false FIR against the petitioner.

Vide order dated 12.10.2017, notice of motion was issued and proceedings before the trial Court were ordered to be stayed.

Learned counsel for the petitioner contends that the only allegation against the petitioner in the FIR is that he forged and fabricated the 10th class certificate (Annexure P/2) which was procured from the Jharkhand State Open School and has referred to Annexure P/3 where during investigation the Inquiry Officer made a request to the Jharkhand State Open School by way of questionnaire dated 29.9.2016 where the point-wise answers were sought on the questions and for the purpose of seeking information to verify whether the said certificate was forged or fabricated. In pursuance to the same vide letter dated 30.9.2016 (Annexure P-4) the Academic Officer of Jharkhand State Open School, Ranchi, Jharkhand answered to the queries raised by the concerned I.O. Learned counsel further contends that as per the reply dated 30.9.2016 no offences under Sections 467, 468 and 471 are made out. He has further referred to the final report filed under Section 173 Cr.P.C. (Annexure P/5) and submits that the I.O. has tried to make out a case that the Jharkhand

CRM-M- 38475-2017 (O&M)

- 3-

State Open School which issued the certificate in question was not a proper recognized Institution, whereas the FIR was registered on the basis that the said certificate was forged and fabricated, but during investigation nothing as such has been found against the petitioner which could prove that the said certificate was forged and fabricated. Learned Counsel for the petitioner further argued that even as per the reply filed by the respondent-State nothing has come out during investigation with regard to forgery and fabrication of the alleged document rather as per respondent-State's reply, the investigating agency confined itself with regard to recognition of the said Institution i.e. Jharkhand State Open School which is not recognized by the State Government and the aspect of investigating or proving the forgery committed by the petitioner has not been established and it is mentioned in the reply that the said institution from which the certificate was obtained is not recognized by the State Government.

Learned State Counsel while referring to the reply submits that during course of investigation the I.O. had visited the registered office of the said Board and inquired about the organization but the said institution failed to provide information which was required for the investigation of the present case. He further submits that to verify the authenticity of the alleged certificate, the I.O. had visited the registered office of Jharkhand State Open School which was mentioned in the certificate but due to non-availability of the management, or any Director of the Institute, the said information could not be provided to the investigating agency. It is also submitted that investigating officer has inquired from the office of Haryana Board of School Education and vide communication dated 9.9.2016, it was clarified

CRM-M- 38475-2017 (O&M)

- 4-

that the examination conducted by Jharkhand State Open School, Ranchi is not equivalent with the examination conducted by the Board of School Education Haryana and the said Institution is not in the list of Boards/Universities/Institutions recognized by the Board of School Education, Haryana, Bhiwani and he further refers to the Annexure R/3 dated 23.8.2016 annexed with the reply where it is mentioned that in reference of letter received from Haryana School Education Board vide which the police authorities requested for certified copy of the equivalency list with regard to recognition of the Jharkhand State Open School Ranchi and Haryana School Education Board. Against the said query it has been informed that examination conducted by Jharkhand State Open School, Ranchi is not recognized equivalent to any examination conducted by Haryana School Education Board, Bhiwani and after detailed investigation, report under Section 173 Cr.P.C. had been presented.

I have heard learned counsel for the parties.

The allegations levelled against the petitioner in the said FIR are that for becoming a Sarpanch, the petitioner had attached a forged and fabricated certificate issued by Jharkhand State Open School and by producing the same became the Sarpanch. As per investigation conducted by the police authorities, there is nothing on record which could prove that the said certificate was forged and fabricated by the petitioner and same was used to become a Sarpanch rather as per reply filed by the respondent-State, the investigating agency confined itself to verify the aspect of recognition, whether the same was recognized by the State Government or not (neither in the challan nor in the reply) and there was no material on record to show

CRM-M- 38475-2017 (O&M)

- 5-

that the alleged certificate was forged and fabricated. Even as per Annexure R/1, R/2 and R/3, which have been annexed with the reply shows that in all those communication letters either to Government of Jharkhand School Education and Literacy Department, only one question was asked whether the Jharkhand State Open School is recognized by the Government of Jharkhand or not.

Further, as per letter dated 9.9.2016 i.e. Annexure R/1 with the reply, the Government of Jharkhand with regard to query raised by the Investigating Officer replied that the Jharkhand State Open School is not recognized by the School Education and Literacy Department, Director of Intermediate Education, Jharkhand Rajya and even as per reply dated 23.8.2016 sent by Haryana School Education Board, the same query was raised by the I.O. that whether Jharkhand State Open School, Ranchi is recognized equivalent to any examination conducted by the Haryana School Education Board. In reply to the said query, the Haryana School Education Board answered to the limited aspect that the said Jharkhand State Open School, Ranchi is not included in equivalency list of Board. Even as per letter dated 5.9.2016 (Annexure R/2) annexed with the reply which was sent by the Superintendent , State Election Commission to the SHO, PS Sadar Narnaul it has been informed that Jharkhand Open School, Ranchi is not on the list of Boards/Universities/Institutions recognized by the School Education, Haryana, Bhiwani.

After a perusal of material available on record as well as reply filed by the respondent-State there is nothing on record which shows that the prosecution was able to prove that the said certificate was forged and

CRM-M- 38475-2017 (O&M)

- 6-

fabricated which was used by the petitioner for becoming a Sarpanch even as per letter dated 5.9.2016 (Annexure R-2) of the State Election Commission, Haryana.

A joint conspectus of the various sections under which the petitioner has been challaned u/s 173 Cr.P.C and is to be prosecuted would show that the same are not made out prima facie from the complaint/FIR. Also, after the examination of Report u/s 173 Cr.P.C the offences alleged to have been committed by the petitioner have not been made out against the petitioner, where investigation was carried out and revolved around only with regard to recognition of the Institution or its equivalency by the State Government or Haryana School Education Board. Further as per query raised by the learned Counsel for the State as well as in the reply though investigating officer visited the registered office of the said Board on the demarcation of the petitioner and enquired about the organization, but the persons who were present there failed to provide the requisite information and answer the queries of the investigating officer, it has been tried to unfairly concluded that the alleged certificate is forged and fabricated, where the investigating agency itself has admitted that the relevant information could not be gathered in absence of the concerned persons. Since the object of investigation was to only prove whether any forgery has been committed by the petitioner, rather the same was diverted from the real object and confined itself to the recognition of the institution only. It is necessary to refer to Sections 420, 467, 468 and 471 IPC in order to ascertain whether in the facts and circumstances of the present case the

CRM-M- 38475-2017 (O&M)

- 7-

offences under aforesaid sections have been made out against the petitioner:- .

“420- 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.

“467- Forgery of valuable security, will, etc.—Whoever forges a document which purports to be a valuable security or a will, or an authority to adopt a son, or which purports to give authority to any person to make or transfer any valuable security, or to receive the principal, interest or dividends thereon, or to receive or deliver any money, movable property, or valuable security, or any document purporting to be an acquittance or receipt acknowledging the payment of money, or an acquittance or receipt for the delivery of any movable property or valuable security, shall be punished with [imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

“468. Whoever commits forgery, intending that the 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”.

“471. Using as genuine a forged [document or electronic record].—Whoever fraudulently or dishonestly uses as genuine any [document or electronic record] which he knows or has reason to believe to be a forged [document or electronic

record], shall be punished in the same manner as if he had forged such [document or electronic record] ”.

The essence of the offences lies in the case whether the same has been done deceitfully by producing the forged document before the concerned authority and the same were fabricated under Section 467, 468 and 471 IPC to achieve the motive but as per prosecution's investigation, the investigation done by the authority has failed to achieve the object and keeping in view the aforesaid, facts and circumstances, this Court is of the view that the criminal proceedings initiated against the petitioner is manifestly attended with malafide and were maliciously instituted with an ulterior motive for wrecking vengeance on the petitioner for private and personal grudge as the opponent who contested the election against him, misused his influence being well connected with the ruling party and got lodged this FIR , through complaint with a revengeful attitude as petitioner contested and got elected as Sarpanch against the said opponent namely Parveen Mehta.

The Hon'ble Supreme Court in its judgment rendered in “***M/s Neeharika Infrastructure Pvt.Ltd. Vs. State of Maharashtra and others***”, ***2021 AIR (Supreme Court) 1918*** has dealt with the issue of quashing of FIR while exercising the power under Section 482 Cr.P.C and made the following observations:-

“23. In view of the above and for the reasons stated above, our final conclusions on the principal/core issue, whether the High Court would be justified in passing an interim order of stay of investigation and/or “no coercive steps to be adopted”, during the pendency of the quashing petition under Section 482 Cr.P.C and/or under

Article 226 of the Constitution of India and in what circumstances and whether the High Court would be justified in passing the order of not to arrest the accused or “no coercive steps to be adopted” during the investigation or till the final report/chargesheet is filed under Section 173 Cr.P.C., while dismissing/disposing of/not entertaining/not quashing the criminal proceedings/complaint/FIR in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India, our final conclusions are as under:

i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into a cognizable offence;

ii) Courts would not thwart any investigation into the cognizable offences;

iii) It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on;

iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the ‘rarest of rare cases (not to be confused with the formation in the context of death penalty).

v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;

vi) Criminal proceedings ought not to be scuttled at the initial stage;

- vii) Quashing of a complaint/FIR should be an exception rather than an ordinary rule;*
- viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere;*
- ix) The functions of the judiciary and the police are complementary, not overlapping;*
- x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;*
- xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;*
- xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;*

xiii) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint;

xv) When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR;

xvi) The aforesaid parameters would be applicable and/or the aforesaid aspects are required to be considered by the High Court while passing an interim order in a quashing petition in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India. However, an interim order of stay of investigation during the pendency of the quashing petition can be passed with circumspection. Such an interim order should not require to be passed routinely, casually and/or mechanically. Normally, when the investigation is in progress and the facts are hazy and the entire evidence/material is not before the High Court, the

High Court should restrain itself from passing the interim order of not to arrest or “no coercive steps to be adopted” and the accused should be relegated to apply for anticipatory bail under Section 438 Cr.P.C. before the competent court. The High Court shall not and as such is not justified in passing the order of not to arrest and/or “no coercive steps” either during the investigation or till the investigation is completed and/or till the final report/chargesheet is filed under Section 173 Cr.P.C., while dismissing/disposing of the quashing petition under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India.

xvii) Even in a case where the High Court is prima facie of the opinion that an exceptional case is made out for grant of interim stay of further investigation, after considering the broad parameters while exercising the powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India referred to hereinabove, the High Court has to give brief reasons why such an interim order is warranted and/or is required to be passed so that it can demonstrate the application of mind by the Court and the higher forum can consider what was weighed with the High Court while passing such an interim order.

xviii) Whenever an interim order is passed by the High Court of “no coercive steps to be adopted” within the aforesaid parameters, the High Court must clarify what does it mean by “no coercive steps to be adopted” as the term “no coercive steps to be adopted” can be said to be too vague and/or broad which can be misunderstood and/or misapplied.”

In such a situation, the prosecution is malafide, untenable and solely initiated to harass the petitioner. This Court is of the view that the respondent-State has failed to prove the allegations made in the FIR which itself is apparent from the material on record where several enquiries were made qua recognition of the institution as well as its equivalency as per the opinion of the State Government.

Therefore, while exercising the power under Section 482, the present petition is allowed and consequently the FIR No. 206 dated 22.7.2016 registered under Sections 420, 462, 468 and 471 IPC at Police Station Sadar, Narnaul and the consequent proceedings are hereby quashed, qua the petitioner herein.

(DEEPAK MANCHANDA)
JUDGE

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Whether speaking/reasoned	Yes
Whether Reportable	Yes /No