

**HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

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**CRM-M-29263-2023**

**Date of Decision: 16.04.2024**

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Virender Kumar

... Petitioner

VS.

State of Haryana & Ors.

... Respondents

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**CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL**

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Present: Mr. SK Bawa, Advocate for the petitioner  
Mr. GS Dhillon, AAG Haryana  
Mr. Ankit Kamboj, Advocate for respondent No.2  
Ms. Sheena Dahiya, Advocate for respondents No.3&4

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**Sandeep Moudgil, J.**

(1). This petition under Sections 482 CrPC has been filed by the petitioners seeking quashing of the order dated 21.04.2023 (Annexure P1) passed by Addl. Sessions Judge, Gurugram vide which the order dated 06.10.2018 passed by SDJM, Pataudi summoning the petitioner in complaint case No.COMI/15/2016 dated 23.03.2016, has been set aside.

(2). The petitioner was selected as Science Master in Education Department of Haryana and joined as such on 25.9.1997. The petitioner came to know that his last five years Annual Confidential Reports were missing and when sought information under RTI for supplying his ACRs, service book and complete correspondences regarding first ACP, The Principal, Government High School, Khor, supplied him certified copies of the ACR for the year 2012-13 and upon inspection of the ACR so supplied, it was found that some particulars i.e. columns no. 4(b), 5(b)(c), 7, 8, 9(b)(c), 10,11 and 13 were blank. He filed complaint before the Lokayukat, Haryana where he came to know that his integrity during the year 2012-13 was doubtful and thus he again applied for

collecting the ACR for the year 2012-13 and thereafter, surprisingly, he came to know that in the subsequent certified copy of ACR for the year 2012-13 supplied by respondent No.1, in column no. 5 (c), she made the entry regarding integrity doubtful.

(3). After an application dated 18.03.2016 under Section 156(3) CrPC, the Illaqa Magistrate vide order dated 21.03.2016, ordered to treat the petitioner's application as private complaint (Annexure P2). The SDJM, Pataudi, vide order dated 06.10.2018 (Annexure P17) summoned the respondents No.2 to 4 only under Section 167/406/465/474 IPC read with Section 120-B IPC and dismissed the application qua Sections 420/468/471/506 IPC read with Section 120-B IPC.

(4). Both the petitioner and respondent No.2 only, preferred two revisions petitions and the Addl. Sessions Judge, vide common order dated 21.04.2023 set aside the summoning order and remanded the case to SDJM, Pataudi with a direction to conduct proper inquiry and pass speaking order and also dismissed the revision petition filed by the petitioner for summoning the respondents No.2 to 4 under Sections 420/468/471/506 IPC read with Section 120-B IPC on the ground that the since the Magistrate was under an obligation to call for a report from the police under Section 202/204 CrPC, which has not been complied with in the instant case.

(5). Learned counsel for the petitioner vehemently contended that the revisional court has returned a contrary finding as inquiry report was sought by the police of police station Pataudi and only after consideration of the same and material evidence as well, the private respondents were summoned as is evident

from Ex.C1 to C9 (Annexures P4 to P12) with regard to compliance of Section 202 CrPC.

(6). The further argument raised is that the impugned order dated 6.10.2018 passed by SDJM, Pataudi is partly incorrect and contrary to law inasmuch as he ignored the actual facts and failed to appreciate that respondents No.2 to 4 played forgery upon the petitioner by tampering with his personal ACRs to be genuine which is punishable under Sections 420, 468 and 471 IPC and moreover, the trial court did not mention any reason behind non-summoning the petitioner under these sections as there are sufficient incriminating material available on record to summon respondents No.2 to 4.

(7). Learned counsel for the respondent No.2 contends that she is working as District Elementary Education Officer and for prosecution of a government officer, prior sanction should be taken from the appropriate authority whereas in the present no such prior sanction was taken by the petitioner. He further averred that numerous complaints are pending against the petitioner in relation to the misconduct of the petitioner in the department and as such, ACR has been rightly recorded against the petitioner.

(8). Learned counsel for the respondents No.2 to 4 submits that Ex.C2 the alleged copy of ACR received by the petitioner-complainant is a procured document and that as per the petitioner, the same was received by him in April, 2014 and that no remarks were found by the petitioner in Column No.5 of Ex.C2 whereas, in the complaint made by the petitioner on 15.02.2014, he categorically acknowledged that there was adverse remarks in the ACR for the year 2012-13 which shows that the remarks, alleged to be forged, were there in para 5 of the ACR of the said year.

- (9). Heard learned counsel for the parties and gone through the record.
- (10). As per Government guidelines (Annexure P-22), the ACR for the relevant year has to be completed at the end of October each year and if any adverse remarks are being made, then the same has to be communicated to the officer concerned in a time bound manner. Respondent No.3 had himself admitted to the police that he had signed the Ex.C-2 (Annexure P-5) i.e. copy of ACR for the year 2012-13. The signatures of respondent No.4 are appended on both the copies of ACR for the year 2012-13, which are of the same year and thus it is apparent from the record that the Ex.C3 was forged by the respondents No.2 to 4.
- (11). The relevant part of ACR report for the year 2012-13 which has to be filled up by the petitioner was duly complied with by the petitioner on dated 14.06.2013 and the same was sent to the office of respondent No.4 under acknowledgement whereas, as per the information supplied under RTI, the Principle Government Senior Secondary School Khor i.e. respondent No.3, had duly acknowledged that the ACR for the year 2012-13 was sent to respondent No.4 vide letter dated 31.10.2013, whereas as per Ex.C-2 (Annexure P-5) the ACR was not filled up and some column were filled up later on by forging the same.
- (12). It can be seen that at one point of time, respondent No.3 is saying that the complete ACR file has been sent on dated 31.10.2013 whereas the intimation of adverse remarks are being sent to the petitioner on dated 02.07.2014 whereas the record given to the petitioner does not have any adverse remarks and thus tampering with the record/ACR by respondents NO.2 to 4, cannot be ruled out.

(13). A perusal of documents Ex.C2 and Ex.C3 obtained by the petitioner under RTI reveals that both these very documents pertain to the ACR for the year 2012-2013, which prima facie proves that after writing ACR of the petitioner for the year 2012-2013 i.e. Ex.C2 was subsequently tampered with vide Ex.C3 as there is adverse comment regarding integrity of the petitioner whereas there is no such adverse comment in Ex.C2.

(14). Both the courts below have observed that no material was found to discard the preliminary evidence of the petitioner and to rely upon the said incomplete report under Section 202 CrPC and at the stage of Section 204 CrPC, the Court is not required to weigh the evidence so meticulously as it has to do so during the course of trial of main case.

(15). The Apex Court in **Sunil Bharti Mittal v. Central Bureau of Investigation, 2015 (4) SCC 609** while dealing with Sections 200 to 204, 190, 173(2) and 319 CrPC held that the words "sufficient ground for proceeding" appearing in Section 204 CrPC is of immense importance. The Court held that all these words would amply suggest that an opinion is to be formed only after due application of mind that there is sufficient basis for proceeding against the said accused and formation of such an opinion is to be stated in the order itself. The Court further held that the order is liable to be set aside if no reason is given therein while coming to the conclusion that there is prima facie case against the accused, though the order need not contain detailed reasons.

(16). In the instant case, it appears that the revisional court has not taken into consideration the above aspects of the case which he was bound to consider in matter of summoning the respondents No.2 to 4 in pursuance to the police report under Section 202 CrPC. It has nowhere been recorded as to

whether or not the evidence adduced under Section 319 CrPC would be sufficient to record a conviction against the accused. Further, the order under challenge lacks reasons for coming to a conclusion as to the non-existence of *prima facie* case against the respondents No.2 to 4. Further, since specific allegations regarding forgery and tampering with the record Ex.C3 vis-à-vis Ex.C2 have been leveled specifically against respondents No.2 to 4, there was no occasion for the revisional court or the trial court to have outrightly rejected the allegations of the petitioner merely on technicalities which could have been very well adjudged during the course of trial in view of the seriousness involved where the career of an employee is at stake. No wonder it cannot be denied that respondents No.2 to 4 are the custodian of records and there has been tampering with the record/ACR of the petitioner and that can only be proved by leading for and against the competing parties.

(17). In view of the above discussion, this petition is allowed and the order dated 21.04.2023 (Annexure P1) passed by Addl. Sessions Judge, Gurugram is quashed and the order dated 06.10.2018 passed by SDJM, Pataudi, is hereby upheld.

(18). Nothing expressed in this order shall influence the trial court.

16.04.2024  
V.Vishal

(Sandeep Moudgil)  
Judge

- 1. Whether speaking/reasoned?
- 2. Whether reportable?

Yes/No  
Yes/No