

(2019) 05 J&K CK 0065

In the Jammu And Kashmir High Court

Case No : Miscellaneous Criminal Cases (CRMC) No. 117 Of 2017

Maniza Khatoon And Anr

APPELLANT

Vs

State Of Jammu & Kashmir And Anr

RESPONDENT

Date of Decision : 30-05-2019

Acts Referred:

Code Of Criminal Procedure, 1898 — Section 561A
Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 420, 467, 468, 471, 474
Code Of Criminal Procedure, 1989 — Section 156(3)
Code Of Criminal Procedure, 1973 — Section 161

Citation : (2019) 05 J&K CK 0065

Hon'ble Judges : Sanjay Kumar Gupta, J

Bench : Single Bench

Advocate : D.S. Chouhan, Rajesh Thapa

Final Decision : Dismissed

Judgement

Sanjay Kumar Gupta, J

1. Through the instant petition filed under Section 561-A of the Code of Criminal Procedure (hereinafter for short, Cr.P.C) petitioners seek quashment of FIR No.38/2012 registered against the petitioners under Sections 420/467/468/471/474 of Ranbir Panel Code, Svt. 1989, pending investigation with SHO Police Station, Chassana (District Reasi).

2. It has been stated in the petition that as per the School Leaving Certificate issued by the Headmaster, Government Middle School, Moramal (Zone Chassana) the date of birth of petitioner No.1 is August 02, 1989 and she has passed 8th class examination in Session 2007-2008 while securing 324/500 marks. Petitioner No.1 further claims that she has also appeared in secondary school examination bi-annul-2009 under Roll No. 617257, but was declared to have failed in English, Urdu, Science and Social Science papers. The further case of the petitioners is that respondent No. 2-Parveen Akhter, whose date of birth is October 30, 1984 as per the School Leaving Certificate issued by the

Headmaster, Government Middle/Primary School, Sanglikote, Zone Chassana (Mahore), has also passed 8th class examination during the year 1998 and secured 200/500 marks.

3. Learned counsel for the petitioners states that pursuant to the Advertisement Notification issued by the Child Development Project Officer, Mahore and consequent to the selection process conducted by the District Selection Committee, a Provisional Select List of Anganwadi Workers in Anganwadi Centre Mal-II, Ward No.2, Panchayat Tulli-B in ICDS Project Mahore was published, wherein, the competing candidates were given ten days' time to file Objections, if any, from the date of publication of the Provisional Select List. In the Provisional Select List of Anganwadi Workers in Anganwadi Centre Mal-II, Ward No.2, Panchayat Tulli-B in ICDS Project Mahore, the name of the respondent No.2 existed at Serial No. 1 showing to have secured 257/500 marks, whereas, the name of petitioner No.1 existed at Serial No.2 showing to have secured 344/500 marks. It is stated that respondent No.2, namely, Parveen Akhter challenged the Provisional Selection of the Petitioner no.1 that she had produced fake documents of Class 8th (Pass Certificate) and the Deputy Commissioner, Reasi in a slipshod manner allowed the appeal of the private respondent No.2, while cancelling the Provisional Selection of the Petitioner No.1 with a further direction to the Child Development Project Officer, Mahore to consider the candidate next in the order of merit and issue the select list accordingly. The Petitioner being aggrieved of Order dated October 15, 2015 passed by the Deputy Commissioner, Reasi, preferred Revision Petition titled "Maniza Khatoon Versus Child Development Project Officer, Mahore & Ors.", before the Learned Divisional Commissioner, Jammu, seeking quashment of the same being illegal, arbitrary, mala fide, discriminatory, against the facts and law. On 20th November, 2015, the said Revision Petition was remitted to Deputy Commissioner, Reasi, directing him to dispose of the matter on merits after hearing the petitioner. It is stated that the petitioner had been approaching the Deputy Commissioner, Reasi, seeking disposal of File No.DI/DC/RS/Anganwadi titled "Parveen Akhter Versus Child Development Project Officer & Anr.", but the Deputy Commissioner, Reasi, kept on delaying the matter on one pretext or the other. In the meanwhile, the Petitioner came to know that the Child Development Project Officer, Mahore, has already passed Order No.27 of ICDS dated February 13, 2016, whereby, sanction was accorded to the engagement of the private respondent No. 2, as Anganwadi Worker in Anganwadi Centre Mal- II, Ward No. 2, Panchayat Tulli-B in ICDS Project, Mahore, in pursuance to the order of Deputy Commissioner, Reasi, dated 15th October, 2015.

4. Learned counsel for the petitioners stated that the above said order dated 13th February, 2016 whereby sanction is accorded to the engagement of the private respondent No.2 herein was challenged before this Court in SWP No.1295/2016, wherein this court vide order dated 10.06.2016 ordered that appointment of respondent No.7 therein shall be subject to the outcome of the writ petition.

5. Learned counsel for the petitioners further contends that the respondent No.2 - Parveen Akhter approached the Learned Chief Judicial Magistrate, Reasi under Section 156 (3) of J&K Code of Criminal Procedure, Svt. 1989 and the Respondent No.1-Station House Officer, Police Station, Chassana (District Kathua), registered First Information Report No.38/2012 against the Petitioners under Sections 420/467/468/471/474 RPC.

6. The petitioners challenge the aforesaid FIR No.38/2012 on the following grounds:-

i) That the impugned FIR No. 38 pending investigation with Station House Officer, Police Station, Chassana (District Reasi), suffers from non-application of mind and is illegal, unjust and against the well-established principles as applicable for the exercise of jurisdiction vested to a Criminal Court under the Code of Criminal Procedure, Svt. 1989

ii) That from the bare perusal of the First Information Report No.38/2012, it is clearly established that the exaggerated version of alleged incidents have been presented to falsely implicate, harass and humiliate the Petitioners;

iii) That pursuant to the Advertisement Notification issued by the Child & Development Project Officer, Mahore, the Petitioner submitted her application form along-with the Final Assessment Certificate issued by the Zonal Education Officer, Chassana, showing her to have passed 8th Class Examinations in Session 2007-2008 while securing 324/500 marks and consequent to the selection process conducted by the District Selection Committee, a Provisional Select List of Anganwadi Workers in Anganwadi Centre Mal - II, Ward No. 2, Panchayat Tulli-B IN ICDS Project Mahore was published, wherein, the name of Petitioner existed at Serial No. 2 wrongly showing to have secured 344/500 marks instead of 324/500. Needless to mention herein that in fact and reality, it was only the Respondent No. 2 who had produced fake and fraudulent Marks Certificate of 8th Class Examination showing to have secured 257/500 marks instead of 200/500 Marks.

iv) that the exercise of the inherent power to quash the First Information Report No. 38/2012 registered against the Petitioners under Sections 420/467/468/471/474 of the Ranbir Panel Code, Svt. 1989 pending investigation with Station House Officer, Police Station, Chassana (District Reasi) is called for as the same is vexatious, frivolous or oppressive. As the allegations set out in First Information Report do not constitute the offence of which cognizance has been taken by the Magistrate;

v) that the allegations made in the First Information Report No. 38/2012 registered against the Petitioners under Sections 420/467/468/471/474 of the Ranbir Panel Code, Svt. 1989 pending investigation with Station House Officer, Police Station, Chassana (District Reasi) and other material accompanying it, even if are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the

Petitioners, justifying registration of the First Information Report."

7. Status report has been filed by the respondent-State stating therein that in the month of July, 2010, the applicant applied for the post of Anganwadi worker for Anganwadi Centre at ward No. 2 Upper Tuli-B village Tehsil Mahore, District Reasi and on the direction of Deputy Commissioner, Reasi status quo was issued and CDPO, Mahore was directed not to allow accused petitioner No. 1 to join and therefore, the complainant applied under RTI Act for the issuance of mark sheet of 8th standard of accused/petitioner No.1 and the CDPO Mahore provided the same in which the accused/ petitioner No. 1 had secured 344/600 i.e., 57.33% marks. It is stated that the complainant applied under RTI Act to Chief Education Officer, Udhampur to provide the result of 8th standard of the accused/petitioner No. 1 and then CEO, Udhampur provided the same information in which the accused/ petitioner No. 1 had only 80 marks on the basis of which the accused/ petitioner No. 1, selected for Anganwari Worker post shows 100 marks in T-2 examination. In the status report it has been further stated that when the accused/ petitioners came to know that the complainant has got the information of mark sheet in which the accused/ petitioner No.1 secured only 80 Marks in T-2 examination, they have prepared one more forged mark sheet in which the total marks obtained by the accused/ petitioner No. 1, 324/600 i.e. 54%. It is further stated that accused/ petitioner No. 2 is the father of accused/ petitioner No.1 and accused No.1 & 2 are the teachers posted at Middle School Moramal, Zone Chassana, Teshsil Mahore District Reasi. When the complainant produced both these marks sheet before the Deputy Commissioner, Reasi and they prepared a forged mark sheet of complainant. Also in the original mark sheet, the complainant has obtained 257/500 marks and in the forged marks sheet which is prepared by accused/petitioner No.1 shows only 200 marks. It is stated in the status report that it is the utter surprise of the complainant that there were three different state subject of the accused/petitioner No. 1 which were issued under different dispatch Nos. The First State Subject of accused/petitioner No.1 was issued under File No. 920-427 dated 01.01.2005 and the second under File No.721-27 dated 13.08.2012 and third one under File No.489 dated 28.06.2011, all are issued by the SDM Mahore. The investigation was done by SI Mohd.Arif the then SHO P/S Chassana; during the course of investigation, I/O got documents from CDPO Office Mahore which were submitted by petitioner No.1 herein when she was engaged as Anganwari Worker and these documents were seized and the statement of the witnesses were also recorded under Section 161 Cr.P. C. The Investigating Officer seized the PRC files of the accused from SDM office Mahore and also recorded the statement of the witnesses. The I/O also seized the register of Govt. Middle School Tuli Mahore. During the course of investigation, I/O got the record from CEO, Office Udhampur regarding the examination of the 8th Class Sessions 2007/2008 and as per the records, the petitioner No.1 herein has secured only 80 marks out of 250 marks which indicate that she has got fake mark sheet prepared and got a job as Anganwari Worker and thus used the fake marks card. Further investigation reveals that the

petitioner No.1 herein has got a fake PRC prepared with the aid of Revenue official in her favour. The petitioner No.1 got prepared a fake PRC and a fake mark sheet with connivance of official of the Education Department and Revenue Department respectively and thus, petitioner No.1 got engaged in Social Welfare Department as Anganwari worker.

8. I have considered the rival contentions of parties. Exercise of power under Section 561-A Cr.P.C. is the exception and not rule. Inherent jurisdiction of High Court under this section may be exercised:-

1. To give effect to an order under the Code.
2. To prevent abuse of the process of Court.
3. To otherwise secure the ends of justice.

9. Bare perusal of this section, makes it clear that the provisions of the Code are intended to limit or affect the inherent powers of the High Courts. Obviously the inherent power can be exercised only for any of the three purposes specifically mentioned in the section. This inherent power cannot naturally be invoked in respect of any matter covered by the specific provisions of the Code. It is only if the matter in question is not covered by any specific provision of the Code, then this section can come into operation, subject further to the requirement that the exercise of such power must serve either of the three purposes mentioned in the said section.

10. It is only where the High Court is satisfied either that an order passed under the Code would be rendered ineffective or that the process of any court would be abused or that the ends of justice would not be secured, the power under this section can be used.

11. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases which may possibly arise.

12. Under section 561 A Cr.P.C., High court does not conduct a trial or appreciate evidence or function as court of appeal or revision. This power has to be exercised sparingly with circumspection and in the rarest of rare cases. While exercising powers under Section 561-A of the Cr. P.C. the Court has to keep in mind that it should not ordinarily embark upon any legal order passed by any Court.

13. In the present case, all the grounds taken in petition are pertaining to appreciation of facts, which this court cannot appreciate in detail. Petitioners have failed to apprise the court as to what is legal bar engrafted in any law for police to investigate the matter and produce challan before court below. All the grounds taken in memo of petition and those argued are defenses which accused have to establish during course of trial before court below.

14. There is ample evidence that petitioner No.1 got prepared fake PRC as well

as Mark Sheet, and on the basis of these fake documents, she got appointment as Anganwadi Worker in Social Welfare Department.

15. So petitioners have not made out any case for quashing the FIR, which has been investigated; and as per status report of respondents, offences under section 420/467/468/471/109 RPC have been proved against the petitioners from investigation conducted so far. Already much time has expired since registration of FIR, so respondents are directed to complete left over investigation expeditiously and produce challan before competent court of law within six weeks from today. Hence, this petition is dismissed along with all connected MP if any.