
(2008) 03 DEL CK 0034

In the Delhi High Court

Case No : Criminal Revision Petition No. 861-62 of 2005

Mr. M.K. Razdan and Mrs. Padma Alva

APPELLANT

Vs

The State and Shri Indukant Dixit

RESPONDENT

Date of Decision : 03-03-2008

Acts Referred:

Citation : (2008) 4 JCC 2966

Hon'ble Judges : Vidya Bhushan Gupta, J

Bench : Single Bench

Advocate : D.C. Mathur and Akshya Bipin, for the Appellant; Lovkesh Sawhney, APP, Rajesh Anand, Ved Prakash, Rajesh K. Singh, Rishikesh Kumar and Neetu Sahni for R-2, for the Respondent

Final Decision : Allowed

Judgement

V.B. Gupta, J.—The present petition has been filed u/s 397/401 read with Section 482 Cr.P.C. by the petitioners for setting aside summoning order dated 5th August, 2005 passed by learned Magistrate and also for quashing of proceedings arising out of complaint case No. 1016/2004 titled as "Indukant Dixit v. M.K. Razdan and Anr." under Sections 211/463/464/465/469 and 471 IPC, pending in the court of Magistrate.

2. The brief facts of this case are that respondent No. 2, Indukant Dixit has filed the above mentioned complaint case against the present petitioners in the court of Magistrate on the allegations that he is employee of Press Trust of India (PTI) and is currently working as a Reporter PTI-Bhasha posted at Jammu. Petitioner No. 1 is the General Manager/CEO/ Editor-in-chief of the Press Trust of India and petitioner No. 2, Ms.Padma Alva is the Regional Manager (North) in Press Trust of India.

3. Respondent No. 2 is a member of PTI Employees" Union Delhi and takes active interest in its activity. In January, 2001, respondent No. 2 won the election and became the national councilor of Federation of PTI Employees Union and he

raised bona fide demands of the employees and also protested against the autocratic style of functioning of petitioner No. 1. Ever since respondent No. 2, started actively participating in the Trade Union activities and raised his voice in protest against the petitioner, the petitioner in collusion with M.S.Yadav, the Joint Secretary of the Federation of PTI Employees Union, started targeting, harassing, victimizing respondent No. 2 on the one pretext or other with a view to compel him to leave the organisation. Later on, petitioners in collusion and connivance with Ms.Ekta Thani, falsely implicated respondent No. 2 in the matter of sexual harassment of Ms.Ekta Thani and respondent No. 2 started getting show cause letters on one false ground or the other. Petitioners 1 and 2 made the life of respondent No. 2 worse than hell and started harassing and victimizing and pressuring him by leveling false charges on him, so that he leave the organization.

4. On July 10, 2001, Ms.Ekta Thani made a false written complaint in collusion and connivance with the petitioners against respondent No. 2 and two other female colleagues namely Ms.Kavita Pant and Ms.Sujata Mathur that they used derogatory statements against her and passed insulting remarks against her. Petitioner No. 2 issued show cause notice only to respondent No. 2 charging him with sexual harassment of Ms.Ekta Thani. Later on, petitioner No. 1 charge sheeted respondent No. 2 with the charges of sexual harassment of Ms.Ekta Thani and other two charges. It is important to mention that charge of sexual harassment was not even made by Ms.Ekta Thani herself.

5. The petitioner with the help of enquiry officer Mr.Shakeel Ahmed, got respondent No. 2 declared guilty of the charges of sexual harassment. However, petitioner No. 1 could not dismiss respondent No. 2 due to overwhelming support of the employees in favor of respondent No. 2. Respondent No. 2 was later on elected General Secretary of the Federation of PTI Employees" Union and later on petitioner No. 1 vide office order dated August 29, 2002 malafidely transferred respondent No. 2 to Jammu as a Reporter in PTI-Bhasha. The office order was read in the presence of the employees and it was mentioned in the office order dated August 29, 2002 that after considering the representation of respondent No. 2 and personal hearing, it was decided to take a lenient view and not to impose the penalty of dismissal and instead the respondent No. 2 promotion to the next grade will be withheld for year after it became due and it was also stated that respondent No. 2 is transferred to Jammu. On the same day, when respondent No. 2 came back to his house, he opened the envelope to read the transfer letter dated August 29, 2002, and was surprised and shocked to read about the mentioning of a false letter dated August 23, 2002. Respondent No. 2 never wrote any letter dated August 23, 2002 to petitioner No. 1 nor he had any personal meeting with him after August 23, 2002. He immediately contacted petitioner No. 1 and asked him how and why these false facts have been mentioned in this letter. Petitioner No. 1 clarified that it was a typing mistake and instead of August 13, 2002, August 23, 2002 got typed and that in place of preceding personal hearing, subsequent personal hearing got typed. Respondent

No. 2 must not doubt the intention of petitioner No. 1. Respondent No. 2 innocently believed his clarification.

6. Before moving to Jammu to join duties, respondent No. 2 filed a criminal complaint for defamation against Ms.Ekta Thani and that matter is pending.

7. On September 2, 2002, respondent No. 2 reported for duty at Jammu and in his reporting letter he made the endorsement that the transfer order from Delhi to Jammu was only meant for covering the Jammu and Kashmir State Assembly Election, 2002 but later on petitioners cheated respondent No. 2 by not calling him back. Even after malafidely transferring respondent No. 2 to Jammu, petitioners did not stop their victimizing attitude and till date, on the one pretext or the other, they issued false show cause notices and charge sheet to respondent No. 2.

8. On January 22, 2003, petitioner No. 1 made a written complaint to the SHO, P.S. Greater Kailash-I, with the intention to cause injury to respondent No. 2 falsely charged him with having committed an offence of criminal intimidation to terrorise him, his family members and Ors. knowing fully well that there was no just or lawful ground for such charge against respondent No. 2 because on January 22, 2003, respondent No. 2 was physically present at Jammu and was performing his duties there. On the basis of this false complaint, petitioner No. 1 got an F.I.R. lodged against respondent No. 2 and Ors. and by doing so, petitioner No. 1 has committed offence punishable u/s 211 IPC.

9. In the month of April, 2003, respondent No. 2 came to know through Mr.Neelkanth Paratkar a close associate of respondent No. 2 and who was illegally dismissed from the services of PTI on account of his trade union activities, that in his personal case, titled as Neelkanth Paratkar v. PTI Management, for reinstatement, petitioners have filed a photocopy of letter dated August 23, 2002 stating that this letter was written by respondent No. 2 to petitioner No. 1 and the management falsely claimed before the labour court of Mumbai for their own illegal benefit, to support their claim against Mr.Neelkanth Paratkar in this case where the photocopy of this false document was placed on record, that respondent No. 2 had written this letter dated August 23, 2002 to petitioner No. 1. Respondent No. 2 never wrote any such letter to petitioner No. 1. The letter dated 23 August, 2002 is a false and forged document and petitioners had made this false document with intention to cause damage/injury to respondent No. 2 to support their own claim and by doing so they have committed the offences under Sections 463/464 IPC punishable u/s 465 IPC.

10. The petitioner have made this false and forged document and they have tried to make the labour court, Mumbai believe that, this letter was made/executed by respondent No. 2 knowing fully well, that respondent No. 2 never wrote any such letter. The petitioner committed forgery with the intention that the document forged by them shall harm the reputation of respondent No. 2. They fraudulently used this forged document as genuine, knowing very well that the letter/

document dated August 23, 2002 was a forged document and by doing so the petitioners have committed offence under Sections 469/471 IPC.

11. The petitioners have also placed on record the photocopy of this forged letter before the Conciliation Officer, Jammu in the matter of "Indukant Dixit v. PTI management" in May, 2003 and by doing so have committed offences under Sections 463, 464, 465, 469 and 471 IPC.

12. It is further stated by respondent No. 2 in his complaint, that on April 14, 2003, he submitted an application in the office at Jammu addressing petitioner No. 1 for medical leave from 6th April, 2003 to 13th April, 2003 and the same was supported by the original medical certificate issued by Dr. S. Chakraborty. On 10th May, 2003, respondent No. 2 was surprised to receive a show cause notice from petitioner No. 2. Petitioner No. 2 in collusion and connivance with petitioner No. 1, charged respondent No. 2 of submitting a false medical certificate under a false name making a false representation of facts for the period of April 5, 2003 to April 12, 2003. Petitioner No. 2 alleged that the medical certificate was issued for Ms. Indukant Dixit. Respondent No. 2 was surprised to read these allegations because he had submitted a genuine certificate. He gave reply to the show cause notice vide letter dated May 23, 2003 and also enclosed the photocopy of the original medical certificate. The petitioners did not specifically reply to the letter dated May 23, 2003 of respondent No. 2 but deliberately with mala fide intention to harass him, deducted his salary for the period from April 5, 2003 to April 12, 2003 even when medical leave application and original leave certificates were submitted to him. Respondent No. 2 had no alternative but to file application in May, 2003 before Assistant Labour Commissioner, Jammu for release of his salary and prosecution of the management of PTI. Petitioners had dishonestly altered the document, i.e. the medical certificate dated April 12, 2003 in a material way after it was submitted by respondent No. 2 and by doing so they have made a false/ forged document and have committed offences u/s 463, 464 IPC, punishable u/s 465 IPC.

13. Under these circumstances, petitioners have made false charges against respondent No. 2 to the SHO P.S.Greater Kailash-I and by getting a false F.I.R. registered against him has committed offence u/s 211 IPC and by making false and forged document dated August 23, 2002 and by making material alteration in the medical certificate submitted by respondent No. 2 without lawful authority, have committed offences u/s 463/464/465/469/471 IPC.

14. In the petition seeking quashing of the summoning order as well as proceedings arising of the complaint case pending in the Court of Magistrate, it has been stated by the Petitioners that the summoning order has been passed in a casual and perfunctory manner without due application of mind. Entire case of respondent No. 2 is based on mis-representation and concealment of facts. The present petitioners have been falsely implicated in this case. The complaint filed by respondent No. 2 is a clear case of vendetta without any just reason or basis

as respondent No. 2 is attempting to force and pressurize petitioners to allow him to work in the company on his own terms and conditions. No expert evidence has been brought on record and no attempt was made to prove document in question i.e. letter dated 23rd August, 2002 was created or forged and alterations were made in the medical certificate by the petitioners. Mere statement of respondent No. 2 and statement of witnesses would not be sufficient to prove the basic ingredient of offence u/s 471 IPC. In order to prove forgery, original document is the best evidence but the same has not been placed before the Court of Magistrate. Besides, the case of respondent No. 2 is user of alleged forged documents in Mumbai and hence Delhi Courts have no jurisdiction to try the said offence. Further, the handwriting expert has opined that there are no significant differences between the disputed signatures on the document and standard signatures and writing of respondent No. 2.

15. Respondent No. 2 did not approach the Court with clean hands which is evident from the fact that he was arrested on 5th April, 2003 in FIR No. 76/2003 and was remanded to judicial custody. Respondent No. 2 was admitted on bail vide order dated 8th April, 2003 passed by Additional Session Judge, Delhi. Under these circumstances, the submission of application for medical leave from 6th April, 2003 to 12th April, 2003 supported by a medical certificate by respondent No. 2 was a false representation of the facts before the Magistrate and there is no evidence to connect the petitioners with the act of creation of forged documents and using the same as genuine and as such impugned summoning order and the consequent proceedings arising out of the complaint case pending in the Court of Magistrate may be quashed.

16. In reply to this petition filed on behalf of respondent No. 2 it is stated that the impugned summoning order passed is legal and appropriate and there is no infirmity or illegality. The respondent No. 2 had prima-facie, proved the basic ingredients of the offence committed by the petitioners. At the stage of issuance of the process, the offence is not to be proved beyond reasonable doubt and only a prima-facie case has to be proved. Further, whatever plea which have been taken by the petitioners in the petition they are their defense and question of defense is a matter of trial. Under these circumstances, the impugned summoning order is legal and there is not infirmity in it and the same has been passed after due application of mind and as such the present petition is liable to be dismissed.

17. It is not in dispute that civil as well as criminal litigations have been pending between the Management of Press Trust of India and Employee Union of Pressing Trust of India. This fact has to be taken into consideration while dealing with the present case.

18. Since the present petition has been filed u/s 482 Cr.P.C., it is well settled that this Court should not, except in extraordinary circumstances exercise its jurisdiction u/s 482 Cr.P.C., so as to quash the prosecution proceedings after they have been launched. The power of quashing a criminal proceedings should be

exercised very sparingly and with circumspection and that too in the rarest of rare cases; the Court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/ Complaint, the extraordinary or inherent power does not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice.

19. In *State of Haryana and others Vs. Ch. Bhajan Lal and others*, a two judge Bench of Apex Court considered the statutory provisions and the earlier decisions of the Court and held that in the following categories of cases the extraordinary power under Art. 226 or the inherent powers under S. 482 Cr.P.C., can be exercised by the High Court either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised:

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers u/s 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated u/s 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient grounds for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

20. Keeping in view the proposition of law laid down in Bhajan Lal's case, it is to seen as to whether, it is a fit case where this Court should exercise it power u/s 482 Cr.P.C. or not.

21. In the entire complaint, no specific allegation have been made against petitioner No. 2 as to how she has committed the alleged criminal offences for which the present complaint has been filed in the Court of Magistrate.

22. During the course of arguments, learned Counsel for respondent No. 2, could not point out any specific allegation attributing any role to petitioner No. 2, with regard to the commission of criminal offences.

23. As per avements made in the complaint case, in July, 2001, one Ekta Thani has allegedly made a false written complaint in collusion and connivance with the present petitioners against respondent No. 2 and petitioner No. 2 issued a show cause notice to respondent No. 2 and later on petitioner No. 1 charged sheeted respondent No. 2 of sexual harassment of Ms. Ekta Thani and petitioners falsely implicated the respondent No. 2 in that case.

24. It has been further alleged that after inquiry they could not dismiss respondent No. 2, but they could simply transfer him.

25. These allegations made in the present complaint, have no connection with the present offences as alleged in the complaint.

26. Next allegation is that respondent No. 2 was transferred to Jammu vide transfer order dated August, 29, 2002 and in this order, there is mentioning of a false letter dated August 23, 2002 which talks about reference of personal hearing before petitioner No. 1. So, admittedly, no allegations has been made against petitioner No. 2 and this document does not concern petitioner No. 2 at all.

27. Other allegation made by respondent No. 2 is that, on 22nd January, 2003, petitioner No. 1 made a written complaint to SHO, P.S. Greater Kailash which was a false complaint and thus petitioner No. 1 has committed offence punishable u/s 211 IPC.

28. So, admittedly, there is no allegation qua, petitioner No. 2.

29. The only allegation made against petitioner No. 2 is that she in collusion and connivance with petitioner No. 1 charged respondent No. 2 of submitting a false medical certificate under a false name making a false representation of the facts, for the period April 5, 2003 to April 12, 2003. So, the only role attributed in the entire criminal complaint against respondent No. 2 is that, she had issued a false show cause notice dated 10th May, 2003 to respondent No. 2.

30. No finding has been given by any authority till date that the show cause notice dated 10th May, 2003 issued by petitioner No. 2 to respondent No. 2 is a false. The grievance of respondent No. 2 is that petitioner No. 2 has alleged that the medical certificate was issued for "Ms. Indukant Dixit" which is a wrong fact

and respondent No. 2, has been wrongly charged with submitting a false medical certificate. According to respondent No. 2, petitioners have been dishonestly altered medical certificate dated April 12, 2003 and they have made a false/forged document and had committed forgery.

31. There is nothing on record to show that it is petitioner No. 2 who has dishonestly altered the medical certificate dated April 12, 2003 and have made a false/forged document and had committed forgery.

32. So, after going through the entire complaint case, filed by respondent No. 2 in the Court of Magistrate, it shows that no allegation has been made against petitioner No. 2, which even prima-facie, may shows that she has committed any offence under Sections 211, 463, 464, 465, 469 and 471 of IPC.

33. Under these circumstances, the criminal complaint filed against petitioner No. 2 is not maintainable and the impugned summoning order dated 5th August, 2005 passed against petitioner No. 2 is liable to be quashed.

34. As far as the case of petitioner No. 1 is concerned, prima-facie, it is to be seen as to whether this petitioner has also committed any criminal offence as alleged in the complaint or not.

35. Regarding commission of offence u/s 211 IPC alleged to have been committed by petitioner No. 1 is concerned, it has been alleged in the complaint that on January 22, 2003 petitioner No. 1 made a written complaint to S.H.O. P.S. Greater Kailash, with the intention to cause injury to respondent No. 2, falsely charged him with having committed an offence of criminal intimidation to terrorize him, his family members and Ors. knowing very well that there was no just or lawful ground for such charge against him because on January, 22 2003 the respondent was physically present at Jammu and was performing his duty as a Reporter PTI"Bhasha. On the basis of this false complaint and high level contacts which petitioner No. 1 had in the administration, he even got an FIR lodged against respondent No. 2 and Ors. bearing No. 9/2003, P.S. Greater kailash. By doing so, petitioner No. 1 has committed offence punishable u/s 211 IPC.

36. Section 211 IPC reads as under:

False charge of offence made with intent to injure.- Whoever, with intent to cause injury to any person, institutes or causes to be instituted any criminal proceeding against that person, or falsely charges any person with having committed an offence, knowing that there is no just or lawful ground for such proceeding or charge against that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both; and if such criminal proceeding be instituted on a false charge of an offence punishable with death, imprisonment for life, or imprisonment for seven years or upwards, shall be punishable with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

37. A bare reading of this Section would show that there has to be "false charge of offence made with intention to cause injuries to any person". Mere filing of an FIR against any person cannot be said to be institution of criminal proceedings against that person, unless the FIR is found to be false. Here, in the present case though petitioner No. 1 had made a complaint dated 22nd January, 2003 to the SHO, P.S. Greater Kailash, New Delhi but no FIR on the basis of this complaint of petitioner No. 1 was registered.

38. On the other hand, as per copy of the FIR No. 9/2003 which has been placed on record, the complainant is constable Nandlal. So, FIR No. 9/2003 has not been lodged by petitioner No. 1 at all and all the averments made in this FIR has been recorded at the instance of constable Nandlal.

39. There is also nothing on record to show as to what happened in that case in which FIR No. 9/2003 has been lodged; whether that case is still pending or the same has been decided. There is no finding of any Court on record that in those criminal proceedings, false charges have been made against respondent No. 2 or the FIR has been found to be false.

40. Under these circumstances, there is no question of petitioner No. 1 committing any offence u/s 211 IPC.

41. With regard to the allegations u/s 463/464 punishable u/s 465 IPC, the case of respondent No. 2 is that petitioners have made false document dated August 23, 2002 with the intention to cause damage/injury to respondent no 2 to support their own claim and have also placed a photocopy of this forged and false letter before the Conciliation Officer, Jammu in the matter of Indukant Dixit v. PTI management in May, 2003 and by doing so have committed offences under Sections 463, 464, 465, 469 and 471 IPC also.

42. Section 463, 464, 465, 469 and 471 of IPC read as under:

463. Forgery-Whoever makes any false documents or false electronic record or part of a document or electronic record, with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.

464. Making a false document-A person is said to make a false document or false electronic record- First-Who dishonestly or fraudulently-

(a) makes, signs, seals or executes a document or part of a document;

(b) makes or transmits any electronic record or part of any electronic record;

(c) affixes any digital signature on any electronic record;

(d) makes any mark denoting the execution of a document or the authenticity of the digital signature, with the intention of causing it to be believed that such document or part of document, electronic record or digital signature was made,

signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or Secondly-Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with digital signature either by himself or by any other person, whether such person be living or dead at the time of such alteration; or Thirdly-Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his digital signature on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practiced upon him, he does not know the contents of the document or electronic record or the nature of the alteration.

465. Punishment for forgery- Whoever commits forgery shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

469. Forgery for purpose of harming reputation- Whoever commits forgery, intending that the document or electronic record forged shall harm the reputation of any party, or knowing that it is likely to be used for that purpose, shall be punished with imprisonment of either description for a term which may extend to three 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.

43. Respondent No. 2 has nowhere stated in the entire complaint where the original of letter dated August 23, 2002 is available. In the entire complaint, respondent No. 2 has referred about the photocopy of this document only.

44. According to the respondent No. 2, the photocopy of this document was placed by petitioner No. 1 before the labour Court of Mumbai as well as before the Conciliation Officer, Jammu. There is nothing on record to show that any such document was placed by petitioner No. 1 before the Labour Court of Mumbai or before the Conciliation Officer, Jammu nor that record has been summoned or proved by respondent No. 2 at the time of his pre-summoning evidence.

45. When neither original document nor its certified copy is either before this Court or the trial court, I fail to understand as to how a finding can be given by any Court that petitioner No. 1 has committed forgery of this document or had made a false document.

46. Under these circumstances, ingredient of Sections 463/464/465/469 and 471 of IPC are not attracted in this case at all.

47. The last allegation against petitioner No. 1 is that on May 10, 2003, respondent No. 2 was surprised and shocked to receive a show cause notice from petitioner No. 2. Petitioner No. 1 in collusion and connivance with petitioner No. 1 charged respondent No. 2 of submitting a false medical certificate under a false name making a false representation of fact for the period of April 5, 2003 to April 12, 2003. Petitioner No. 2 has alleged that the medical certificate was issued for Ms. Indukant Dixit.

48. As per the case of respondent No. 2, on April 14, 2003, he had submitted an application in the office at Jammu addressing petitioner No. 1 for medical leave from April 6, 2003 to April 13, 2003. The said application was supported by the original medical certificate issued by Dr. S.Chakraborty. Respondent No. 2 was surprised and shocked to see that petitioners had forged and fabricated his medical certificate dated April 12, 2003 and had placed photocopy of his medical certificate on record after forging the same, as in the original medical certificate, the doctor had not struck off either Mr./Ms./Mrs. The photocopy of forged medical certificate which is placed on record by petitioners show Mr. and Mrs. as struck off and it seems that medical certificate is issued in the name of Ms. Indukant Dixit. Thus, without the lawful authority, petitioners had dishonestly altered the document i.e. the medical certificate dated April 12, 2003 in a material way, after it was submitted by respondent No. 2 and by doing so, petitioners have made a false/forged document and have committed forgery and they have committed offence u/s 463/464 punishable u/s 465 IPC.

49. According to respondent No. 2, he had submitted a genuine Medical Certificate.

50. In the present case, it would be pertinent to point out that respondent No. 2 had been arrested in case FIR No. 76/2003, u/s 506 and 341/34 IPC, P.S. Parliament Street, New Delhi and as per certified copy of the bail order placed on record in this case, he was arrested in that case on 5th April, 2003 and was bailed out on 8th April, 2003. The bail order is reproduced as under:

State v.

1. Indukant Dixit

2. J.S. Rawat

FIR No. 76/2003

P.S. Parliament Street

Under Section 506 and 341/34 IPC.

8/4/2003

Present: Ld. Addl. P.P. for the State.

Counsel for the applicant.

The applicants were arrested on 5.4.2003 and are in custody since then. They have allegedly committed the offence u/s 506 as well as 341 of IPC in course of their activities as Members of PTI Employees Union. There are two other cases against the applicants of the same nature. The complainant PTI Management has already been protected by an order of the Hon"ble High Court of Delhi restraining the Union from carrying out any Union activity within 50 metres of the Office of the Management. The applicants be released on a bond of Rs. 25,000/- with one surety each in the like amount to the satisfaction of learned trial court/link MM/ duty MM subject to the condition that in case they are found violating the order of injunction passed by the Hon"ble High Court the current bail order will be liable to be cancelled. A.S.J. New Delhi"

51. So, admittedly, respondent No. 2 was in judicial custody in Delhi w.e.f. 5th April, 2003 to 8th April, 2003. However, the alleged medical certificate which is purported to have forged by the present petitioners is for the period from 5th April, 2003 to 12th April, 2003. I fail to understand as to how medical certificate for this period has been obtained by respondent No. 2 and was submitted in his office, when admittedly he was in judicial custody.

52. Naturally, when respondent No. 2 was in judicial custody and for that period when he had sent a medical leave application to his office then, the petitioners were fully justified in issuing show cause notice to make enquiry into this matter.

53. It is clear that after getting show cause notice, respondent No. 2 as a counter blast has filed the present complaint alleging that the medical certificate has been forged by the petitioners. The best witness to depose about the medical certificate as to whether it is a forged or genuine one is Dr. S. Chakraborty who has issued the medical certificate but his statement has not been recorded till date. Only he can state as to which is the original certificate and which one is the forged certificate. Moreover, this medical certificate does not even bear the signatures of respondent No. 2.

54. Under these circumstances, it is patently clear that respondent No. 2 has filed this criminal complaint before the Court of Magistrate as a counter blast so as to escape his prosecution for submitting an allegedly false medical certificate during the course of his service.

55. So, keeping in view the principles laid down in Bhajan Lal's case, the allegations made in the complaint even if they are taken at their face value and accepted in its entity do not prima-facie constitute any offence against any of the petitioners.

56. Under these circumstances, the present petition is allowed and the summoning order dated 5th August, 2005 passed by learned Magistrate is set aside and the proceedings pending in the complaint case, as mentioned above stands quashed.

57. Trial court record be sent back forthwith.