
(2003) 10 J&K CK 0021
In the Jammu And Kashmir High Court
Case No : 561. A/34 of 2003

Shabnam Nahid

APPELLANT

Vs

State of Jammu & Kashmir and Others

RESPONDENT

Date of Decision : 09-10-2003

Acts Referred:

Ranbir Penal Code, 1989 — Section 120B, 420, 467, 471, 561A

Citation : (2004) 1 JKJ 272

Hon'ble Judges : Y.P. Nargotra, J

Bench : Single Bench

Advocate : Anil Sethi, for the Appellant; Aruna Thakur, for the Respondent

Final Decision : Dismissed

Judgement

Y.P. Nargotra, J.—Petitioner Miss Shabnam Nahid through this petition u/s 561-A. Cr. P.C. is seeking quashing of challan titled State of

J&K v. Shabnam Nahid and Ors. instituted against her and other co-accused persons for commission of offences under Sections 420, 467, 471 &

120B, RPC in the court of learned 2nd Additional Sessions Judge Jammu.

2. The facts of the case stated in brief are that the petitioner had appeared in entrance examination for admission to MBBS course and was

declared successful under scheduled tribe category. However soon after declaration of result Sr. Superintendent of Police Crimes and Railway

received a complaint that the petitioner does not belong to Gujjar community and has prepared a false category certificate. On receipt of this

complaint and after holding preliminary inquiry the S.S.P. Crimes and Railway Jammu requested the Chairman Competent Authority Entrance

Examination, not to grant admission to the petitioner unless she produces the original certificate of secondary school examination in which she had

appeared under Roll No. 120046 Session May-June 1993. While the matter was under investigation the petitioner moved OWP 238/98 in this

court in which by way of interim relief the Competent Authority was directed to accord admission to the petitioner. While this petition was pending

the Dy. Commissioner Jammu vide his order dated 23.5.1996 cancelled the scheduled tribe certificate dated 13.8.1996 issued in favour of the

petitioner by Tehsildar Samba. This order of the Dy. Commissioner was challenged by the petitioner in OWP 394/98 AND OWP 424/98. Both

these petitions were decided with the direction to the Dy. Commissioner to decide the application as also the revision petition depending upon the

result of the finding on the application. The Dy. Commissioner Jammu decided the matter on 16.6.1998 by canceling the category certificate dated

13.8.1996 issued in favour of the petitioner. This order of cancellation of category certificate was challenged by the petitioner in OWP 520/1998.

The category certificate of the petitioner was cancelled on the allegation that the petitioner is the daughter of Gulzar Hussain and not of Taj Din

whereas wrong facts were recorded in the application moved before Tehsildar Samba for issuance of scheduled tribe certificate where the

parentage of the petitioner was shown as Taj Din. The adoption deed registered on 11.4.1996 where under the petitioner was purportedly shown

to have been adopted by Taj Din was in the knowledge of the petitioner but the same was not filed before Tehsildar Samba, who had issued the

scheduled caste certificate in favour of the petitioner, treating her to be the real daughter of Taj Din. The petitioner, allegedly misrepresented the

facts before the issuing authority only to get undue benefit.

3. Cancellation of the category certificate came up for consideration before this court in OWP 238/98 AND OWP 520/98. learned Single Judge

of this Court (Mr. Justice O. P. Sharma) vide judgment dated 24.12.1998 dismissed both the writ petitions and order of cancellation of scheduled

tribe certificate obtained by the petitioner was upheld. In Para 8 of the judgment it was observed as follows:--

As noticed above, the petitioner had herself admitted before the Deputy Commissioner that she had applied for the issue of certificate as a natural

born child of Shri Taj Din and not as his adopted daughter. The Tehsildar had thus issued certificate in her favour as the natural born daughter

because Taj Din as well as the witnesses produced by her stated that she was a natural born child of Taj Din. The Deputy Commissioner had only

to verify this fact. The petitioner did not stick to the claim made before the Tehsildar and tried to build up the case of adoption, so the certificate

had to be cancelled, and was rightly cancelled.

4. Against the above said judgment of the learned Single Judge the petitioner has filed a Letters Patent Appeal which is pending before the Division

Bench of this Court. This is one aspect of the matter which has a direct bearing on the objection raised by learned counsel for the petitioner to the

maintainability of the challan instituted against the petitioner.

5. As already said enquiry was conducted by the Crime Branch Jammu after receipt of a complaint that the petitioner has obtained a category

certificate by false representation on the basis of which she has appeared in the entrance examination for MBBS course in which she has been

declared successful. On the basis of this enquiry FIR was registered by the Crime Branch and investigated. In the investigation it was revealed to

the investigating agency that the petitioner appeared in matriculation examination and passed the same through Board of school Education Jammu

showing herself to be the daughter of Gulzar Hussain. Again she appeared in 10+2 examination under roll No. 109750 as a regular student of

Govt. Girls Higher Secondary School Mubarakmandi Jammu in May 1995 showing herself to be the daughter of Gulzar Hussain. However for

appearing in the entrance test to be conducted by the competent authority for MBBS course in May 1997 she submitted application form along

with attested Photostat copies of the testimonials showing herself to be daughter of Taj Din caste Gujjar instead of Gulzar Hussain, the real father.

Along with her application form she also filed forged copies of matriculation and 10+2 marks cards and thereby succeeded in getting herself

selected for MBBS course in 1997 session. The investigating agency concluded that the petitioner has thus fraudulently obtained admission in

entrance examination in pursuance of a conspiracy entered into between her and the other accused and therefore the petitioner and her co-accused

have committed offences under Sections 420, 467, 468, 471 and 120B RPC. For seeking trial of the accused charge sheet has been filed.

6. The petitioner through this petition seeks to invoke the jurisdiction of this

court u/s 561-A, Cr. P.C. for quashing the challan. Mr. Sethi, learned counsel for the petitioner has argued that the basic issue involved in the criminal case instituted against the petitioner is whether she has obtained the category certificate by concealment of true facts, forgery and fraud. The question of validity of the category certificate was raised by the petitioner in OWP 238/98 AND 520/98. Learned Single Judge has held that the cancellation was proper, as the petitioner had obtained the same by suppression of true facts. The judgment of the learned Single Judge has been challenged in a Letters Patent Appeal. If the L.P.A. comes to be decided in favour of the petitioner in that case cancellation of the category certificate would be invalid which would validate the certificate and if the category certificate issued in favour of the petitioner is held to be valid, then there cannot be any question of cancellation, forgery or fraud practiced by the petitioner for obtaining the said category certificate. Mr. Sethi has argued that as the question of validity of the category certificate is in issue before the Division Bench of this court, as such, if the criminal case is allowed to proceed, the petitioner is surely to be prejudiced and in case she is convicted thereby ultimately and at the same time if her appeal is allowed and category certificate is held to be valid, it would create a very anomalous position as the petitioner would face conviction for having obtained that category certificate which may ultimately be held to be valid by the Division Bench of this court. He has further argued that till the appeal is decided criminal trial of the case should be quashed or in the alternative stayed by invoking the jurisdiction of this court u/s 561-A, Cr. PC. In support of his contention he has relied upon Mohan Lal and Others Vs. The State of Rajasthan and Another, And Sardar Trilok Singh and Others Vs. Satya Deo Tripathi, , Karam Chand Ganga Prasad and Another Vs. Union of India (UOI) and Others, , 1981 Cr. LJ(II)58 and M. Krishnan Vs. Vijay Singh and Another, .

7. Before considering the judgments of various High Courts relied upon by the learned counsel for the petitioner let us take note of the judgments delivered by the Apex Court relied upon by the learned counsel for the petitioner. In Mohan Lal and Others Vs. The State of Rajasthan and Another, the Apex Court was considering the scope of Section 195(1)(c) Cr. P. C. therefore this judgment has no application to the present case. In Sardar Trilok

Singh and Others Vs. Satya Deo Tripathi, their lordships held that the dispute between the parties related to the purchase of a truck by the complainant on hire purchase agreement basis and an agreement was entered into between the respondent and a Financial corporation, the accused-appellant. The loan was payable in monthly instalments. According to agreement on default of any one installment the financier had the right to terminate hire-purchase agreement even without notice and seize the truck. The complainant's case was that only a blank form was got signed by him and that on default of the third installment the truck was forcibly seized and removed by the appellant. The respondent filed a complaint against the appellants in this connection for certain offences and in view of the transaction the Apex court held that the dispute raised was purely of a civil nature and criminal proceeding was an abuse of the process of the Court. This authority also has no application to the present case because it is no body's case that the facts on which commission of offences by the accused has been alleged constituted a civil cause.

8. Learned counsel for the petitioner has also relied upon Karam Chand Ganga Prasad and Another Vs. Union of India (UOI) and Others, wherein it has been held that the decisions of civil courts are binding on criminal courts but the converse is not true. The dismissal of the writ petitions by the High Court in view of the pendency of the criminal proceedings was held to be illegal. This authority also has also no bearing on the point in issue.

9. In the case titled M. Krishnan Vs. Vijay Singh and Another, the facts involved were that the appellant filed a complaint against the respondent alleging commission of offences punishable under Sections 193, 196, 197 406, 465, 468 and 471 of Indian Penal Code. The Magistrate took the cognizance and issued process against the two out of the three accused, named in the complaint. Instead of appearing before the trial Magistrate, the respondents approached the High Court by way of a petition u/s 482(corresponding to Section 561-A, of J&K Cr. P. C.) praying for quashing the proceedings initiated against them. The High court accepted the prayer of the accused and quashed the proceedings initiated against the respondents mainly on the ground that in view of the pendency of civil disputes between the parties where the genuineness of the documents

relied upon by the complainant was in dispute, no criminal action could be initiated against the accused persons. Feeling aggrieved by the order of the High Court the complainant preferred an appeal before the Supreme Court contending that the High Court committed a mistake of law by quashing the proceedings u/s 482 Cr. P. C. at the initial stage without affording the complainant an opportunity to prove his case against the accused as detailed in his complaint. In the complaint the appellant had made serious allegations against the respondents and prima facie satisfied the Magistrate about the commission of the offences under various sections of the Indian Penal Code. It was alleged that to prevent legal action against them, the accused persons filed a suit on false and flimsy claim by creating and forging documents/bonds/papers etc. Those documents were alleged to have been got filled up by the first accused which he had obtained from the complainant on blank papers for production before the Bank as guarantor. The accused were alleged to have betrayed the good faith and confidence reposed in them by the complainant and thus withdrew huge amounts on the basis of the forged documents. Along with the complaint the appellant filed a number of documents and got the statements recorded and after perusal of the complaint, the sworn statements of the complainant, his witnesses and inspecting the documents produced along with the complaint the Trial Magistrate directed registration of a case against the accused 1&2 for offences punishable under Sections 193, 209, 406, 468 and 471 IPC read with Section 120B IPC and issued process against them. Mr. Justice R. P. Sethi (as His lordship then was), speaking for the Bench observed as follows:--

Despite referring to various judgments of this court relating to the interpretation and scope of Section 482 of the Code and the indictment that the High court should be slow in interfering with proceedings at the initial stage, the learned Single Judge of the High court passed the impugned order. The High Court appears to have been impressed by the fact that as the nature of the dispute was primarily of a civil nature, the appellant was not justified in resorting to the criminal proceedings.

Accepting such general proposition would be against the provisions of law inasmuch as in all cases of cheating and fraud, in the whole transaction there is generally some element of civil nature. However, in this case the

allegations were regarding the forging of the documents and acquiring gains on the basis of such forged documents. The proceedings could not be quashed only because the respondents had filed a civil suit with respect to the aforesaid documents. In a criminal court the allegations made in the complaint have to be established independently, notwithstanding the adjudication by a civil court. Had the complainant failed to prove the allegations made by him in the complaint, the respondents were entitled to discharge or acquittal but not otherwise. If mere pendency of a suit is made a ground for quashing the criminal proceedings, the unscrupulous litigants, apprehending criminal action against them would be encouraged to frustrate the course of justice and law by filing suits with respect to the documents intended to be used against them after the initiation of criminal proceedings or in anticipation of such proceedings. Such a course cannot be the mandate of law. Civil proceedings, as distinguished from the criminal action, have to be adjudicated and concluded by adopting separate yard-sticks. The onus of proving the allegations beyond reasonable doubt, in criminal case, is not applicable in the civil proceeding which can be decided merely on the basis of probabilities with respect to the acts complained of. The High Court was not in any way justified to observe:

In my view, unless and until the civil court decides the question whether the documents are genuine or forged, no criminal action can be initiated against the petitioners and in view of the same the present criminal proceedings and taking cognizance and Issue of process are clearly erroneous.

His lordship further observed:-

Where factual foundations for the offences have been laid down in the complaint, the High court should not hasten to quash criminal proceedings merely in the premises that one or two ingredients have not been stated with the details or that the facts narrated reveal the existence of commercial or money transaction between the parties.

10. The above said judgment rendered by the Supreme Court applies from all corners to the case in hand. In the present case the accused-petitioner is alleged to have obtained the category certificate on the basis of false assertions by concealment of true facts and thus factual foundation for commission of the alleged offences committed by the accused has been very well been laid in the charge sheet filed by the

prosecution against her. Simply because the accused-petitioner in a letter patent appeal has questioned the legality of cancellation of the category

certificate, she cannot be allowed to urge that criminal proceedings should not be allowed to continue. Criminal proceedings stand on a different

footing in which on the facts alleged the trial court has to see whether such offences are made out or not prima facie for framing charges against the

accused for putting her to trial for commission of such offences. Present case has yet to come before the trial court on the question of framing of

charge and therefore without going into the question as to whether prima facie offences are constituted or not, in my view, criminal proceedings

initiated against the petitioner cannot and should not be scuttled at the threshold.

11. Viewed thus there is no merit in the contention of learned counsel for the petitioner. The other authorities of the High Court relied upon by him

do not cover the field and instead the case is covered by the above quoted judgment of the Apex Court.

12. In another case, Kamaladevi Agarwal Vs. State of West Bengal and Others, , Hon'ble Mr. Justice R. P. Sethi, (as his lordship then was),

speaking for the Bench after noticing various judgments observed as under:-

In view of the preponderance of authorities to the contrary, we are satisfied that the High Court was not Justified in quashing the proceedings

initiated by the appellant against the respondents. We are also not impressed by the argument that as the civil suit was pending in the High Court,

the Magistrate was not justified to proceed with the criminal case either in law or on the basis of propriety. Criminal cases have to be proceeded

with in accordance with the procedure as prescribed under the Code of Criminal Procedure and the pendency of a civil action in a different court

even though higher in status and authority, cannot be made a basis for quashing of the proceedings.

13. For the reasons stated above, I find no merit in this petition and, as such, same is dismissed.