



297 IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRR No. 1676 of 2019 (O&M)
Reserved on 22.08.2024.
Date of Decision: 28.08.2024

Harinder Dhingra

.....Petitioner

Versus

Narbir Singh

.....Respondent

CORAM: HON'BLE MR.JUSTICE MAHABIR SINGH SINDHU

Present: Mr. K.S. Khehar, Advocate,
for the petitioner.

Mr. R.S. Rai, Senior Advocate with
Mr. Gautam Dutt, Advocate,
Mr. Anurag Arora, Advocate,
Mr. P.S. Ahluwalia, Advocate and
Ms. Radhika Mehta, Advocate,
for the respondent.

MAHABIR SINGH SINDHU. J.

“An eye opener for the educated citizenry.”

On 26th November, 1949, Dr. Rajendra Prasad, the President of Constituent Assembly, before adopting the Constitution of India, listed two regrets:-

“There are only two regrets which I must share with the honourable Members. I would have liked to have some qualifications laid down for members of the Legislatures. It is anomalous that we should insist upon high qualifications for those who administer or help in administering the law but none for those who make it except that they are elected. A law giver requires intellectual equipment but even more than that capacity to take a balanced view of things, to act independently and above all to be true to those fundamental things of life---in one word---to have character (Hear, hear). It is not possible to devise any yard-stick for measuring the moral qualities of a man and so long as that is



not possible, our Constitution will remain defective. The other regret is that we have not been able to draw up our first Constitution of a free Bharat in an Indian language. The difficulties in both cases were practical and proved insurmountable. But that does not make the regret any the less poignant.”

{Constituent Assembly Debates, Book No.5, Vol.No. X-XII, Page 993}

A period of about 75 years has been consumed; but till date, the “first regret” is waiting for amelioration. Even as on today, there is no requirement of any educational qualification for becoming a Cabinet Minister; or Member of Parliament (M.P); and/or Member of Legislative Assembly (M.L.A) in our country.

“Is it law’s flaw; and/or pure politics?

Or

Both of above?

But it is very difficult to comprehend for a commoner!”

1. Present criminal revision has been filed, under Section 397 of Code of Criminal Procedure, 1973 (for short “Cr.P.C) against the impugned order dated 02.07.2019, passed by learned Judicial Magistrate First Class (For short “Judicial Magistrate”), Gurugram, whereby complaint bearing No. COMI/00030 of 2019 dated 18.01.2019 (P-1) titled as “***Harinder Dhingra Versus Rao Narbir Singh***”, filed by the petitioner under Section 125-A of the Representation of People Act, 1951 (for short “RP Act, 1951) and Sections 177, 193, 465, 420, 467, 468 and 471 IPC was dismissed at preliminary stage under Section 203 Cr.P.C.

2. Brief allegations as contained in the complaint dated 18.01.2019 (P-1) can be summarised as under:-



1. That the respondent furnished affidavit on 15.01.2005, before Returning Officer to contest election for Member of Legislative Assembly (for short "MLA") from Jatusana constituency, District Rewari (Haryana).
2. That the respondent also furnished affidavit on 25.09.2014, before the Returning Officer to contest election for MLA from Badshahpur Constituency, District Gurugram (Haryana) and at present, he is a Cabinet Minister in the Government of Haryana.
3. That upon going through the affidavit(s) obtained under the Right to Information Act, 2005 (for short "RTI Act"), the petitioner came to know that in the nomination papers, including affidavit filed for Jatusana constituency, District Rewari, the educational qualification shown by the respondent was Graduation from "Hindi Vishvavidyalaya Hindi Sahitya Sammelan Prayag" in 1986; whereas in the nomination papers, including affidavit filed for Badshahpur constituency, District Gurugram, the educational qualification of the respondent was shown as Graduation from "Hindi Vishvavidyalay Allahabad" in 1987. The University Grant Commission informed the petitioner under RTI Act that there is no university in the name of "Hindi Vishvavidyalay Allahabad".
4. That both the aforesaid affidavits are self-contradictory. The petitioner also made complaint to Election Commission of India for taking necessary action against the respondent, upon which, vide its office letter no.464/ECI/Terr/Let/HAR/2019-NS-II/602 dated 3.1.2019, Election Commission of India informed the petitioner to approach the Court of competent jurisdiction for redressal of his grievance under Section 125-A of the RP Act, 1951.



5. That in order to allure the general public, the respondent furnished false information in the affidavits time and again with respect to his graduation from above said university knowing fully well that the university was bogus. The said affidavits were tendered before the Election Commission, Rewari and lastly before Election Commission, Gurugram. The respondent knowingly and intentionally concealed true facts by filing false affidavits before the competent authority; thus, there is sufficient ground for proceeding against the respondent under Section 125-A of the RP Act, 1951 and Section 31 of the RP Act, 1950 and Sections 177, 193, 420, 467, 468 & 471 of Indian Penal Code, 1860 for furnishing false information in the shape of affidavit(s) before Election Commission(s), Haryana time and again after manipulating false documents.

3. While leading preliminary evidence, petitioner himself appeared as CW-1; examined one Ravinder Yadav as CW-2; also produced documents Ex.P1 to Ex.P-19 on record and closed the evidence.

4. After hearing the petitioner and upon perusing the material available on record, learned Judicial Magistrate dismissed the complaint under Section 203 Cr.P.C vide impugned order dated 02.07.2019; hence present revision petition.

CONTENTIONS:-

ON BEHALF OF THE PETITIONER:-

5. Contended that learned Judicial Magistrate has committed grave error in dismissing the complaint despite there being sufficient evidence to summon the respondent.



5.1 At the time of summoning the accused, only *prima facie* case is to be seen. The truthfulness or falsehood of allegations need not be seen at this stage. The Court is not required to delve into the merits of the case. The evidence brought on record is not to be appreciated meticulously.

5.2 In support of the contentions, learned counsel has relied upon (i) *Satish Ukey Versus Devendra Gangadharrao Fandavis (2019) 9 SCC 1*; (ii) *Bhim Rao Baswanth Rao Patil Versus K. Madan Mohan Rao and others (2023) SCC Online SC 871*; (iii) *Mairembam Prithviraj @ Prithviraj Singh Versus Pukhrem Sharatchandra Singh (2017) 2 SCC 487*; (iv) *Pramod Kumar Versus U.P. Secondary Education Services Commission and others (2008) 7 SCC 153*; (v) *Rajasthan Pradesh Vaidya Samiti, Sardarshahar and another Versus Union of India and others (2010) 12 SCC 609*; (vi) *Madhu Bala Sharma and others Versus State of Haryana and others (LPA No.117 of 2005) Pb&Hr*; (vii) *Sonu Gupta Versus Deepak Gupta and others (2015) 3 SCC 424*.

ON BEHALF OF THE RESPONDENT

6. Learned Senior Advocate contends that learned Judicial Magistrate has rightly dismissed the impugned complaint inasmuch as no *prima facie* case is made out to summon the respondent.

6.1 As a matter of fact, respondent had completed his graduation vide Roll No. 6151 and was awarded degree in Hindi Madhyama (Virshad) by Hindi Sahitya Sammellan, Prayag in the year 1988 which is equivalent to B.A. Further contends that respondent also completed his graduation vide Roll No. 2471 and was awarded with Uttama Sahitya Ratana in the year 2001 with Punjabi subject from Hindi Sahitya Sammellan, Allahabad which is equivalent to B.A. (Hons.). Also contends that central Government has given recognition to Hindi Sahitya Sammellan (Prayag), Allahabad to award degree in Madhyama (Visharad)



which is equivalent to B.A. and in Uttama (Hindi Sahitya), which is equivalent to B.A. (Hons.) in Hindi.

6.2 Again submitted that degrees obtained by the respondent have not been declared as fake, forged or fabricated by any competent authority or body till date and if at all, the Institute/Deemed University from where respondent completed his degree is not recognised by the UGC, then also, there would be no fault of the respondent in this regard; nor he had conspired with the Institute/Deemed University for awarding of the degrees in question.

6.3 Lastly submitted that since there is no *actus reus* or *mens rea*, on the part of respondent; thus there was no occasion to issue the process against him while entertaining the complaint filed at the instance of petitioner.

6.4 Petitioner is claiming to be an RTI activist and unnecessarily harassing the respondent, just to blackmail him for extraneous consideration.

7. Heard learned counsel for the parties and perused the records.

8. Before proceeding further, it is necessary to reproduce the text of Section 203 Cr.P.C and which reads as under:-

“203. Dismissal of complaint.--If, after considering the statements on oath (if any) of the complainant and of the witnesses and the result of the inquiry or investigation (if any) under Section 202, the Magistrate is of opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint, and in every such case he shall briefly record his reasons for so doing.”

A perusal of the aforesaid provisions, indicates, *inter alia*, that if after considering the statements on oath, (if any) of the complainant and of the witnesses and the result of the inquiry under Section 202 Cr.P.C, the Magistrate is of the opinion that there is no sufficient ground for proceeding, he shall



dismiss the complaint and in every such case, he shall briefly record his reasons for doing so.

9. More than half a century ago, Hon'ble the Supreme Court in ***D.N. Bhattacharjee and others Versus State of West Bengal and another (1972) 3 SCC 414*** while dealing with the provisions of Section 302 of the Old Code (Code of Criminal Procedure, 1898) (Now Section 203 Cr.P.C) in para 7, observed as under:-

“7. It has to be remembered that an order of dismissal of a complaint under Section 203, Criminal Procedure Code has to be made on judicially sound grounds. It can only be made where the reasons given disclose that the proceedings cannot terminate successfully in a conviction. It is true that the Magistrate is not debarred, at this stage, from going into the merits of the evidence produced by the complainant. But, the object of such consideration of the merits of the case, at this stage, could only be to determine whether there are sufficient grounds for proceeding further or not. The mere existence of some grounds which would be material in deciding whether the accused should be convicted or acquitted does not generally indicate that the case must necessarily fail. On the other hand, such grounds may indicate the need for proceeding further in order to discover the truth after a full and proper investigation. If, however, a bare perusal of a complaint or the evidence led in support of it show that essential ingredients of the offences alleged are absent or that the dispute is only of a civil nature or that there are such patent absurdities in evidence produced that it would be a waste of time to proceed further, the complaint could be properly dismissed under Section 203, Criminal Procedure Code.”

10. This Court has gone through the order under challenge, carefully and finds that learned Judicial Magistrate, while dismissing the complaint has



assigned good and sufficient reasons in paragraph Nos.14, 15, 16, 21 & 28 thereof and for reference, the same are recapitulated as under:-

14. In this regard, a perusal of documents attached to inquiry report of Section 202 of Cr.P.C. shows that the proposed accused had done his graduation in Hindi under Roll No. 6151 from Hindi Sahitya Sammellan, Allahabad in the year 1988 and a degree that has been awarded to him is Hindi Madhyama (Visharad) which is equivalent to B.A. Further perusal of copy of degree bearing Roll No. 2741 shows that the proposed accused had done his Uttama Sahitya Ratana in the year 2001 with Punjabi subject from Hindi Sahitya Sammellan, Allahabad, which is equivalent to B.A. (Hons.). A further perusal of documents attached to said report in the form of Press-note dated 18.02.1970 issued by Government of India through Ministry of Education & Social Empowerment/Welfare shows that the Central Government has given the recognition or sanction to Hindi Sahitya Sammellan (Prayag), Allahabad to award degree in Madhyama (Visharad), which is equivalent to B.A. and in Uttama (Hindi Sahitya), which is equivalent to B.A. (Hons.) in Hindi.

15. A collective perusal of afore-said documents, it is prima-facie proved on record that the proposed accused was awarded with graduation degree in the form of Hindi Madhyama (Visharad) in the year 1988 and also the degree of Uttama (Sahitya Ratana) which is equivalent to B.A. (Hons.), at the time of filing of nomination papers and Form 26 in Assembly Elections of Haryana for 2005 & 2014 and also in 2009 Lok Sabha Elections. Meaning thereby, the proposed accused was having graduation degree at the time of filing afore-said nomination papers and Form 26 in the form of sworn affidavits. Therefore, the contention of the complainant that the accused is not graduate or not having any graduation degree while filing such affidavits is not



sustainable and same is against the records and accordingly, stands declined.

16. *Another contention raised by the complainant is that the proposed accused while filing affidavit in Form 26 for 2005 Assembly election from Jatusana (Rewari) constituency has mentioned the institution/university name as "Hindi Vishwavidalya, Hindi Sahitya Sammellan, Prayag". However, said university is neither recognized nor mentioned in the UGC list. He further contended that in affidavit and Form 26 filed while contesting 2009 Lok Sabha Election from Gurgaon constituency, the proposed accused has shown himself graduate from "Hindi Vishwavidalya, Allahabad. Further, the proposed accused in his affidavit and Form 26 filed while contesting 2014 Assembly Election from Badshahpur constituency has shown himself as graduate from "Hindi Vishvidalya, Allahabad" and in this regard, complainant had contended that in all three affidavits the proposed accused has mentioned the institute/university name different and contradictory and therefore, he has given false information in his sworn affidavits and thereby allured the general public of said constituencies to cast their votes to him.*

However, afore-said contention is also not sustainable as the proposed accused has mentioned about possessing a graduation degree from Hindi Sahitya Sammelan Prayag/Allahabad. Merely mentioning the wrong name of any institution or university from which he has done his graduation can not be termed as false information and the institution or university name can be checked or verified from the degree so issued by the said institution or university to the proposed accused. The proposed accused has not concealed any true and material facts and he has specifically stated about possessing or having graduation degree at the time of filing said affidavits in Form 26 and the said fact has also been proved on record from the documents in the form



of copies of degrees awarded to him, letter issued by Hindi Sahitya Sammellan, Allahabad from which proposed accused had done his graduation. Therefore, mere mentioning of wrong name of institution/university can not be termed as false information or declaration and the same is appears to be a clerical or typing error which can not hold the particulars or contents of affidavit as false. Hence, this contention is also declined accordingly.

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21. After perusing the record and afore-said provisions, the material ingredients of cheating as defined under Sections 415 & 420 of IPC and also the essential ingredients of forgery and manipulation or fabrication of false documents as defined under Sections 463 & 464 of IPC are not proved on record and therefore, the proposed accused can not be summoned under afore-said Sections merely upon asking of complainant as no deception, dishonest concealment and false or misleading representation has been made by proposed accused in his nomination papers, affidavits and Form 26 while contesting elections of M.L.A. & M.P in the years 2005, 2009 & 2014. Accordingly, this contention stands declined being without having any substance.

22 to 27

28. In view of above discussions, it is clear that there was no limitation provided qua launch of criminal prosecutions before coming into force of The Code of Criminal Procedure, 1973 as The Limitation Act, 1863 used to apply only to criminal appeals and revisions, though, delay used to be a ground to doubt prosecution's case or complainant's story at the time of final decision. The provisions of chapter XXXVIth of The Code of Criminal Procedure, 1973 were introduced and limitation was provided qua launch of criminal prosecutions in less serious offences punishable up to three years to quicken diligence, to prevent abuse of process of Court by filing vexatious and belated



prosecutions, to proven oppression, to serve public interest by bringing certainty and to relieve Courts from burden of adjudicating inconsequential claims as material evidence is either lost or fades away with time. Now, as per Section 468 of Cr.P.C reproduced above there is bar in taking cognizance of offence after expiry of period of one year, which is applicable to the present matter as the offence complained of and punishable under Section 125A of the Act, 1951 is punishable with severest or maximum imprisonment up to six months. It is clear from the Section 469 of Cr.P.C that the period of limitation generally starts from the commission of offence. Now, the affidavits and Form No. 26 in question in which the alleged false information was furnished were filed in the years 2005, 2009 & 2014. The said affidavits/information furnished by the proposed accused herein must have been published by concerned Returning Officers as per the provisions of Sections 35 and 36 of the Act, 1951 reproduced above. So, the said information was within public domain since the said publication as per Sections 35 and 36 of the Act, 1951. More so, it was within public domain ever since it was uploaded on the website of Election Commission of India which must be corresponding with the period in which the same was filed. So, at the best, the limitation for filing such complaint qua present offence was up to one year from the date of publication by returning officer. The present complaint was filed in year January, 2019 i.e. after long-long gap of around 15 years, 10 years & 5 years respectively from the date of furnishing of alleged false information and up to 2019, the complainant has remained in deep slumber and has not raised any objection within the prescribed time period.”

A bare glance on the above extract clearly indicates that the impugned order has been passed by learned Judicial Magistrate after due application of judicial mind and the view taken in the matter is quite justified



being plausible to the effect that there is no sufficient ground for proceeding against respondent for summoning him in the present complaint.

11. Also noteworthy that Hon'ble Supreme Court in ***SanjaySing Ramrao Chavan Versus Dattatray Gulabrao Phalke and others, (2015) 3 SCC 123***, while dealing with the power of revisional Court under Section 397 to 401 Cr.P.C, in paragraph No.14, held as under:-

“14. In the case before us, the learned Magistrate went through the entire records of the case, not limiting to the report filed by the police and has passed a reasoned order holding that it is not a fit case to take cognizance for the purpose of issuing process to the appellant. Unless the order passed by the Magistrate is perverse or the view taken by the court is wholly unreasonable or there is non-consideration of any relevant material or there is palpable misreading of records, the Revisional Court is not justified in setting aside the order, merely because another view is possible. The Revisional Court is not meant to act as an appellate court. The whole purpose of the revisional jurisdiction is to preserve the power in the court to do justice in accordance with the principles of criminal jurisprudence. The revisional power of the court under Sections 397 to 401 Cr.P.C is not to be equated with that of an appeal. Unless the finding of the court, whose decision is sought to be revised, is shown to be perverse or untenable in law or is grossly erroneous or glaringly unreasonable or where the decision is based on no material or where the material facts are wholly ignored or where the judicial discretion is exercised arbitrarily or capriciously, the courts may not interfere with decision in exercise of their revisional jurisdiction.”

12. *A fortiori*, there is sufficient material, which clearly indicates that respondent was awarded degree in Hindi Madhyama (Visharad) in the year 1988 which is equivalent to B.A as well as the degree of Uttama (Sahitya Ratana) in the year 2001 and that is equivalent to B.A. (Hons.).



13. Thus, in such a scenario, there remains no doubt that respondent was having the graduation degrees at the time of filing his nomination papers on 15.01.2005 as well as 25.09.2014. Of course, it is vehemently contended on behalf of the petitioner that above degrees obtained by the respondent are not legally valid inasmuch as the Institute (alleged Deemed University) is not approved by the UGC; but that does not make the respondent liable for making any false declaration in Form No. 26, attached with the nomination form and/or for filing an affidavit in support thereof and to face prosecution in the manner alleged.

14. The reason is obvious; as it is not the allegation of petitioner that respondent did not complete his degrees from the Institute and/or that the degrees obtained by him were found to be fake, forged or fabricated by any competent authority established in this regard. Even accepting as a worse proposition to the effect that Institute was not recognised by the UGC and/or the degrees awarded by the said Institute are found to be not valid in law, for any purpose; still it would be wrong to allege that respondent has committed any crime while obtaining the degrees in question.

15. It is quite discernible that respondent under *bona fide* impression, enrolled himself as a student of the Institute with due care and attention at relevant point of time and if subsequently, it is found that Institute was not recognised by the UGC, then it would not be the fault of respondent; nor the same could be a ground to prosecute him for obtaining such degrees.

16. Moreover, it is not the allegation of petitioner that respondent was instrumental in running the Institute and/or that he had obtained the degrees in any deceitful manner, without any enrolment and/or that his admission was manipulated *de hors* the legal provisions.



17. To be specific and more precise, if the Institute from where respondent had completed his degrees, is subsequently found to be not recognised by the UGC, then respondent being a genuine student, who completed his education from such Institute, cannot be prosecuted for obtaining the degrees in due course.

18. Needless to repeat that till date, in our country, for contesting an election as an MLA or MP, there is no requirement of any educational qualification.

19. Although, learned counsel for the petitioner tried to make an attempt while arguing that respondent has mentioned different years of passing the graduation degree i.e. 1986, 1987 and 1988 and as such, the same is alleged to be false declaration in the nomination papers as well as in the supporting affidavit. However, in the opinion of this Court, it cannot be said to be a false declaration and/or a ground for criminal prosecution; rather at best, same could be termed as a clerical or typing error, having no material consequences upon the fate of a candidate.

20. It is noteworthy that election of the respondent has never been declared as invalid on any ground stipulated under the R.P. Act, 1951 by the Court of competent jurisdiction.

21. Although, learned counsel for the petitioner tried to convince the Court while citing various judicial pronouncements, noticed here-in-above, but the same are not helpful in any manner for the following reasons:-

- (i) In *Satish Ukey's case(supra)*, the respondent had not mentioned the details of two criminal cases pending against him in the affidavit in Form No.26 prescribed under Rule 4-A of the Conduct of Election Rules. Hon'ble the Supreme Court held that a candidate is bound to disclose the pending cases against him in



which cognizance has been taken by the Court. However, in the case in hand, there is no question of mentioning of criminal cases.

(ii) In *Bhim Rao Baswanth Rao Patil's case (ibid)*, the appellant had not published in the newspaper regarding pendency of cases against him and those in which he was convicted. It is an election petition wherein respondent filed an application under Order VII Rule 11 CPC for rejection of petition. However, the application was dismissed upto the Hon'ble Supreme Court while returning no finding on merit; whereas in the present case, there is no question of publication of pending cases against the respondent.

(iii) In *Mairembam Prithviraj alias Prithviraj Singh's case (supra)*, the educational qualification of returned candidate was mentioned as MBA in nomination papers. After raising objection by the respondent and on being asked by the Returning Officer to give proof of his educational qualification, the returned candidate failed to furnish any document in support of his educational qualification. In the present case, there is a proof of educational qualification.

(iv) In *Pramod Kumar's case (supra)*, the controversy was regarding appointment for the post of a teacher which required qualification of B.Ed. It was a selection matter; hence distinguishable.

(v) In *Rajasthan Pradesh Vaidya Samiti, Sardarshahar's case (supra)*, the question was regarding recognition of degree upto 1967 for the purpose of medical practice; hence distinguishable.

(vi) In *Madhu Bala Sharma's case (supra)*, the only question that fell for determination before the Court was whether the



petitioners/appellants were entitled to remain in government service on the basis of the degrees which they claim to have acquired from Hindi Sahitya Sammelan, Allahabad. It was a service matter; therefore not helpful to the petitioner.

(vii) In *Sonu Gupta's case (supra)*, it was held that at the stage of cognizance and summoning, the Magistrate is not required to consider the defence version or materials or arguments nor is he required to evaluate the merits of the materials or evidence of the complainant. There is no quarrel with the above legal proposition; however, in the present case, *de hors* the defence of respondent, even if the allegations made in the complaint are taken at its face value, still no offence is made out against him.

22. In view of the above discussion, this Court does not find any illegality or perversity, worth interference with the impugned order passed by learned Judicial Magistrate. There is no hesitation to observe here that the impugned order is based on material facts and no relevant evidence has been ignored; nor the judicial discretion has been exercised arbitrarily or capriciously. Even the order impugned does not admit of any other view warranting substitution to the contrary.

23. Consequently, there is no option, except to dismiss the present revision petition.

24. Ordered accordingly.

Pending application(s), if any, shall also stand disposed off.

28.08.2024

SN

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable: Yes/No