

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Criminal Miscellaneous (Petition) No. 55/2020

Laluram S/o Shri Kanaram, Aged About 54 Years, R/o
Sukhalpura, Police Station Renwal, District Jaipur, Raj.

----Accused-Petitioner

Versus

State Of Rajasthan, Through PP.

----Respondent

For Petitioner(s)	:	Mr. Suresh Pareek Sr. Adv. with Mr. N.C. Sharma & Mr. S.L. Sharma & Mr. Nachiketa Pareek
For Respondent(s)	:	Mr. F.R. Meena, PP
For Complainant	:	Mr. Anoop Dhand

HON'BLE MR. JUSTICE MAHENDAR KUMAR GOYAL
Judgment

24/02/2021

This criminal misc. petition under Section 482 Cr.P.C. is filed against the order dated 05.12.2019 passed by the Additional Sessions Judge No.1, Sambhar Lake, District Jaipur whereby, the revision petition filed by the petitioner against the order dated 27.02.2017 passed by the learned Additional Chief Judicial Magistrate, Sambhar Lake, District Jaipur framing charges against the petitioner under Sections 420, 467, 468, 471, 474 and 120-B of IPC, has been dismissed.

Assailing the order, learned Senior Counsel for the petitioner submitted that allegation against him was of furnishing false information before the Returning Officer while submitting nomination papers and in view of provisions of Section 195(1)(a) Cr.P.C., complaint could have been filed by the public servant, i.e., by the Returning Officer only and no private complaint was

maintainable. Referring the contents of FIR No.53/2015 registered at Police Station Data Ramgarh, District Sikar, learned Senior Counsel submitted that in case of **Smt. Kiran Kanwar Vs. State of Rajasthan and Anr., in S.B. Criminal Misc. (Petition) No.4345/2019**, arising out of the aforesaid FIR involving identical facts, this Court, vide its judgment dated 10.12.2019, quashed the proceeding initiated on behest of private complaint in view of bar contained under Section 195(1)(a) Cr.P.C. He submitted that the Special Leave to Petition preferred against the aforesaid judgment has been dismissed by the Hon'ble Apex Court. He, therefore, prayed that the order impugned be quashed and he may be discharged from the offences under Sections 420, 467, 468, 471, 474 and 120-B of IPC.

Per contra, learned Public Prosecutor assisted by the learned counsel for the complainant opposing the prayer submitted that in the present case, the allegations disclose commission of cognizable offence also and hence, the bar under Section 195 (1) (a) Cr.P.C. is not applicable. They, therefore, prayed that the criminal misc. petition be dismissed.

Heard learned counsels for the parties and perused the record.

Undisputedly, there is categorical allegation against the petitioner of forging and fabricating transfer certificate of Class-VIII which he used alongwith his nomination papers submitted for contesting election for the post of Sarpanch Gram Panchayat, Mundoti. A perusal of the order passed by the learned trial Court as well as learned revisional Court reveals that charges have been framed against the petitioner and upheld taking into consideration the material on record including the statements of complainant

and other witnesses recorded under Section 161 Cr.P.C. Shakil-Ur-Rahman, who was Director of the school which has allegedly issued the transfer certificate of the petitioner, has specifically stated in the statement recorded under Section 161 Cr.P.C. that at the relevant time i.e. in the year 1982 when the petitioner is claimed to have passed Class- VIII from the institution, the same was not in existence and the institution has issued no such transfer certificate. Therefore, the findings of the learned Court below are based on material on record and do not suffer from any perversity or illegality.

Contention of the learned Senior counsel that complaint by the public servant only was maintainable in view of provisions of Section 195 (1)(a) Cr.P.C., is wholly misconceived. The provisions of Section 195(1)(a) Cr.P.C. provides as under:-

"195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence-(1)

No Court shall take cognizance-

(a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or

(ii) of any abetment of, or attempt to commit, such offence, or

(iii) of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;"

In the present case, the allegations, beside submitting false information with the Returning Officer, are with regard to forging and fabricating a document also, for which private complaint was very well maintainable. The judgment of the co-ordinate Bench of this Court in case of **Smt. Kiran Kanwar** (supra) has no applicability in the facts and circumstances of the present case. In

that case, this Court proceeded to quash the criminal proceeding against the petitioner therein relying on judgment of another co-ordinate Bench of this Court in case of **Rekha Bano Vs. State of Rajasthan and Anr., in S.B. Criminal Misc. (Petition) No.1561/2019 decided on 07.03.2019.** In **Rekha Bano** (supra), this Court recorded a categorical finding as under:-

"There is no allegation in the entire FIR that the petitioner ever fabricated or forged any document. The only allegation against the petitioner is that she had wrongly deposed in the affidavit that she is mother of two children. Thus, according to the complaint, the petitioner had furnished a wrong information to the Returning Officer, who is a public official/public servant."

Undisputedly, in the present case, there is specific allegation against the petitioner of forging and fabricating transfer certificate of Class- VIII which has been found to be substantiated by the material collected by the investigating agency during course of investigation. It is trite that judgment of Court cannot be treated as Euclid's formula and has to be read in the factual matrix involved therein.

Contention of the learned Senior Counsel to assess the precedential value of the judgment of this Court in case of **Smt. Kiran Kanwar** (supra) analyzing the contents of FIR out of which that judgment arose, is wholly misconceived. A judgment can be a binding precedent only for what has been considered and held in it. No Court can travel beyond the facts mentioned and considered therein to cull out "ratio decidendi". A Division Bench of the Allahabad High Court has, in case of **Ashok Kumar Vs. State of U.P. and Ors., MANU/UP/0618/2001,** held as under:-

"10.The observations of Hon'ble the Supreme Court in State of U.P. v. Shakeel Ahmad (supra) pertained to a case of detention under the Conservation

of Foreign Exchange and Prevention of Smuggling Activities Act, which is a social offence affecting the society at large. Under Article 141 of the Constitution of India, only those precedents of Hon'ble Supreme Court are binding upon this Court where the entire facts of the case, pleas taken by the opposite parties, and the law on the subject have been discussed and elaborated. Every judgment of Hon'ble the Supreme Court, which does not deal with all those questions, cannot be said to be a binding precedent under Article 141 of the Constitution. In State of V. P. v. Shakeel Ahamad (supra) neither the facts involved were mentioned nor the law on the subject was elaborated and explained, hence the view taken by Hon'ble the Supreme Court in the case noted above which the learned counsel for the petitioner has cited, cannot be said to be a precedent."

As already held, the case of **Smt. Kiran Kanwar** (supra) has been decided on the basis of another judgment of this Court in case of **Rekha Bano** (supra), wherein it has specifically been observed that there was no allegation in the FIR of forging and fabricating any document, which is specifically levelled herein and hence, the same has no applicability in the facts and circumstances of the present case.

This criminal misc. petition devoid of merit is dismissed accordingly.

(MAHENDAR KUMAR GOYAL),J

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