

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **Crl.M.C. 638/2009 & Crl.M.A.2384/09 (stay)**

% Date of reserve: 04.03.2009
Date of decision: 23.03.2009

D.R. PATEL & ORS. ...PETITIONERS
Through: Mr. S.C. Juneja, S.K. Anand &
Anil Anand, adv.

Versus

STATE & ANR. ...RESPONDENTS
Through: None

CORAM:
HON'BLE MR. JUSTICE MOOL CHAND GARG

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

MOOL CHAND GARG, J.

1. The present petition arises out of an order passed by the Learned Addl. Sessions Judge dated 09.04.2007 the Learned Addl. Sessions Judge while deciding his second revision petition filed under Section 397 Cr.P.C. has upheld the order of the Metropolitan Magistrate dated 23.06.2007 directing the petitioners to face a trial in case FIR No. 139/04 dated 28.04.2004 under Section 420/468/471/504/506/34 IPC which has been registered at the instance of the second respondent.

2. Briefly stating the facts giving rise to this case are:

(i) An FIR was registered against the petitioners at the

instance of the second respondent on the allegations that the petitioners manipulated the report card of his son Vishal Singh Rathore who was studying in the school where the petitioners are working and one of them is a principal so as to fail him because the petitioners failed to abide by the illegal demands of the respondents. It was also alleged that the answer sheets of the papers given by his son were also manipulated.

- (ii) Originally the petitioner filed a Police complaint but since the Police refused to register an FIR the second respondent approached this Court and by way of a writ petition it was pursuant to the orders passed by this Court that the ACMM directed the registration of an FIR on the basis of a complaint filed by the petitioner dated 28.04.2004.
- (iii) The Police filed a cancellation report after investigating the allegations made in the FIR against the petitioners but the Magistrate refused to accept the cancellation report and summoned the petitioner to face the trial for the offences under Section 420/468/471/504/506/34 IPC.
- (iv) This order of the Magistrate was assailed by the petitioner by filing a revision petition before District &

Sessions Judge which was marked for disposal in the Court of Ms. Reena Singh Nag, Learned Addl. Sessions Judge who vide her order dated 23.06.2007 the case back to the Magistrate with the following directions:

Having gone through the record in the light of submissions addressed by both the sides and the judgments referred, in my considered view a grave prejudice has been caused to the accused persons due to passing of a non speaking order by Ld. MM. As such order dated 8.12.2006 is set aside and Ld. MM is directed to pass a speaking order touching upon all the aspects including role of the accused persons qua their culpability coming on record, with regard to taking of cognizance and summoning of accused so that neither accused nor complainant is prejudiced due to non speaking order. Trial Court record be sent back along with copy of this order. Complainant is directed to appear before the trial Court on 16.04.2007 at 2.00 PM.

- (v) After the remand the Magistrate reiterated his earlier order on 08.12.2006 but by a speaking order again directed the petitioner to appear in his Court for facing the charge against them on the basis of the FIR No. 139/04.
- (vi) This order was again assailed by the petitioners by filing a second revision petition.
- (vii) This petition came up for hearing before an Addl. Sessions Judge who was pleased to dismiss the said revision vide order dated 11.02.2009 which has been assailed now before this Court under Section 482 Cr.P.C.

3. It is the submission of the petitioner that despite availing

remedy of revision under Section 397 Cr.P.C. the present petition is still maintainable as while deciding the matter neither the Magistrate nor the Addl. Sessions Judge has taken into consideration the observations made by this Court and the Hon'ble Supreme Court of India in writ petition and SLP filed by the petitioner seeking direction for admission of a child in the next Class and where the Courts unequivocally held that the prayer made by the complainant that his son has qualified/ passed in 11 (C) but was deliberately failed by the school authorities was rejected. It has been submitted that the Courts below have carried gross mis-carriage of justice by not disclosing the findings of the CFSL which it is sated is the case of complainant and where it has been find that there is no alteration, manipulation and forgery in this case as the marks on the answer-sheets are the same as were mentioned in the report. The petitioners have relied upon the judgment delivered by the Apex Court in Kailash Verma Vs. Punjab State Civil Supplies Corporation (2005) 2 SCC 571.

4. Having gone through the record I find that the Learned Addl. Sessions Judge while disposing of the revision petition has taken note of the submissions made by the petitioner that the writ petition was also filed by the complainant before the Hon'ble High Court in CM.No.6951/2004 against the school authorities and were seeking a declaration that his child was wrongly been

declared as failed and that the said writ petition was dismissed and LPA filed against the said order was also dismissed. An SLP filed against the order passed in LPA was also dismissed.

5. In addition to the aforesaid argument the Learned ASJ has also taken note of the submission made by the petitioner that the order of summoning by the Magistrate dated 23.06.2007 reiterated vide second order dated 08.12.2006 was bad in law inasmuch as it was submitted that there was no manipulation in the answer-sheet or the report card and, therefore, there was no question of having committed forgery by the petitioners on the basis of which they have been called upon to face prosecution.

6. However, the Addl. Sessions Judge has not accepted the contentions of the petitioner and has disposed of the second revision petition by a speaking order. The relevant portion of the order is being reproduced hereunder:

2.I have perused the impugned order of Ld. MM vide which the processes to all the revisionists were issued holding that:

As far as the removal of staple pins is concerned the IO has given his opinion that mere removal of staples pins is no offence. In the present case, the question is not only of the removal of the staple pins, but that of the manipulation, and change of one sheet of the report card. There would have been no offence if only a staple pin is removed and another staple pin is placed in place of the previous staple pin, but when a sheet or document is completely removed and some other sheet or documents is placed back with some other particulars, the offence of forgery is committed.

Allegedly, when the complainant received the report card of his son he saw that Vishal Singh Rathore got more than 33%

in every subject. According to the complainant as per rules if a student gets more than 33% in each subject and gets required percentage of marks in aggregate, he has to be declared pass. When the complainant saw the percentage of marks in the report of his son as mentioned above and if any change is made by the school authority or the accused persons in the report card to the prejudice of his son, it would certainly amount to be forgery.

It is further seen that in the report card Vishal Singh Rathore has been declared failed in three subjects i.e. Maths, Physics and Chemistry whereas in the remarks column, he has been put for re-exam in chemistry and Maths only. It is surprising that when Vishal Singh Rathore was allowed re-exam in Chemistry and Maths only, why he has been shown failed in Physics also. Even in the register which was seized by the IO containing the marks of the students, Vishal Singh Rathore was put in the re-exam for Maths and Chemistry whereas in the mark-sheet he was declared failed in the physics also. If Vishal Singh Rathore was failed in three subjects there would be no question of re-examination in two subjects, and he had to be declared failed completely. This fact also give enough suspicion on the accused persons for the manipulation of the report card.”

3. These observations are purely pertaining to the facts which can only be decided during the course of examination and cross-examination. The offence against which revisionists have been summoned are warrant trial cases. Therefore, before matter is considered for trial the pre-charge evidence is mandatory. So the question of disputed facts can only be looked into during the course of enquiry or prior to the trial stage by the Court concerned. The contentions of revisionists are not sustainable at this stage since they can raised their plea before the original court of jurisdiction during the pre charge evidence for determination of the exact and proximate facts of the case. The revision jurisdiction only extend to the legality, correctness and propriety. The disputed question is not covered under the legality. So long as the correctness and propriety is concerned to my view revisionist Court has very limited jurisdiction to determine the fact except in the exceptional cases. Therefore, in my view it will neither be justifiable nor correct and proper if this Court sits to supervise the jurisdiction of the trial Court at this stage on the determination of the facts in question. The contentions of the Ld. APP regarding the remedy available with the revisionists, is only u/s 482 read with 204 IPC in this regard he has quoted the judgment 'M/s Hindustan Cables Ltd and others Vs. State Govt. of NCT of Delhi and others' and relied upon the para 6 which spells out

as under:

“Aggrieved thereby the petitioners filed a Revision Petition before the Sessions Judge. The Ld. Addl. Sessions Judge observed that in view of the judgment passed by the Supreme Court in Adalat Prasad Vs. Rooplal Jindal and others, 2004 (4) RCR (Criminal) 1: 2004 (3) Apex Criminal 459: 113 (2004) DLT 356 (SC) and Subramaniam Sethuraman Vs. State of Maharashtra and Another, 2004 (4) RCR (Criminal) 349: 2004 (3) Apex Criminal 535: 2004 (4) Crimes 78 (SC), the only course of action available to the accused/petitioners by way of filing a Petition u/s 482 Cr.P.C. before this Court against the order of the Ld. Metropolitan Magistrate relating to the summoning order. Accused persons have got no right to ask recalling of the summoning order either directly/indirectly by way of filing the Revision Petition; hence, dismissed the said Revision Petition being not maintainable in the eyes of law, without entering into the merits of the case.”

The citation relied upon by respondent is not applicable in this case as facts mentioned in the aforesaid citation and the case are different as the offence u/s 138 N.I. Act 1881 is a summoned trial case where as the offence u/s 420/468/471/504/506/34 IPC pertains to the warrant trial cases. Therefore, the revisionists have an opportunity during the course of pre-charge evidence to cross-examine witnesses so as to arrive at the determination of the facts before the revisionists are put on trial. In view of these facts and circumstances of the case I do not agree with the contentions of Ld. Counsel for revisionists. The matter is remanded back to the trial court and with the direction to complete the pre-charge evidence as early as possible but not later than six months. Accordingly, revision petition is dismissed.

7. Learned counsel for the petitioner has tried to assail the order passed by the Addl. Sessions Judge and the Magistrate by again reiterating that the Special Leave Petition filed by the complainant against the petitioners which was basically for a declaration that the action of the petitioners in having failed the son of the petitioner was not correct which fact has already been considered by the Revisional Court as stated above submits that the allegation which have been made against him were very

much the subject matter of the petitions filed by the petitioner which stands disposed of by this Court as well as by the Hon'ble Supreme Court and, therefore, there is no question of a second trial of the petitioner before the Criminal Court for which the proceedings have been undertaken by the petitioners and order of summoning has been issued by the Magistrate and which order has been upheld by the Addl. Sessions Judge.

8. It has been submitted that in view of the observations made by the Writ Court as well as by the Hon'ble Supreme Court in the order dismissing the SLP the proceedings which are being sought to be continued by the petitioner tantamount to be abuse of the process of this Court and, therefore, this Court can intervene and pass appropriate directions to stop abuse of the process of the Court by quashing the FIR as well as the summoning order, relying upon the judgment of the Apex Court delivered in the case of Kailash Verma Vs. Punjab State Civil Supplies Corporation (Supra) where it has been held:

5. It may also be noticed that this Court in Rajathi Vs. C. Ganesan said that the power under Section 482 of the Criminal Procedure Code has to be exercised sparingly and such power shall not be utilized as a substitute for second revision. Ordinarily, when a revision has been barred under Section 397(3) of the Code, the complainant or the accused cannot be allowed to take recourse to revision before the High Court under Section 397(1) of the Criminal Procedure Code as it is prohibited under Section 397(3) thereof. However, the High Court can entertain a petition under Section 482 of the Criminal Procedure Code when there is serious miscarriage of justice and abuse of the process of the court or when mandatory provisions of law are not complied with and when the High Court feels that the inherent jurisdiction is to be exercised to correct the mistake committed by the revisional court.

9. Having gone through the record I am not able to convince that it is a fit case where this Court should interfere by exercising its powers under Section 482 Cr.P.C. as I find, in this case, it is the petitioners who are trying to mis-use the process of Court inasmuch as having failed in the first revision petition they filed a second revision petition. Despite being unsuccessful they have come to this Court under Section 482 Cr.P.C. raising similar grievances which have been taken note of by the Addl. Sessions Judge and have not been accepted for cogent reasons.

10. In so far as the adjudication by this Court and the Hon'ble Supreme Court is concerned, the writ petition as well as the Special Leave Petition were disposed of on legal issues dealing with the powers of the Directorate of Education in accordance with the School Education Act. Those decisions does not take note of the factual aspects such as forgery which has been alleged to have been committed by the complainant in his FIR and which is a matter to be tried by the Magistrate concerned after recording the evidence of the parties.

11. As such it is not a case where this Court should interfere under Section 482 Cr.P.C. which if allowed would tantamount to entertain a second revision which is barred by the provisions contained under Section 397(2) Cr.P.C. which issue is no more res-integra more particularly because nothing new has been

brought to the notice of this Court. All the issues raised by the petitioners which have been raised firstly before Ms. Reena Singh Nag and thereafter before Shri Raj Kapoor Addl. Sessions Judge have been taken note of by the Metropolitan Magistrate in his order dated 27.06.2006 as well as in the order dated 11.02.2009.

12. It may also be observed that Ms. Reena Singh Nag, J while decided to send back the matter to Magistrate for passing a speaking order including the role of the accused persons qua their culpability having come in record in view of the report of CFSL has taken note of the allegations which were made by the petitioner with regard to the dismissal of the writ petition of the complainant in not permitting the son of the complainant to join 12th Class which in fact is a different question and in fact in the writ petition directions were given to the Director of Education to hold enquiry and after order so passed when LPA so filed by the complainant the only observation which was made by the Division Bench was an advise to the complainant not to waste the time of the child. However, on the basis of a writ petition filed by the complainant before this Court an order was passed on 22.02.2006 whereby the matter was referred to anti-forgery Section of EOW Cell to reinvestigate the case i.e. the complaint filed by the complainant and it is thereafter the matter came up for consideration afresh before the Magistrate who vide his order dated 23.06.2006 has reiterated the order of summoning which

order was the subject matter of adjudication before the second revisional Court who again did not agree with the petitioner for the reasons stated above.

13. I have also gone through the order of the Magistrate dated 23.06.2007 which is also the subject matter of the challenge. A perusal of the aforesaid order goes to show that after the case was remanded back by the Addl. Sessions Judge Reena Singh Nag the Magistrate has passed a speaking order even after taking note of the cancellation report by making the following observations:

In the present case as per the contentions of the complainant the sole question is whether there was any tampering in the report card of Vishal Singh Rathore. The IO in his report states that the following shortcomings were found in the report card of the son of the complainant. First, that the report card of Vishal Singh Rathore was bearing 07 pages whereas all the other report cards were having 08 pages. Secondly, there was no cutting in the attendance column of Vishal Singh Rathore's report card whereas cutting can be seen in the column of remaining report cards. Thirdly, practical marks of Vishal Singh Rathore has not been added whereas rest of the report cards were made after adding the practical marks. Fourthly, signature of the guardian in the half yearly terms in the report card of Vishal Singh Rathore did not exist. Fifth, Vishal Singh Rathore's report card had three staple pins and lastly, Vishal Singh Rathore had been failed in three subject, but was given compartment in only two subject.

When the report card was found to have above mentioned discrepancies, prima facie, it is to be believed that the same was manipulated. The IO has given the explanation as given by the accused persons of each and every discrepancy. In my opinion when the report card was found to be manipulated or had discrepancies the matter was subject to trial. The explanations of the accused persons cannot be believed and considered unless the same are proved by them in their defence.

As far as the removal of staple pins is concerned the IO has given his opinion that mere removal of staples pins is no offence. In the present case, the question is not only of the removal of the staple pins, but that of the manipulation, and change of one sheet of the report card. There would have been no offence if only a staple pin is removed and another staple pin is placed in

place of the previous staple pin, but when a sheet or document is completely removed and some other sheet or documents is placed back with some other particulars, the offence of forgery is committed.

Allegedly, when the complainant received the report card of his son he saw that Vishal Singh Rathore got more than 33% in every subject. According to the complainant as per rules if a student gets more than 33% marks in each subject and gets required percentage of marks in aggregate, he has to be declared pass. When the complainant saw the percentage of marks in the report of his son as mentioned above and if any change is made by the school authority or the accused persons in the report card to the prejudice of his son, it would certainly amount to be forgery.

It is further seen that in the report card Vishal Singh Rathore has been declared failed in three subjects i.e. Maths, Physics and Chemistry whereas in the remarks column, he has been put for re-exam in chemistry and Maths only. It is surprising that when Vishal Singh Rathore was allowed re-exam in Chemistry and Maths only, why he has been shown failed in Physics also. Even in the register which was seized by the IO containing the marks of the students, Vishal Singh Rathore was put in re-exam for Maths and Chemistry whereas in the mark-sheet he was declared failed in the physics also. If Vishal Singh Rathore was failed in three subjects there would be no question of re-examination in two subjects, and he had to be declared failed completely. This fact also given enough suspicion on the accused persons for the manipulation of the report card.

Even Hon'ble Mr. Justice R.C. Jain in his order dated 02.02.2006 had observed that the investigation in the case had not been taken up in the real earnest and core question which was required to be investigated was as to whether the report card of the son of the petitioner was in fact manipulated or not. Hon'ble Mr. Justice R.C. Jain further observed the FSL report about the staple pins, and gave observation that status report filed by the Asst. Commissioner of police clearly overlooked the missing of one sheet of the report card prior to its last page, and insertion of another staple pin between top and bottom which was found to be different then the one used for stapling the report cards of the other students. It was further observed by the Lordship that the very fact that one page was found missing from the report card of the petitioner's son lends credit to the version of the petitioner that the report card of his son Vishal Singh Rathore was manipulated by someone at some stage with some ulterior motive. It was further the observation of the Lordship that the Investigation officers mis-conducted themselves with a view to help the persons who were responsible for manipulating the report card of Vishal Singh Rathore, after petitioner took up the matter with the concerned authorities of the Directorate of education, Govt. of NCT of Delhi.

This Court follows the observation of Hon'ble Mr. Justice R.C. Jain.

At this stage, the court just has to see whether there is prima facie case against the accused persons or

there are sufficient grounds to prosecute the accused persons. At the time of summoning the accused persons, the court has not to see the sufficient ground for conviction but only to see whether there are sufficient ground to proceed. Further, the question whether the evidence is adequate for supporting the conviction can be determined only at the trial and not at this stage. At this stage, of issuing process the court is mainly concerned with the allegations made in the complaint, and material collected by the investigating agency.

14. The aforesaid goes to show that a conscious decision was taken by the Magistrate based upon the material placed on record which prima facie shows that the petitioners are guilty of committing forgery in having manipulated the report card and answer-sheets of the son of the petitioner. The issue of commission of forgery and not permitting the son of the petitioner to join 12th Class are two independent issues. The second issue has been sorted out by an adjudication by this Court as well as the Apex Court in having dismissed the petitions filed by the complainant but the issue of forgery which is a disputed question of facts could not have been decided by this Court in writ jurisdiction. Accordingly, I do not find any merit in the petition which in view of Section 397(2) Cr.P.C. is even otherwise not maintainable. Hence the same is dismissed.

Crl.M.A.2384/09 (stay)

In view of the aforesaid orders stay application also stands dismissed.

MOOL CHAND GARG, J.

MARCH 23, 2009
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