

**FIR No. 265/2002
PS Patel Nagar
State vs Anil Kumar & Anr.**

15.06.2020

At 2.20 PM, it is brought to my notice by the reader that in the order passed today, the section in the end is mentioned as 304-B instead of 304-A IPC

Pr. : None

It is clarified that the notice has been directed to be framed for offence under section 304A IPC against both accused. The order shall be read accordingly.

Be put up on date fixed.

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ACMM (WEST)/THC/15.06.2020**

**CC no. 3471/2019
PS Patel Nagar
Dr. Pardeep Bageja vs. Bajaj Finserv Ltd. & Ors.**

15.06.2020

Through VC (CISCO)

Present: Sh. Sanjay Barnawal (enrol. no. D289-I/2004) Ld.
Counsel for the complainant.

Vide this order, I shall decide the application u/s. 156(3)
Cr.P.C. filed on behalf of the complainant.

It is stated in the application that in month of October 2018, the complainant had received number of calls from the employee of Bajaj Finserv Ltd. and he illegally demanded money for the alleged loan which was not availed by the complainant. When the complainant refused to pay the loan amount, the employee extended threat that he was sending the recovery agent/goons for recovery of money. Thereafter, the complainant checked the CIBIL REPORT and came to know that some unknown person in collusion with the Company has availed alleged loan by preparing / forging documents for reimbursement of the loan. The complainant also came to know from CIBIL SCORE & REPORT that the accused No. 2 to 9 in collusion with other accused persons had used the complainant's personal data like mobile phone, PAN number, Passport Number for preparing fake documents.

It is further stated that the accused persons had illegally handed over the complainant's data to the accused No. 10. The

complainant sent several eMails to the accused No. 1 informing that he did not avail any loan and requested for taking strict action against the accused persons and to delete complainant's private data from CIBIL SCORE and REPORT, but the accused no.1 did not take any action. The complainant has been made to suffer both financially and mentally. The complainant lodged a complaint with SHO PS Patel Nagar on 09.04.2019 and it was also sent to Commissioner and Dy. Commissioner. However no action was taken by the police. Hence, the application before the Court.

Alongwith the complaint, the complainant has filed copy of his Aadhar, copy of CIBIL report and copy of complaint lodged with the police.

ATR was called. In the ATR, it is stated that during inquiry, the complainant stated that he had visited the office of Bajaj Finserv Ltd regarding the matter in November 2018. Thereafter, he did not receive any call or email from Baja Finserv Ltd. for payment of loan. However the CIBIL REPORT has not been corrected. Thereafter, Bajaj Finserv Ltd was served with notices u/s. 91 Cr.P.C and it was stated that 5 loans were availed by Mr Pardeep Bageja by submitting Aadhar no. 642296426261. The name of the complainant and DOB matches with the Aadhar Card that was used to avail loan but all other details were different. Bajaj Finserv Ltd also stated that they have referred the matter to their Fraud Control Unit.

Learned counsel for the complainant has argued that the allegations made by the complainant disclose commission of cognizable offences and hence directions may be issued for registration of FIR.

This Court has considered the submissions of Learned Counsel and perused the record.

It has been settled that the order of registration of an FIR can not be passed mechanically. Hon'ble High Court of Delhi in Crl M.C. No. 6122-23 & 6133-34 of 2005 titled as **Sh. Subhkaran Luharuka & Anr Vs State (Govt. of NCT of Delhi) & Anr.**, after extensive discussion of the relevant law and various judgments on the subject has held as under:

“52....

“(ii) The magistrate should then form his own opinion whether the facts mentioned in the complaint disclose commission of the cognizable offences by the accused persons arrayed in the Complaint which can be tried in his jurisdiction. He should also satisfy himself about the need for investigation by the Police in the matter. A preliminary enquiry as this is such enquiry has been done by the SHO, then it is all the more necessary for the Magistrate to consider all these factors. For that purpose, the Magistrate must apply his mind and such application of mind should be reflected in the Order passed by him. Upon a preliminary satisfaction, unless there are exceptional circumstances to be recorded in writing, a status report by the police is to be called for before passing final orders.”

Hon'ble Supreme Court of India in case titled as **Mrs. Priyanka Srivastava & Anr. Vs State of U.P & Ors. Crl Appeal No. 781 of 2012 dated 19.03.2015** has held that the allegations made in the complaint should not be taken on the face of it and to curb the tendency of making false and baseless allegations in the complaint, one detailed affidavit should also be taken from the complainants in

support of allegations made therein. It was also observed by the Hon'ble Supreme Court that the Magistrate should exercise the discretion u/s 156(3) Cr.P.C. in a wise manner and should apply his judicial mind before directing any police investigation in the matter.

In the present case, the detailed reply of Bajaj Finserv Ltd. and ATR shows that five loans were obtained by one Pardeep Bageja. The Aadhar Card submitted for obtaining the loan was not of the complainant but it was of Pardeep Bageja s/o. Balbir Kumar r/o Flat no. 41, Krishna Apartment, BH East, Shalimar Bagh, North West, Delhi and the complainant's detail is Pardeep Bageja s/o. Sh Radhey Shyam Bageja r/o. 13/25, First Floor, Front side, East Patel Nagar, Delhi.

The record is clear that aadhar card of complainant was not used for availing loan. There is nothing to show that any wrongful loss was caused to the complainant. Now, the complainant has not been receiving any calls for repayment of alleged loans. The main grievance of the complainant is that his CIBIL report has not been corrected. The complainant can avail other remedy for the same.

The complainant is well aware of all the facts and circumstances and he is in possession of all the material/ evidence required to prove his case. The complainant can also summon the record to prove the allegations made in the complaint. The court may issue summons to any relevant witness/person/authority at the instance of Complainant for bringing full fact and material pertaining to the allegations made in the complaint. Custodial interrogation of the accused is not required in this case. There is no requirement of collection of evidence by the police. Moreover, subsequently, after

evidence of complainant, if it is deemed necessary, then police inquiry as envisaged U/s. 202 of CrPC can be initiated. Therefore, the present application u/s. 156(3) Cr.P.C. is dismissed. The complainant can lead his pre summoning evidence on the complaint under Section 200, Cr. P.C.

Be put up for pre-summoning evidence on 31.07.2020.

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**FIR No.29/11
PS Patel Nagar
State vs. Uttam Kumar**

15.06.2020

Through VC

Present: Ld. APP for the State

Sh. S. M. Sallauddin, Ld. Counsel for the accused has not joined the meeting. When he was contacted on phone by the Reader, he informed that he is in difficulty to join the meeting and he does not have any objection if the order is pronounced and he would check the order on website.

In view of the above, this Court proceeds to pronounce the order.

The matter is fixed for order on charge.

Ld. counsel for the accused has argued that no recovery of weapon or cartridge has been made from Uttam. Further, there was no misinformation by accused Uttam and offence U/s. 309 has been declared to be unconstitutional by Hon'ble Supreme Court. It is also argued that FSL result does not support the case of prosecution and the Doctor is not able to give opinion whether the injury was self inflicted or not. Hence, the accused may be discharged.

On the other hand, Ld. APP for the State has argued that the statement of the public witnesses is sufficient to frame charge against the accused.

This Court has considered the submissions of Ld.

Counsels and perused the record.

The chargesheet has been filed for offences punishable u/s. 309/177/182/203 IPC and 25/27 of Arms Act.

It is stated in the charge-sheet that on 11.02.2011, DD No. 27A was received in the police station at about 2.50 PM that at E-31, West Patel Nagar brother-in-law of ACP was shot. The call was marked to ASI Sohanvir Singh. ASI Sohanvir alongwith Ct. Devraj reached the spot i.e. E-31, West Patel Nagar where they found that the office of Shri Ram Infravision Pvt Ltd was closed. After sometime, employees of the said office namely Ram Kumar, Hari Om, Sher Singh and Vinay came and told that one person namely Uttam, who used to come to their office for tallying the accounts, had shot himself in the bathroom and the persons namely Sushil Hudda and Mukesh Sharma had taken him to hospital in their car. The office was got opened and inspected. On checking the bathroom, one desi kata, one blue coloured handkerchief and 3 pieces of one bullet were found. On the front wall of the bathroom, bullet mark was also found.

It is further stated in the charge-sheet that during investigation, DD No. 28A was received regarding admission of injured at Sir Ganga Ram Hospital. Insp. Mahabir Prasad alongwith Ct. Bijender had also reached the spot. Request was made to send the Crime Team. IO reached Ganga Ram Hospital where Uttam was found admitted vide MLC No. 1337/11. Injured was unfit for statement. Inquiry was made from Sushil Hudda and Mukesh Sharma. IO prepared sketch of the katta. Both katta and empty cartridge were seized.

It is further stated that as per investigation carried out, MLC and recovery of case property, offence punishable u/s. 307 IPC and 25/54/57 Arms Act was made out. IO/ASI prepared tehrir and got the FIR registered. Hand swabs of Anil Chillar was taken by the Ballastic Team and five hand swabs of injured Uttam were also taken by the Ballastic Team. Inquiries were made from the persons and their statement was recorded. Statement of Mukesh and Sushil were got recorded under section 164 Cr.P.C.

It is stated in the charge-sheet that Uttam Kumar in order to book Anil Chillar had shot himself with desi katta. On 15.02.2011 accused Uttam Kumar was discharged from Hospital and he was interrogated. After investigation, offence u/s. 307 IPC was converted to section 309/177/182/203 IPC and 27 Arms Act.

Perusal of record shows that statement of eye witness namely Sushil Kumar Hudda and Mukesh Sharma were recorded u/s. 164 Cr.P.C. by the Ld. MM. In the statement u/s. 164 Cr.P.C, Mukesh stated that about 7 months ago, he alongwith Sushil Hudda and Uttam Kumar had got financed vehicles from Shriram Infovision whose owner is Anil Chillar. Anil Chillar had contract with Barclays & Convergys. He used to drive the vehicle for Barclays and Convergys. He was not getting any profit by driving the vehicle as he was not paid anything by Anil Chillar. Thereafter it was agreed between Uttam Kumar, Sushil Hudda and himself on one side and Anil Chillar on other side that they would handover the vehicle to Anil Chillar and Anil Chillar would return their money. Few days ago, he had seen Uttam Kumar having a desi kata in the marriage of a neighbour. On

11.02.2011 at about 12.30 PM, he along with Sushil and Uttam reached at the office of Anil Chillar to hand over the vehicles. The accountant of Anil Chillar asked to deposit the vehicles. At about 2.30-2.45 PM, he, Uttam and Sushil Hudda went to the office of Anil Chillar. He and Sushil went inside the office and Uttam Kumar asked them to go inside and said that he would come after going to the bathroom. He and Sushil Hudda were talking to Anil Chillar and after about 10-15 minutes, they heard noise of something like cracker. All three and other staff members went towards the bathroom and saw Uttam Kumar coming from the side of bathroom in injured condition. He went inside the bathroom and saw a desi kata. It was same katta which Uttam Kumar was having few days ago. Uttam Kumar was bleeding from chest and was saying that Anil Chillar had shot him. He and Sushil Hudda took him to Ganga Ram Hospital.

In the statement under section 164 Cr.P.C, Sushil Hudda has stated that he has got financed vehicles from Anil Chillar who was the owner of Sriram Infovision. He could not get any benefit by driving the cab because he was not given any money. He had got the vehicle financed through Uttam Kumar from Anil Chillar and he was having dealings with Uttam Kumar. Uttam Kumar did not give him any money for 3-4 months. Uttam Kumar was asked about the money and he stated that that he has not received any money from Delhi. Uttam further stated that he would take him to Anil Chillar. Thereafter on 11th February 2011 at about 8.00 AM, he alongwith Uttam Kumar, Mukesh Sharma and driver Bobby went to meet Anil Chillar at Delhi. Anil Chillar was not present at that time. Anil Chillar reached at about

2.30 PM. He entered the office and Uttam Kumar stayed behind. While he and Mukesh were talking to Anil, they heard noise of some cracker. They came out of the office and saw that Uttam was in injured condition.

The prosecution has alleged offences punishable under section 309/177/182/203 IPC and 25/27 of Arms Act.

The offence punishable u/s. 309 IPC i.e. attempt to commit suicide has been decriminalized on the recommendation of Hon'ble Supreme Court. ***Hence, accused Uttam Kumar can not be charged for offence punishable under section 309 IPC.***

There is seizure memo dated 11th February 2011 which shows that one country made pistol and one blank cartridge were found in the bathroom of H No. E-31, West Patel Nagar. The FSL Result in respect of the pistol seized from the bathroom has been received. As per the FSL Result, the pistol was a country made pistol and it was in working order. The cartridge was a fired empty cartridge. There is sanction u/s. 39 of Arms Act of the DCP. There is also specific statement of Mukesh Kumar that he had seen one pistol in the possession of Uttam Kumar few days ago in a marriage and the same pistol was found in the bathroom where he was shot. The material is sufficient at this stage to show that accused Uttam was in possession of country made pistol and cartridge in violation of provisions of Arms Act. ***Hence the material is sufficient to frame charge for offence punishable u/s. 25/27 of Arms Act.***

The prosecution has also alleged offence punishable

under section 177/182/203 IPC.

Section 182 IPC provides punishment for giving false information with intent to cause the public servant to use his lawful power to the injury of another person. Section 177 IPC provides punishment for giving false information. Section 203 IPC provides punishment for giving false information with respect to an offence committed.

One of the essential ingredients of offence punishable under section 177 IPC and 182 IPC is that the information must be given to the public servant.

The statement of witnesses and circumstances of the case show that Uttam has not given any information to the police officials or to any public servant. There is no complaint of accused Uttam Kumar to any police official or to PCR or to any other public authority that Anil Chillar had shot him and action may be taken against Anil Chillar. The ingredients of offence punishable under section 177 & 182 IPC are not satisfied. ***Hence, the accused is discharged for offence punishable under section 177/182 IPC.***

Section 203 IPC reads as, whoever knowing or having reason to believe that an offence has been committed, gives any information respecting that offence which he knows or believes to be false, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

In the case, during investigation, the IO has asked for opinion from the doctor whether the injury was self-inflicted or not

and it was stated by the doctor of Sir Ganga Ram Hospital that they cannot make any comment whether the injury was self-inflicted. Further, subsequent opinion was taken by the IO regarding the consistency of cut mark present on the cloth of Uttam Kumar with firm arm injury on the body and the doctor opined that the cut mark on the cloth are present at the corresponding side of injury as noted in the MLC. The doctor has also given the opinion that *the fire arm was fired from closed range not exceeding more than 5-15 cm from the body of the alleged person.*

The opinion of the doctor is clear that the fire arm was fired from closed range. Further, there is also statement of Mukesh and Sushil that while they were talking to Anil Chillar, shot was fired. Mukesh has also said that the pistol used for fire was the same pistol which was in possession of accused Uttam. The circumstances of the case prima facie suggest that accused Uttam had shot himself to frame Anil Chillar in a criminal case.

FSL report in respect of hand swabs is that no opinion can be given due to insufficient data. The argument of Ld. Counsel for the accused that FSL report does not support the case of the prosecution is not of much help to him because there are specific statement of eye witnesses regarding the incident.

In statement under section 164 Cr.P.C, Mukesh has stated that while Uttam was in injured condition, he said that Anil Chillar shot him. This statement of Mukesh prima facie shows that accused Uttam had given false information (shot by Anil Chillar) in respect of the offence committed knowing that it was false information. There is

no requirement under section 203 IPC that the information must be given to public servant. False information to any person regarding the offence is sufficient to constitute the offence under section 203 IPC.
Hence, this Court is of the view that the material is sufficient to frame charge for offence punishable under section 203 IPC.

Be put up for framing of charge on **22.06.2020**.

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**FIR no. 265/2002
PS Patel Nagar
State vs. Anil & M. K. Jaiswal**

Though VC (CISCO)

15.06.2020

Present: Sh. Piyush Bhadu, Ld APP for the State.

Sh. Sumit Arora (enrol. no. D787/2006), Ld. Counsel for accused M. K. Jaiswal

Sh. Munish Kumar (enrol. no. D1269/2002), Ld. Counsel for accused Anil Kumar.

The matter is fixed for order whether the material is sufficient to frame notice against the accused persons or they may be discharged.

Written arguments were filed on behalf of the accused persons.

In the written submission filed on behalf of accused MK Jaiswal, it is stated that initially MK Jaiswal was not made an accused in the charge sheet. However, vide order dated 07.08.2013 MK Jaiswal was summoned to face trial on the statement of Assistant Manager R.P. Khurana that when the alleged incident occurred, the accused was also incharge of the area. The incident had taken place on 29.05.2002 and the FIR was registered. The charge sheet has been filed on 10.06.2005 after lapse of 3 years without any application for condonation of delay. The charge sheet has been filed after the period of limitation. Hon'ble Supreme Court in the matter of *Arun Vyas and ors. Vs. Anita Vyas AIR 1999 SC 2071* has held that where the Magistrate finds that taking cognizance of offence itself was contrary

to any provisions of law like Section 468 Cr.P.C., the complaint being barred by limitation, so he cannot frame the charge, he has to discharge the accused. Further, Hon'ble Supreme Court in the matter of *Amal Kumar Jha Vs. State of Chatisgarh AIR 2016 SC 2082* has held that when the act in question is connected to the performance of official duty, sanction U/s. 197 Cr.PC is required. In this present case, no sanction for prosecution of the accused was taken in terms of Section 197 Cr.PC. Further the accused was not on duty on the date of alleged incident as he was on leave and therefore, no criminal liability can be fastened upon him. Hon'ble Supreme Court in the matter of *Yogesh Vs. State of Maharashtra* has held that if two views are equally possible and the judge is satisfied that the evidence produced before him gives rise to suspicion only, he will be fully within his rights to discharge the accused. Accused MK Jaiswal cannot be said to be negligent in performance of his duty. Hence, the accused may be discharged.

In the written arguments filed on behalf of Anil Kumar, it is stated that statement of witnesses u/s. 161 Cr.PC have not been recorded. The FIR is registered against Government Department but the IO has failed to obtain necessary permission from the concerned department and failed to comply provision of Section 197 Cr.PC. The accused has relied upon the judgment passed by Hon'ble Supreme Court in the matter of *Surinderjit Singh vs. State of Punjab AIR 2016 SC 3251* in this regard. It is further argued that the said act is not negligence on behalf of the accused because on 28.05.2002 there was considerable damage, overhead electric cables were snapped, hundreds of trees were uprooted because of rain and storm and it was

an act of god. There were no complaint lodged regarding snapping of electric cable where the incident had occurred and the department was not aware about the said cable. No opinion of electric inspector was obtained prior to registration of FIR. At the time of incident, the In-Charge of the area was Assistant Engineer (Maintenance Head). No complaint register has been filed regarding the incident nor any attendance register, log book or record book has been filed by the IO. There is nothing to show that accused Anil was negligent in his duty. Hence, the accused may be discharged.

Ld. APP for the State that the department of the accused persons had given in writing that accused Anil Kumar and M. K. Jaiswal were responsible persons of the alleged spot where the child was electrocuted. The material is sufficient to serve notice to the accused persons.

This Court has carefully considered the submissions of Ld. Counsels for the parties and perused the record. This Court has also carefully gone through the judgments relied upon by the Ld. Counsel for the parties.

In the complaint to police, the complainant has stated that he was working as Chowkidar in the MCD. On 29.5.2002 at about 10.00 AM, when he was sitting under the *pul* in front of his house, his son Sonu went to play in the open area near the *pul*. His son touched some electric wire lying there and died due to electrocution.

IO received the DD No. 10A regarding the incident and he went to the hospital where the statement of the father of the child was recorded. After Post Mortem, the IO served notice dated

31.05.2002 to the Delhi Vidyut Board to supply names of the maintenance staff who were responsible for keep and maintenance of the line.

In the reply dated 18.07.2002, the concerned Engineer stated that it was not cable of their zone and the IO was asked to contact Moti Nagar District as the cable was maintained by Moti Nagar District. Thereafter, letter dated 13.08.2002 and another letter dated 17.09.2002 was written by the IO to AE of Zone Naraina Industrial Area to supply names of maintenance staff. AE wrote letter dated 07.10.2002 to the IO that reply of Executive Engineer was awaited. Later, Assistant Manager-Sh RP Khurana, in letter dated 08.08.2003 addressed to the Incharge, PP Ranjit Nagar, has stated that MK Jaiswal and Anil were the Incharge and responsible persons of that area.

During investigation, both accused claimed that they were on leave on the date of incident and the IO wrote letter to the department to verify whether both accused were on leave on the date of incident. Reply dated 17.11.2004 was received that M. K. Jaiswal was on leave on that day. After considering the material on record, the charge-sheet was prepared against accused Anil Kumar, who was JE of DVB. Accused M. K. Jaiswal was not charge-sheeted. However M. K. Jaiswal was summoned as an accused later on by the order of the Court.

Section 468 Cr.P.C provides for limitation of three years for filing of charge-sheet in case under section 304-A IPC. Section 469 Cr.P.C provides that the period of limitation shall commence, when it is not known by whom the offence was committed, the first

day on which the identity of the offender is known to the person aggrieved by the offence or to the police officer making investigation into the offence.

In the present case, the DVB had informed about the officials responsible for the alleged incident only vide letter dated 08.08.2003. The charge-sheet has been filed within period of limitation after getting knowledge about the offender. In view of Section 469 Cr.P.C, it can not be said that the charge-sheet is barred by the limitation.

This Court also does not find any strength in the argument of Ld. Counsels that sanction under section 197 Cr.P.C is mandatory.

Section 197 Cr.P.C applies to a case where the public servant, not removable from his office save by or with the sanction of the Government, is accused of any offence alleged to have been committed while acting or purporting to act in discharge of duty.

In the present case, there is nothing to show that Assistant Engineer and Junior Engineer of the DVB can not be removed except with the sanction of the Government. Therefore, it can not be said that sanction under 197 Cr.P.C is mandatory for trial against the accused persons.

Perusal of the record shows that in the entire charge sheet, it is not mentioned that there was any heavy rain or storm on the date of incident/ one day prior to the date of incident. There is nothing on record to support the contention of accused Anil that there was storm or heavy rain on the date of incident or one day prior to the date of incident.

One of the argument of accused MK Jaiswal is that he was on leave on that particular day. Alongwith the chargesheet, the IO has filed letter dated 17.11.2004 of Senior Manager, wherein he has confirmed that MK Jaiswal was on leave on 29.05.2002.

Assistant Manager R. P. Khurana, in his letter dated 08.08.2003, has stated that M. K. Jaiswal (Assistant Manager) and Anil Kumar (JE) were incharge of the area. It is not in dispute that MK Jaiswal was the Assistant Manager of the concerned zone and Anil was the JE. The department of the accused persons had named them as the ones responsible for the incident occurred on 29.05.2002. Letter of AE is clear that M.K. Jaiswal was also responsible person of the area. Thus it is a matter of evidence and trial whether M.K. Jaiswal was responsible for the alleged incident or not.

This Court also does not find any strength in the argument of Ld. counsel for accused Anil that since there was no complaint of snapping of wire, he can not be held responsible. Being the incharge of the area, it was duty of the accused persons to regularly supervise the maintenance work of cable. Also merely because no record book or log book or register has been seized by the IO, the accused can be discharged. Further, recording of statement of witnesses under section 161 Cr.P.C is not mandatory under the law and it is only the prerogative of IO whether to record statement or not. Record shows that no opinion of electrical inspector was taken before registration of FIR. However, there is no requirement of law that opinion of electrical inspector is mandatory for registration of FIR in cases of death due to electrocution. There is post-mortem report of the deceased that death occurred due to electric shock. There is statement

of father of deceased that the child got electric shock from live wire near the *pul*.

Ld. Counsel for accused M. K. Jaiswal has relied upon judgment passed by Hon'ble Delhi High Court in the matter of ***Guljeet Singh Kocher Vs. State 121 (2005) DLT 516.***

In the case of Guljeet Singh Kochar, summoning order U/s. 304-A IPC was quashed because there was nothing to suggest that construction work was being done under the direct supervision of the accused/petitioners. The petitioners were owner of the house where the construction was done and a contractor was hired for the same. The said case is distinguishable on the facts of the case.

Section 251 Cr.P.C provides that when in a summons-case the accused appears or is brought before the Magistrate, the particulars of the offence of which he is accused shall be stated to him, and he shall be asked whether he pleads guilty or has any defence to make, but it shall not be necessary to frame a formal charge.

Section 304-A IPC is summons triable offence. There is no provision of discharge in summons case. Further, there is specific reply of the DVB that accused M. K Jaiswal and Anil Kumar were the officers incharge of the area where the incident took place. In these facts and circumstances, ***this Court is of the view that the material is sufficient to frame notice for offence punishable under section 304-B IPC against both accused.***

Be put for framing of notice on 16.07.2020.

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**FIR No. 1089/2015
PS Patel Nagar
State vs. Ravinder Kumar @ Ravi & Anr.**

15.06.2020

Through Video Conferencing (Cisco)

Present:- Ld. APP for the State.
Accused Ravinder produced from JC through CISCO
Sh. M. A. Siddiqui, Ld. Counsel for both accused.

The matter is fixed for order on charge.

Ld counsel for accused persons has argued that Shankar is only relative/ chacha of accused Ravinder. Accused Ravinder had filed an application under Juvenile Justice Act in a case u/s. 302 IPC pending before the Ld ASJ claiming himself to be juvenile. The Voter ID, Aadhar Card and the Certificate are correct. There is nothing to show that Shankar Lal met Ravinder in Tihar or that he had got prepared fake school transfer certificate. There is nothing to suggest that the accused persons had conspired together to file fake document in the Court. Hence, accused Shankar may be discharged.

On the other hand, Ld. APP for the State has argued that accused Shankar had submitted his affidavit alongwith fake school transfer certificate before the Registrar for issuance of birth certificate and the circumstances show that both accused had conspired to use fake document. The material is therefore sufficient to frame charge against both accused persons.

This Court has considered the submissions of Ld. Counsels and perused the record.

The present FIR was registered as per the directions of

Ld. ASJ. In the order dated 29.07.2015, Ld. ASJ has made following observations:

“ xxx Applicant Ravinder Kumar S/o. Sh. Babu Lal is stated to have studied at Bal Vidya Mandir, Sikar and his date of birth is 04.06.1996. This birth certificate has been issued by Registrar on 18.04.2015 on the basis of affidavit of Shankar Lal, Uncle of the applicant who filed the transfer certificate. The Head Master of Bal Vidya Mandir gave in writing under his signatures that Ravinder Kumar S/o. Sh. Babu Lal has never studied in his school.

Insp. Subodh Kumar of PS Subhash Place was directed to verify the birth certificate of Ravinder and the report has been filed wherein it is stated that the birth certificate was obtained fraudulently by submitting fake transfer certificate and false affidavit. It is further mentioned that the father of Ravinder provided photocopy of birth certificate with his signatures issued by Union Territory of Delhi showing the date of birth as 26.07.1993. The birth certificate produced by father proves that accused/applicant is major on the date of alleged incident/ occurrence i.e. 17.04.2014 and the date of birth as mentioned in the document of Union Territory of Delhi is 26.07.1993.

The applicant/accused in collusion and connivance with his uncle Shankar Lal produced false transfer certificate and obtained birth certificate from Registrar, Sikar who issued the birth certificate without verifying the facts. Hence, FIR be registered against all of them and matter be inquired into in detail.” (emphasis supplied)

On the directions of Ld. ASJ, the present FIR was registered. The charge-sheet has been filed for offences punishable under section 420/468/471/120-B IPC.

The IO has filed certified copy of the application u/s. 7A Rule 12 of Juvenile Justice (Care & Protection of Children), Act 2000 and Rule 2007 filed before the Ld. ASJ with the chargesheet. The IO during investigation has given notice to the Tehsildar of Village Dantaramgarh, Distt Sikar, Rajasthan regarding the documents which

were submitted to obtain the birth certificate. The documents which has been provided by Gram Panchyat are Affidavit of Shankar Lal that date of birth of Ravinder is 04.06.1996 and school transfer certificate of Ravinder Kumar.

The aforesaid documents show that accused Shankar Lal had deposited fake school transfer certificate and submitted his Affidavit with his voter ID and Aadhar card for issuance of birth certificate of Ravinder Kumar. There is certified copy of statement of Principal of Bal Vidya Mandir, Sikar wherein he has stated that Ravinder s/o. Babu Lal never studied in his school and he did not know him. The statement of Principal shows that a fake school transfer certificate was submitted by Shankar Lal with Tehsilar for issuance of birth certificate of accused Ravinder.

Section 120B IPC provides punishment for conspiracy and section 120A IPC defines 'criminal conspiracy' as when two or more persons agree to do, or cause to be done- (1) an illegal act, or (2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy.

In the present case, accused Shankar had submitted his affidavit regarding date of birth of Ravinder with fake school transfer certificate with the office of Registrar and on the basis of his affidavit and fake school certificate, birth certificate was fraudulently obtained from the office of Registrar. The circumstances of the case *prima facie* show that accused Ravinder Kumar and Shankar Lal agreed to fraudulently obtain birth certificate by submitting fake school transfer certificate and Affidavit with the office of Tehsildar. Merely because Shankar did not visit Ravinder in Tihar Jail does not give rise to any

presumption that he was not aware of fake school transfer certificate. It is accused Shankar who had submitted his affidavit that date of birth of Ravinder was 04.06.1996, though the father of accused Ravinder had given certificate that Ravinder was born in 1993. The allegations are sufficient to show that both accused persons had agreed to commit an illegal act of fraudulently obtaining birth certificate to claim benefit under JJ Act for accused Ravinder and in furtherance of that conspiracy, accused Shankar has submitted his false affidavit and fake school transfer certificate in the office of Tehsildar/Registrar. ***The material is therefore sufficient to frame charge for offence punishable under section 120-B IPC against both accused.***

Section 415 IPC defines cheating as whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to “cheat”. Section 417 IPC provides punishment for cheating. Section 420 IPC provides punishment for cheating and dishonestly inducing delivery of property.

Accused Ravinder filed fraudulently obtained birth certificate before the Court of Ld. ASJ claiming himself to be juvenile on the date of offence and the date of birth mentioned on the said certificate was false. Accused Shankar had got prepared birth certificate of Ravinder with false date of birth. Giving of false

document amounts to practising fraud upon the court. Further, the accused persons had committed fraud / cheating with the Registrar/ Tehsildar by filing fake school transfer certificate and obtaining birth certificate with false date of birth. The circumstances *prima facie* show that both accused had conspired to commit fraud with the Registrar and the Court and in furtherance of their conspiracy, fake school transfer certificate was filed with the Registrar to induce him to issue birth certificate. ***The material is therefore sufficient to frame charge for offence punishable under section 417/420/120-B IPC against both accused.***

The prosecution has also alleged offence of forgery. Section 468 IPC provides punishment for forgery for the purpose of cheating. Section 463 IPC defines forgery. In order to constitute offence of forgery, there must be making of a false document or electronic record. There is no material on record to show that any of the accused had prepared fake school transfer certificate. There is no expert opinion that fake school certificate is in handwriting of accused Ravinder or Shankar. ***Hence, the accused are discharged for offence punishable under section 468 IPC.***

Section 471 IPC provides punishment for using forged document as genuine one. The material is *prima facie* clear that Shankar Lal has submitted fake school transfer certificate alongwith his Affidavit in order to fraudulently obtain birth certificate of Ravinder from the office of Tehsildar/ Registrar. The birth certificate obtained on the basis of the fake transfer certificate has been submitted in the Court by accused Ravinder. The material is sufficient to show that both accused persons, in furtherance of their conspiracy

to commit fraud upon the Registrar and the Court, used the fake school certificate as genuine one. The school transfer certificate is not a valuable security or receipt or any such document as covered under section 466 or 467 IPC. ***Hence, the circumstances are sufficient to frame charge for offence punishable under section 471/120-B IPC read with 465 IPC against both accused namely Ravinder and Shankar.***

Be put up for framing of charge on 23.06.2020.

NEHA
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