

**HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU**

561_A No.103/2010, CrMA No.108/2010

Date of Decision:06/08/2014

Sanjay Kumar VS State and ors.

Coram:

Hon'ble Mr. Justice Bansi Lal Bhat, Judge

Appearing Counsel:

For Petitioner(s) :Mr.B.S.Manhas, Advocate.

For Respondent(s) :Mr.D.S.Saini, Advocate.

Whether approved for reporting in law journals? : **Yes/No**

Whether approved for publishing Press/Media ? : **Yes/No/Optional**

1. Petitioner is aggrieved of order dated 31.03.2010 passed by learned Chief Judicial Magistrate, Jammu in complaint case titled "**“Sanjay Kumar Vs. Meenakshi Dogra”**" in terms whereof learned Chief Judicial Magistrate accepted the report of SSP, Jammu dated 30.03.2010 and directed the petitioner to approach the competent Officer of Police having jurisdiction. The relevant facts germane to the disposal of instant petition under Section 561-A Cr.P.C may briefly be noticed.

2. The case set up by petitioner is that his first wife- Meena Kumari, who was a Government employee died in harness on 30.10.2007 leaving behind her minor

son – Bhuvneshwar Singh besides petitioner – husband as her legal heirs. Subsequently, on 12th May, 2009 petitioner contracted second marriage with respondent no.3 - Meenakshi Dogra. According to petitioner, respondent no.3 lived with him only for one week whereafter she left the matrimonial home and started living with her parents. As petitioner's efforts to bring her back failed, petitioner filed petition under Section 9 of Hindu Marriage Act seeking relief of restitution of conjugal rights against respondent no.3 which is said to be pending adjudication before learned Additional District Judge (Matrimonial Cases) Jammu. Thus, according to petitioner, minor son – Bhuvneshwar Singh and the petitioner being husband of deceased Meena Kumari were entitled to the service benefits of deceased. Respondent no.3 was neither a member of the family of deceased in the latter's lifetime nor a legal heir or dependent of deceased Meena Kumari and, thus, she could not seek compassionate appointment in terms of SRO 43 against the vacancy created on account of death-in-harness of deceased Meena Kumari. Petitioner moved an application before respondent no.2 - SSP Jammu praying for registration of FIR against respondent no.3 who was alleged to have prepared a forged document for getting appointment

under SRO 43 on the false claim of being the dependent of deceased Meena Kumari. The allegedly forged dependent certificate was stated to have been procured from SDM Nowshera and produced by respondent no.3 before SSP Jammu for staking her claim on the strength of such forged dependent certificate. However, no action was taken by SSPJammu which constrained the petitioner to file a complaint before learned Chief Judicial Magistrate, Jammu for seeking direction under Section 156(3) Cr.P.C in the name of SSP Jammu to register an FIR. Learned Chief Judicial Magistrate Jammu sought a report from SSP Jammu who submitted report on 30.03.2010, based whereupon learned Chief Judicial Magistrate Jammu passed the impugned order assailed in the instant petition.

3. The impugned order is assailed on the ground that the learned Chief Judicial Magistrate Jammu passed the impugned order in haste without summoning the record from SSPJammu who had concealed the material facts from the Court below. It is pointed out that when petitioner approached SDM Nowshera to inquire about issuance of the dependent certificate in favour of respondent no.3, it was revealed that no dependent certificate had been issued in her favour

under the given number and date. It is submitted that since the forged dependent certificate was produced by respondent no.3 in the office of SSP Jammu to secure benefit of SRO 43, the latter was legally bound to book the guilty person and learned Chief Judicial Magistrate Jammu was not justified in accepting the report as offence under Section 471 RPC, *prima-facie* established against respondent No.3, was committed at Jammu. The impugned order is also assailed on the ground of having been passed at the back of petitioner without affording him an opportunity of being heard.

4. Respondents 1 and 2 filed objections pleading therein that the deceased Meena Kumari serving as Selection Grade Constable, while performing duty at main gate of Shri Raghunath Temple on 30.10.2007, felt giddiness and on being removed to Police Hospital Jammu for treatment she expired same day in the evening leaving behind petitioner-husband and a four year old minor son as her legal heirs. Subsequently on 12.05.2009, petitioner married respondent no.3 – the real sister of deceased Meena Kumari. On 07.08.2009 respondent no.3 sought appointment on the strength of her being the real sister of deceased who had married the petitioner. Her case was processed. Meanwhile, on 17.08.2009, petitioner filed application requesting for

appointment of his minor son upon attaining age of majority. Petitioner was informed that the post could not be kept reserved under SRO – 43 for such a long time. He was informed of the application filed by respondent no.3 seeking benefit under SRO-43. Petitioner, in response, requested for rejection of claim for appointment preferred by respondent no.3. In view of the non-consent of petitioner, respondent no.2 was informed of non-consideration of her claim. With regard to petitioner's allegations of forgery of the dependency certificate produced by respondent no.3 before respondent no.2, it is pleaded that upon verification from SDM-Nowshera it was revealed that no dependent certificate was issued in favour of respondent no.3 with reference to the given number and date. Accordingly, SSP-Rajouri was directed to take necessary action on the complaint of petitioner. Learned Chief Judicial Magistrate Jammu had sought report on the complaint of petitioner and the report was submitted to the effect that the dependent certificate has been issued from office of SDM-Nowshera and the petitioner was required to approach SSP-Rajouri having jurisdiction in the matter. Learned Chief Judicial Magistrate Jammu passed the impugned order accordingly.

5. Heard and considered.
6. Exercise of powers under Section 561-A Cr.P.C. depends upon the nature of the case. The inherent jurisdiction may be exercised to give effect to an order under Cr.P.C. to prevent abuse of process of the Court and to otherwise secure the ends of justice. No inflexible rule governing exercise of inherent jurisdiction could possibly be laid down. Exercise of inherent powers vested in High Court, apart from express provisions of Cr.P.C. may become necessary in a given case for proper discharge of functions and duties imposed upon the Court. Such powers are to be exercised for advancing the cause of justice and to prevent the abuse of process of Court. Following guidelines have been laid down by Hon'ble Apex Court in "***State Of Haryana And Ors vs Ch. Bhajan Lal And Ors***" reported in AIR 1992, SC 604:-

"8.1. In the exercise of the extra-ordinary power under Article 226 or the inherent powers under Section 482 of the Code of Criminal Procedure, the following categories of cases are given by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guide myriad kinds of cases wherein such power should be exercised:

(a) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima

facie constitute any offence or make out a case against the accused;

(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(c) where the uncontested allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(d) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(e) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(f) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(g) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

7. Adverting to the facts and circumstances of the instant case as emerging from the pleadings of the parties and documents placed on record it appears that *Meena Kumari* – the deceased wife of petitioner was serving as Selection Grade Constable and she died in harness leaving behind petitioner – husband and her four year old minor son – Bhuvneshwar Singh as her legal heirs. Petitioner appears to have contracted second marriage

subsequently by taking respondent no.3 – Meenakshi Dogra, who happened to be the real sister of his deceased wife – Meena Kumari, as his second wife. However, this marriage does not appear to have taken off from the very inception and barely after a week, respondent no.3 deserted the matrimonial home and started living with her parents. Petitioner appears to have filed petition for restitution of conjugal rights against respondent no.3 and the matter was subjudice before a Court as endeavors for settlement did not bear fruit. Meanwhile, respondent no.3 appears to have staked her claim before respondent no.2 to secure benefit under SRO-43 on the strength of a dependency certificate purportedly issued by SDM-Nowshera. Admittedly, respondent no.3 was neither a member of the family of deceased – Meena Kumari at the time of latter's demise nor a dependent of deceased. Therefore, consent of petitioner-husband was sought in regard to claim of respondent no.3. Petitioner did not give his consent for obvious reasons. He also appears to have staked claim to benefit of appointment under SRO-43 in favour of his minor son-Bhuvneshwar Singh which was turned down on the ground that the compassionate appointment could not be deferred till attaining of majority by the minor son- Bhuvneshwar

Singh. Petitioner appears to have filed complaint before learned CJM-Jammu alleging that respondent no.3 had tried to secure appointment in place of deceased Meena Kumari on the strength of a forged dependency certificate. A Report was sought by learned CJM from respondent no.2 who reported that upon verification it came to light that the dependent certificate had been issued from SDM-Office Nowshera district Rajouri, therefore petitioner may be advised to approach SSP-Rajouri in this regard. This factual position emerges from the certified copy of report of respondent no.2 forming Annexure – C to the petition. On consideration of this Report, learned CJM appears to have passed the impugned order directing petitioner to approach competent Officer of Police having jurisdiction. Thus, direction for registration of case under Section 156(3) Cr.PC was declined.

8. Learned counsel for petitioner has vehemently assailed the report of respondent no.2 and the impugned order passed by learned Chief Judicial Magistrate based on such report. He invited the attention of this Court to the wireless message forming Annexure-E to the petition in terms whereof SDM-Nowshera reported to Respondent no.2 that no dependent certificate was issued in favour of respondent no.3 with reference to

the given number and date. Copy of the said certificate forms Annexure-F to the petition. In view of the information provided by SDM-Nowshera, the report submitted by respondent No.2 before learned CJM to the effect that, upon verification, dependent certificate in favour of respondent no.3 was found to have been issued by SDM-Nowshera is seriously questionable. On the face of it such report does not correctly reflect the position emanating from the information provided by SDM-Nowshera. Respondents 1 and 2 have also referred to the aforesaid report of SDM but still tried to defend the impugned order on the ground that the certificate in question having been issued by SDM-Nowshera, petitioner was required to approach the competent Officer of Police having jurisdiction. It is shocking that the information provided by SDM has been distorted and despite his specific report that the aforesaid dependency certificate has not been issued by his Office, the contesting respondents harp on the tune that the dependency certificate has been issued by SDM-Nowshera. It is unfortunate that respondent no.2 has failed to understand the import of information provided by SDM-Nowshera which did not admit of any ambiguity. *Prima facie*, it appears to be a case of seeking compassionate appointment by an ineligible

person on the strength of a fake dependency certificate purportedly issued by SDM-Nowshera who has denied its issuance with reference to the number and date incorporated in the copy of certificate. It is not a case of the certificate having been obtained fraudulently on the basis of misrepresentation of facts by respondent no.3. Thus construed, the offence was committed when the fake certificate was allegedly produced before respondent no.2 by respondent no.3 at Jammu to stake her claim for compassionate appointment. Viewed thus, learned CJM was not justified in passing the impugned order having the effect of declining the petitioner's prayer for registration of case at Jammu where the alleged fake dependency certificate was produced by respondent No.3 for seeking compassionate appointment.

9. In view of the aforesaid discussion, I am of the considered opinion that the impugned order has occasioned failure of justice and the same deserves to be quashed for securing the ends of justice. The impugned order dated 31.03.2010 is accordingly quashed. Learned CJM-Jammu shall send for the record from respondent no.2 pertaining to inquiry conducted by him under orders of Court in regard to complaint of petitioner and pass appropriate orders

after providing an opportunity of hearing to the petitioner.

10. Copy of this order be sent to learned Chief Judicial Magistrate-Jammu, who will put the petitioner on notice before proceeding further in the matter.

(Bansi Lal Bhat)
Judge

Jammu

06.08.2014

Varun Bedi