



IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

ON THE 13th DAY OF JULY, 2022

BEFORE

HON'BLE MR. JUSTICE VIVEK SINGH THAKUR

CRIMINAL MISC. PETITION (MAIN) U/S 482 CRPC No. 246 OF 2021

Between:-

**AMAN KUMAR BHARDWAJ SON OF
SH.PANKAJ BHARDWAJ, RESIDENT
OF VILLAGE DADI BHOLA,
PEERSTHAN NALAGARH, DISTRICT
SOLAN, HIMACHAL PRADESH.**

....PETITIONER

**(BY SH. B.C. NEGI, SENIOR ADVOCATE,
ALONGWITH MR.PRANAY PRATAP SINGH,
ADVOCATE.)**

AND

**1. STATE OF HIMACHAL PRADESH
THROUGH DIRECTOR GENERAL OF
POLICE, NIGAM VIHAR, CHOTTA
SHIMLA, SHIMLA, HIMACHAL
PRADESH 171002.**

**2. THE SUPERINTENDENT OF POLICE
SHIMLA, THE MALL ROAD, RAM
BAZAR SHIMLA, HIMACHAL
PRADESH 171001.**

**3. ASHUTOSH GARG, DIRECTOR
INFORMATION AND TECHNOLOGY,
SHOGHI BYEPASS, BASANT VIHAR,
MEHLI, SHIMLA, HIMACHAL
PRADESH.**

....RESPONDENTS

**(BY SH. HEMANT VAID, ADDITIONAL
ADVOCATE GENERAL.)**

Whether approved for Reporting? Yes.

Reserved on: 27.6.2022

Decided on: 13.7.2022

*This petition coming on for pronouncement this day, the
Court passed the following:*

ORDER

Petitioner, invoking the provisions of Section 482 of the
Code of Criminal Procedure (for short "Cr.P.C."), has approached this
Court for quashing FIR No. 51 of 2021, dated 7.5.2021, registered in

Police Station East, Shimla under Sections 419, 468, 471 of Indian Penal Code (for short "IPC"), Section 66(D) of Information Technology Act, 2000 (for short "IT Act") and Section 54 of Disaster Management Act, 2005 (for short "DM Act").

2. Petitioner is a journalist by profession, who, since 2017, remained associated with various media houses and has been working with Zee Media House since January, 2021 and is posted in Shimla.

3. During Covid-19 Pandemic, vide order dated 25.4.2021, Government of Himachal Pradesh through Secretary (Health), to the Government of Himachal Pradesh-cum-Mission Director (National Health Mission) had issued an order invoking provisions of Himachal Pradesh Epidemic Disease (COVID-19) Regulations 2020 and The Epidemic Disease Act, 1897 with certain direction to combat and control the spread of Covid-19 Pandemic. Besides other directions, there was a direction that all inter-state movement into the State shall be monitored through registration in COVID e-pass software to monitor compliance with the quarantine requirements and facilitate contact tracing of persons in event of detection of COVID-19 positive cases and, therefore, all persons desirous of entering the State shall register themselves on online software and details of their arrival was to be shared with all concerned for the purpose of quarantine requirement and contact tracing.

4. It is the case of the petitioner that on noticing increase in interstate vehicular movement, despite imposition of strict restrictions on interstate movement of vehicles and prerequisite condition of generation of an e-pass for any kind of inter-state movement only on assigning a

valid reason at the time of registration on the portal, petitioner, being a responsible Journalist and acting in larger interest of public, carried out an investigation about the claims of administration qua verification of registration forms of persons entering Himachal Pradesh in compliance of order dated 25.4.2021 and 5.5.2021. During this investigation, petitioner noticed that registration as well as generation of e-pass were being done in mechanical manner without any verification by the authorities and, therefore, he obtained requisite permission from his Bureau Chief to proceed further in order to highlight the discrepancy in the entire process and for which he conducted a reality check qua veracity of functioning of the web portal.

5. Petitioner filled two online registration forms on the portal for issuance of two e-passes for entering the State of Himachal Pradesh without assigning any valid reason. The registration so made was in the names of two renowned personalities, i.e. Amitabh Bachchan and Donald Trump. Names of renowned personalities were used with hope that names so mentioned would definitely be taken note of by the authorities during the process of verification.

6. It is further case of the petitioner that as identity proof he deliberately uploaded his own valid details, i.e. Adhaar Card number and telephone number, for above mentioned registrations and also mentioned two random vehicle numbers alongwith other details.

7. Pursuant to afore registration, e-passes so applied in the names of Amitabh Bachachan and Donald Trump by the petitioner were generated which substantiated the fact that passes were being issued

without, any verification of accompanying documents, in a mechanical manner.

8. It is the case of the petitioner that entire exercise was undertaken by him with a bonafide intention to unearth the truth and loopholes in the system behind the entire process of registration, for the larger public interest.

9. It is further case of the petitioner that generation of aforesaid two e-passes was brought by him to the notice of certain senior authorities of the State including the Director General of Police Himachal Pradesh and a Cabinet Minister prior to the story being televised by the petitioner on his news channel, but, finding no response, petitioner broadcasted the story on his News Channel.

10. The aforesaid broadcasting of the news lead to registration of FIR against the petitioner under Section 419, 468, 471 IPC, 66(D) of the Information Technology Act and Section 54 of the Disaster Management Act. Thereafter, petitioner was interrogated during investigation and his statements were recorded.

11. Feeling aggrieved by the aforesaid registration of FIR, petitioner has approached this Court.

12. In response to the petition, it has been submitted that admittedly petitioner applied for e-passes to enter the State of Himachal Pradesh by faking his identity and claiming to be a person which he was not and causing false propaganda as if everybody and anybody can enter the State on fake identity without being checked, whereas it was known to all including the petitioner that Police barriers were made operational at various places in the State including entry points of the

State to check the identity of individuals entering the State and to pass on the information to the concerned authorities to ensure that the individual is dealt with as per protocols and it has been stated that present petition is an attempt to thwart the investigation.

13. It is case of the respondents-State that petitioner impersonated himself as 'Amitabh Bachchan' and 'Donald Trump' and used fake registration numbers of vehicles by mentioning his own mobile number and Aadhaar Card as identity proof for generating fake and forged documents and, thus petitioner is liable to be tried and punished for the offences mentioned in the FIR and, therefore, present FIR is not liable to be quashed, rather Investigating Agency should be permitted to continue and complete the investigation in the matter.

14. I have heard learned counsel for the parties and have also gone through the record.

15. As referred by learned counsel for the petitioner, certain provisions of IPC, IT Act and DM Act relevant for adjudication of present case, read as under: -

Indian Penal Code

"7. **Sense of expression once explained.**—Every expression which is explained in any part of this Code is used in every part of this Code in conformity with the explanation.

24. **"Dishonestly".**—Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing "dishonestly".

25. **"Fraudulently".**—A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise.

415. **Cheating.**—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".

Explanation.—A dishonest concealment of facts is a deception within the meaning of this section.

Illustrations

- (a) *A, by falsely pretending to be in the Civil Service, intentionally deceives Z, and thus dishonestly induces Z to let him have on credit goods for which he does not mean to pay. A cheats.*
- (b) *A, by putting a counterfeit mark on an article, intentionally deceives Z into a belief that this article was made by a certain celebrated manufacturer, and thus dishonestly induces Z to buy and pay for the article. A cheats.*
- (c) *A, by exhibiting to Z a false sample of an article, intentionally deceives Z into believing that the article corresponds with the sample, and thereby, dishonestly induces Z to buy and pay for the article. A cheats.*
- (d) *A, by tendering in payment for an article a bill on a house with which A keeps no money, and by which A expects that the bill will be dishonored, intentionally deceives Z, and thereby dishonestly induces Z to deliver the article, intending not to pay for it. A cheats.*
- (e) *A, by pledging as diamonds article which he knows are not diamonds, intentionally deceives Z, and thereby dishonestly induces Z to lend money. A cheats.*
- (f) *A intentionally deceives Z into a belief that A means to repay any money that Z may lend to him and thereby dishonestly induces Z to lend him money. A not intending to repay it. A cheats.*
- (g) *A intentionally deceives Z into a belief that A means to deliver to Z a certain quantity of indigo plant which he does not intend to deliver, and thereby dishonestly induces Z to advance money upon the faith of such delivery. A cheats;*

but if A, at the time of obtaining the money, intends to deliver the indigo plant, and afterwards breaks his contract and does not deliver it, he does not cheat, but is liable only to a civil action for breach of contract.

- (h) A intentionally deceives Z into a belief that A has performed A's part of a contract made with Z, which he has not performed, and thereby dishonestly induces Z to pay money. A cheats.
- (i) A sells and conveys an estate to B. A, knowing that in consequence of such sale he has no right to the property, sells or mortgages the same to Z, without disclosing the fact of the previous sale and conveyance to B, and receives the purchase or mortgage money from Z. A cheats.

416. **Cheating by personation.**—A person is said to “cheat by personation” if he cheats by pretending to be some other person, or by knowingly substituting one person for another, or representing that he or any other person is a person other than he or such other person really is.

Explanation.—The offence is committed whether the individual personated is a real or imaginary person.

Illustration

- (a) A cheats by pretending to be a certain rich banker of the same name. A cheats by personation.
- (b) A cheats by pretending to be B, a person who is deceased. A cheats by personation.

419. **Punishment for cheating by personation.**—Whoever cheats by personation shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

463. **Forgery.**—Whoever makes any false documents or false electronic record or part of a document or electronic record, with intent to cause damage or injury], to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.

468. **Forgery for purpose of cheating.** —Whoever commits forgery, intending that the [document or electronic record forged] shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

471. **Using as genuine a forged 1[document or electronic record].**—Whoever fraudulently or dishonestly uses as genuine any [document or electronic record] which he knows or has reason to believe to be a forged [document or electronic record], shall be punished in the same manner as if he had forged such 1[document or electronic record].”

66(D) of IT Act

Punishment for cheating by personation by using computer resource.—Whoever, by means for any communication device or computer resource cheats by personating, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine which may extend to one lakh rupees.

54 of Disaster Management Act.

Whoever makes or circulates a false alarm or warning as to disaster or its severity or magnitude, leading to panic, shall on conviction, be punishable with imprisonment with may extend to one year or with fine.”

16. Section 7 of IPC says that every expression which is explained in any part of IPC, is used in every part of IPC in conformity with the explanation. Sections 24 and 25 of IPC define expression ‘dishonestly’ and ‘fraudulently’, respectively. As per Section 24 IPC, ‘dishonestly’ means an act done with intention to cause wrongful gain to one person or wrongful loss to another person. Whereas, fraudulently means to do a thing with intention to defraud, but not otherwise. For the

purpose of determining commission of offence under IPC, these expressions are to be used in terms of Sections 24 and 25 of IPC.

17. In present case, petitioner did not commit any act with intention to defraud, but for reality check and verifying the working of system of online registration and generation of e-passes, regarding which it was claimed by State that e-passes would be generated after proper verification of documents uploaded with the online request. Petitioner filled the names of someone else as applicants and uploaded his own documents which would, in case of verification, have definitely been noticed by the persons or system verifying the documents with the details of Aadhar Card and Identity Card of the applicant, name of applicants and name in Identity proofs were not matching with each other. But it did not happen and requests for e-passes were not only registered, but e-passes were also generated. Petitioner never intended to use nor used these e-passes for entering in Himachal Pradesh. He brought this lapse in system to the notice of higher authorities. In given facts and circumstances it cannot be said an act done by the petitioner was with intent to defraud, therefore, it was not an act done 'fraudulently'.

18. The act by the petitioner was never done with intention of causing wrongful gain or wrongful loss to any person nor any such attempt was ever made by the petitioner and, therefore, in absence of such essential ingredients, as defined in Section 24 of IPC, act of the petitioner cannot be termed as an act done 'dishonestly'.

19. The necessary ingredient of 'cheating by personation' under Section 419 IPC is that there must be 'cheating'. 'Cheating' is defined in

Section 415 and necessary ingredient for attracting commission of offence of cheating, there must be deceiving of any person, inducing such person fraudulently or dishonestly to deliver any property to any person or to consent to retain any property by any person, or intentionally inducing such person to do or omit to do anything which he would not do or omit if he were not so deceived and such act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property. The basic requirement for 'cheating' is that there must be deceiving of a person with fraudulent or dishonest or intentional inducement for a purpose referred in Section 415 IPC which is absent in present case.

20. In present case, both ingredients, i.e. 'dishonestly' or 'fraudulently', which are necessary for 'cheating' and 'cheating by personation', are missing. For absence of essential ingredients for 'cheating' and 'cheating by personation', there cannot be punishment for cheating under Section 419 IPC.

21. Section 468 IPC provides punishment for 'forgery for the purpose of cheating', whereas Section 471 provides punishment for 'using a forged document or electronic record as genuine'. For commission of offence under Section 468 IPC, there must be 'forgery' which has been defined in Section 463 IPC. The essential ingredient for commission of 'forgery' is that document or part thereof should be made with intention to cause damage or injury to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud. In present case, intention, as required under Section 463

IPC, is absent and, therefore, petitioner cannot be said to have committed forgery. As discussed supra ingredient for terming the act of petitioner as cheating is also absent. Therefore, in absence of 'forgery' and 'cheating', Section 468 IPC is not attracted.

22. For commission of offence under Section 471 IPC, there must be 'fraudulent' or 'dishonest' use of a 'forged document' as a genuine document. As discussed supra, there is no forgery committed in present case. Therefore, there is no forged document. For not only absence of forged document but also for absence of fraudulent and dishonest use of the document much less of a forged document and also for the reasons that petitioner did not use the alleged forged document as a genuine at any place, rather brought generation of document to the notice of senior authorities and persons in power, it cannot be said that petitioner has committed an offence under Section 471 IPC.

23. Section 66D of Information and Technology Act provides punishment for 'cheating by personation'. As observed supra, in present case ingredients necessary for terming the act of the petitioner as 'cheating by personation', are missing. Therefore, Section 66D of Information and Technology Act is also not attracted.

24. Section 54 of the Disaster Management Act provides punishment for false alarm or warning. In present case, petitioner had demonstrated not only possibility of registration of request for generation of e-pass by filling up misleading details but also generation of e-pass on the basis of such faulty request. All this was done by petitioner, with permission of his Bureau Chief, in order to verify and check the claim of

the State authorities and working of the system and he demonstrated it by doing it practically. Therefore, broadcasting news about it, that too after bringing it in notice of authorities, cannot be said a false alarm or warning, rather reporting and news was true and genuine. Act of the petitioner based on the fact revealed to him by undertaking a practical exercise and after informing about it to the senior authorities, Director General of Police, Cabinet Minister and other responsible persons in the Government, would not amount to circulation of a false alarm or warning as to disaster or its severity or magnitude, leading to panic. Petitioner had tried to raise alarm and warning to the authorities so as to improve the system to avoid disaster or to increase severity or magnitude of spread of Covid-19 Pandemic by restricting entry of unwanted persons in the State in terms of restrictions imposed by the State Government to take appropriate steps to improve in order to provide foolproof/flawless system.

25. Petitioner was having doubt about proper working of verification system of State at the time of registration of online request for e-pass and generation of e-passes. He was not having any other via-media to check and verify the system except submitting a misleading request. It is evident that in entire episode intention of petitioner was neither dishonest nor fraudulent as immediately after generation of e-passes, which otherwise could not have been used by any person, petitioner brought it to the notice of concerned authorities and persons.

26. In view of above discussion, I am of the considered opinion that there was no sufficient material for lodging FIR against the petitioner of offences under Sections 419, 468 and 471 of IPC, Section 66(D) of IT

Act, 2000 and Section 54 of Disaster Management Act, 2005 for absence of essential ingredients required for attracting these Sections. It is apparent that allegations made in complaint/FIR even if they are taken at their face value and accepted in entirety do not, prima facie, constitute any offence or make out a case against the accused. Therefore, finding merit in the petition, FIR No. 51 of 2021, dated 7.5.2021 registered against the petitioner in Police Station East Shimla and consequential proceedings arising thereto, if any, are quashed.

The petition stands allowed and disposed of in aforesaid terms.

13th July, 2022
(Keshav)

(Vivek Singh Thakur),
Judge.

High Court