



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

Pronounced on: 17th February, 2025

+ **CRL.M.C.1212/2017**

TULSI RAM
S/O. LATE SH. TARA CHAND
R/O. H.NO. T-35C, SIRI RAM ROAD,
RAILWAY COLONY NO.9
CIVIL LINES, DELHI

.....Appellant

Through: Mr. Anupam S.Sharma, Ms. Harpreet
Kalsi, Mr. Prakarsh Airan, Mr.
Ripudaman Sharma, Mr. Vashisht
Rao and Mr. Syamantak Modgil,
Advocates.

versus

- 1) **STATE**
- 2) **NARENDER SINGH**
S.S.E WORKS (MAINTENANCE)
RAILWAY OFFICE,
SARDAR PATEL MARG,
NEW DELHI
- 3) **RANJEET SINGH**
S.S.E WORKS
RAILWAY STATION,
FARIDABAD,
HARYANA
- 4) **MOHAN LAL**
M.C.M. WORKS (MAINTENANCE)
BARODA HOUSE,
NEW DELHI
- 5) **HARISH KHANNA**
RETIRED OFFICER
O.S./DEN.E-I



DRM OFFICE
NEW DELHI RAILWAY STATION,
NEW DELHI

- 6) **AVHINASHI LAL**
RETIRED OFFICER
O.S./DEN. E-I
DRM OFFICE
NEW DELHI RAILWAY STATION, NEW DELHI
- 7) **GIRISH LAWANIA**
ADEN/E-I
DRM OFFICE,
NEW DELHI RAILWAY STATION,
NEW DELHI
- 8) **ANUPAM SINGH**
SR. DEN/ESTATE
DRM OFFICE,
NEW DELHI RAILWAY STATION,
NEW DELHI
- 9) **SUNITA SHARMA**
DEALING ASSISTANT
DRM OFFICE
NEW DELHI RAILWAY STATION
NEW DELHI
- 10) **RAMESH KUMAR**
SR. SEC. OFFICER
DRM OFFICE,
NEW DELHI RAILWAY STATION,
NEW DELHI
- 11) **NARESH BISHT**
FA & CAO,
BARODA HOUSE,



NEW DELHI

- 12) DARSHANA GOGIA**
RETIRED OFFICER,
COS/ADEN/E-I,
DRM OFFICE,
NEW DELHI RAILWAY STATION,
NEW DELHI
- 13) PRAVEEN KUMAR**
DEN/E-1
DRM OFFICE,
NEW DELHI RAILWAY STATION,
NEW DELHI
- 14) GULAB SINGH**
RECORD SUPPLIER,
DRM OFFICE,
NEW DELHI RAILWAY STATION,
NEW DELHI
- 15) OM PRAKASH**
FA & CAO,
KASHMIRI GATE,
NEW DELHI
- 16) SHAHID KHAN**
SR. DEC. OFFICER,
DRM OFFICE,
NEW DELHI RAILWAY STATION,
NEW DELHI
- 17) MASOOD AHMED**
SR. SEC OFFICER
DRM OFFICE,
NEW DELHI RAILWAY STATION,
NEW DELHI



18) MUKESH MITTAL
FA & CAO,
BARODA HOUSE,
NEW DELHI

...Respondents

Through: Mr. Hitesh Vali, APP for the State
with SI Rekha, P.S.Tilak Marg.
Mr. Om Prakash, Advocate for R-3 to
5, 7 to 9, 13 & 17.
Mr. Jitender Kumar Singh with Ms.
Anjali Kumar, Ms. Harshita Singh
and Ms. Shivpriya, Advocates for R-
10,11,14 & 16.

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. Petition under Section 482 of the *Code of Criminal Procedure, 1973* ('Cr.P.C' hereinafter) has been filed for setting aside the Order dated 25.10.2016 *vide* which the learned ASJ has upheld the Order of learned M.M dated 30.06.2016 rejecting the Application under Section 156(3) Cr.P.C filed by the Applicant for registration of the FIR.
2. The *facts in brief* are that Petitioner who was working as a Khalasi (Plumber) at Enquiry Office, Tilak Bridge, Railway Colony, New Delhi used to mark his attendance on Muster Roll maintained at the Office. His duty was to attend to the Complaints at the residence of Railway employees for which a slip was issued and simultaneously an entry was also made in the complaint register. After the complaint was attended, the Issue Slip was attached to the Complaint Register.



3. The Petitioner was having a doubt about his accumulated leave and he started making monthly enquiries in regard to them in the month of May, June, and July of 2011. He was informed that he had two unutilized Casual Leaves. Thereafter, he made an enquiry in October, 2011 when he was informed that all his Leaves have been exhausted despite him not taking any Leave during this period. He requested that his Leave Applications be shown to him but his request was resisted on one pretext or the other. Ultimately, Respondent Nos. 2 to 4 showed him his Application but it was neither written nor signed by him. When he protested, he was told to do whatever he could. A copy of the Application was also not given to him despite his requests.

4. The Petitioner, however, somehow managed to obtain the copy of the Complaint Register from their Office wherein it was reflected that he was on duty and attended the Complaints on the day when he was marked on Leave.

5. It is submitted that Petitioner thereafter, made a request for making available to him a copy of the Muster Roll and certified copy of Casual Leave Register through RTI, but no Reply was given. However, on the directions of Appellate Authority, Sr. DEN/Estate provided him with the photocopies of Casual Leave Register and one Attendance Sheet *vide* Letter dated 05.01.2012. However, the copies of Attendance Sheet supplied to him was not original but a hand copied document.

6. He filed Second Appeal before Central Information



Commission ('CIC' *hereinafter*) requesting for the copy of the original Muster Roll which was directed by CIC *vide* Order dated 25.05.2012 to be supplied to him, but despite several requests and reminders, the requisite documents were not supplied to him.

7. He then filed a Complaint again before CIC where the Railway Officials informed that the Muster Roll was not traceable, which is mentioned in Order dated 02.05.2013. On the directions of the CIC, the concerned Railway Officials filed an Affidavit affirming that the Muster Sheets pertaining to the period 01.04.2011 to 25.04.2011, were not available in the office.

8. The Petitioner has claimed that it is apparent that copy of the Attendance Register and Leave applications are fabricated documents. The concerned Railway Officers have either stolen or concealed Muster Roll in order to save themselves. Therefore, they have committed the offence of *criminal misappropriation* of the property entrusted to them and have *stolen the office record*.

9. He made a Complaint to the SHO on 10.07.2013, but no action was taken. He thereafter, filed an Application under Section 154(3) Cr.P.C. to DCP. Finding no alternative, he filed a Complaint before the learned M.M and also filed an Application under Section 156(3) Cr.P.C for directions to the police for registration of the FIR. His Application under Section 156(3) Cr.P.C was dismissed by learned M.M on 12.01.2015.

10. In Revision, the matter was remanded back to the learned M.M to decide afresh, but his Application under Section 156(3) Cr.P.C. was



again dismissed by the learned M.M on 30.06.2016. It met the same fate in the Revision before learned ASJ and was dismissed on 25.10.2016.

11. Aggrieved by the said dismissal of Application under Section 156(3) Cr.P.C., present Petition has been filed by the Petitioner.

12. The *grounds on which the challenge* has been made is that from the entire narration above, it is evident that the Railway Officials are guilty of fabricating and misappropriating the official records. It is asserted by him that he requires *police assistance firstly*, to recover the fabricated documents; *secondly*, to get their authenticity verified from FSL; and *thirdly*, to establish the identity of the persons who have fabricated the documents and also to trace out the persons who were involved in preparation of these documents.

13. The Petitioner is not in a position to collect and produce evidence on all these aspects. Furthermore, the documents i.e. the Muster Roll and leave Applications are also in power and possession of the officials of Railway Department for which Police assistance is required. Therefore, learned ASJ was incorrect in observing that the Petitioner is in power and possession of the material evidence.

14. Furthermore, as held in the case of *Lalita Kumari vs.State of U.P* (2014) 2 SCC 1 a preliminary enquiry may be made *inter-alia* in cases where there is an abnormal delay and laches in initiating criminal prosecution. In the present case, there is no delay on the part of the Petitioner as he was diligently pursuing his matter with RTI and CIC took him sometime to obtain the copy of the requisite



documents.

15. It is, therefore, asserted that the impugned Order be set aside and the directions be issued for registration of FIR.

16. *A short Reply has been filed on behalf of the Respondents Nos. 10,11,14 and 16*, who have asserted that the alleged incident is of middle of 2011, but the Complaint has been filed only in October, 2013. There is a considerable delay and the Investigating Agency cannot recover the alleged Muster Sheet. Furthermore, the affidavit has been submitted before the CIC that the record of Attendance that is referred to as Muster Roll has been misplaced and is not available. It is, therefore, submitted that there is no merit in the present Petition which is liable to be dismissed.

17. **Submissions heard and Record perused.**

18. The Petitioner who was employed as a Khalasi in Railways, has alleged that he never took Leave on 02.04.2011 and 21.04.2011, on which dates he has been shown on Leave. He had been shown the Leave Applications allegedly written by him for the abovementioned two dates, but neither these Applications were written nor were they signed by him. It is claimed by him that the documents have been forged to illegally show the Petitioner to be on leave on the two Dates.

19. It has been explained on behalf of the Respondent that the Petitioner had taken Casual Leave on 02.04.2011 and 21.04.2011. It is claimed by him that he had attended the complaints on that date, but the Complaint Register reflects that the Artisan Allotment Slip was assigned to the Applicant on 02.04.2011, but he was not available in



the Office and it was attended to by him on 04.04.2011 thereby reflecting that he was not present on 02.04.2011.

20. Pertinently, according to the averments made in the Complaint he had been taking the monthly stock of his Leave from the Department for the month of May, June and July, 2011 and thereafter, he enquired about his casual leave status in October, 2011 when he was told that his entire leaves stands exhausted. These disputed Leaves pertained to the month of April, 2011 about which he had been taking stock in May, June and July, 2011. Moreover, the certified copies of the Casual Leave Applications and record of Casual Leave Duty Register has already been made available to him.

21. The Petitioner has been insisting on being provided with the Muster Roll, but its handwritten copy has already been made available to him under RTI. His assertion is that the original record be produced for which the affidavit has already been filed by the officials of the Railway Department before CIC certifying that the original Muster Roll register is not available.

22. In the light of aforesaid averments, the documents as available with the Department have already been provided to the Petitioner. No police assistance is required for collection of alleged documents. Moreover, these witnesses from Department can even be summoned by the Petitioner in his evidence under Section 200 Cr.P.C. to seek production of the relevant documents. It cannot be said that any police assistance is required for production of the Government documents.

23. In so far as the allegations of the Application being forged and



fabricated is concerned, the certified copies are already available with him. Moreover, while an opinion of an expert about the handwriting and signatures is only a corroborative piece of evidence, the Petitioner can lead independent evidence about the circumstances to support his assertions.

24. The Application under Section 156(3) Cr.P.C. for registration of FIR *has been rightly rejected*. However, it does not imply that the case of the Petitioner itself has been rejected or there is any observation that the averments made in the Complaint are without merit. The *only consequence* of dismissal of Application under Section 156(3) Cr.P.C. is that the Petitioner has been given an opportunity under Section 200 Cr.P.C. to get the evidence recorded and in case found to be sufficient, the learned Trial Court would proceed further in accordance with law. In so far as police assistance is required, if the Court so feels it can still resort to Section 202 Cr.P.C. to seek the assistance of the police for collection of relevant evidence.

25. There is no infirmity in the impugned Order and the Petition is hereby dismissed.

(NEENA BANSAL KRISHNA)
JUDGE

FEBRUARY 17, 2025/rk