

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

% *Judgment Reserved on: 12th, November 2009*
Judgment Delivered on: 27th, November 2009

+ **CRL.REV. P.122/2003, CRL.M.A.NOs.243/2003 & 440/2003**

SURINDER KUMAR BALI ...Petitioner
Through: Mr. Sandeep Sethi, Sr. Advocate with
Mr. Anurag Jain, Mr. Sindhu Sinha &
Mr. Nikhil Bhalla, Advocates

Versus

STATE ...Respondent
Through: Mr. Manoj Ohri, APP.

CORAM:
HON'BLE MS. JUSTICEINDERMEET KAUR

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

INDERMEET KAUR, J.

1. Charge sheet had been filed against six co-accused persons. Sunil Kumar Bali is the petitioner before this Court; he was the Assistant Manager of the Syndicate Bank, Kamla Nagar Branch, Delhi at the relevant time. Bhagya Nath and Venu Gopal were also assistant managers; Ram Kumar & Dev Anand were clerks and S.S. Brahmi was a stenographer. Allegations were that all the aforesaid persons had entered into a criminal conspiracy to make certain bogus withdrawals from the bank; in furtherance of the common object of their criminal conspiracy they had opened two current accounts i.e. C/A No. 1732 in the name of Mahendra Estate

and C/A No.1738 in the name of M.K.Enterprises. False transfer vouchers and entries were made in the ledger in order to fructify their common purpose.

2. Allegations against the petitioner are two fold:-

i)- Account opening form of current account no. 1732 Ex.PW-14/D of Mahendra Estate was introduced by Darshan Lal Manchanda; petitioner has verified the signatures of the introducer namely Darshan Lal Manchanda on this account opening form. Darshan Lal Manchanda had come into witness box as PW-3 and had denied that he had introduced this account. Allegations thus being that the petitioner had committed a forgery.

ii)- Petitioner had tallied an amount of Rs.5,05,000/- from the current account No.1738 Ex.PW-14/F in the name of M/s M.K.Enterprises with the balance in the Balance Book Ex.PW-12/H of the bank; (Ex.PW-12/G) is the original) this was a forgery done with an intent to cheat.

3. Trial Court had examined 16 witnesses to substantiate the allegations against the accused persons. Complianant was J.C. Singhal, the manager of the bank at the relevant time. He has been examined as PW-14. Darshanlal Manchanda PW-3 had purportedly introduced the current account No.1732 of Mahendra Estate; specimen signatures of PW-3, Ex.PW-3/A and Ex.PW-3/B were taken in the presence of Hari Om PW-4. Specimen signatures of the petitioner were taken on 9.7.1987 in the presence of Ram Singh PW-10. Dr.S.C.Mittal PW-8 had examined the questioned and the admitted/specimen writings/signatures of the petitioner, PW-3 as

also the other accomplices of the petitioner. His reports Ex.PW-8/A and Ex.PW-8/B were however both inconclusive qua the role of the petitioner. R.K.Dhawan PW-12 was the special Assistant Manager in the bank at the relevant time and was looking after the loan deposit Register; as per his version in August 1986 he had reported that the L.D. i.e. the loan deposit register was missing.

4. Trial Court on the basis of the evidence adduced before it had convicted the petitioner i.e. Surinder Kumar Bali, Bhagya Nath and Venu Gopal under Section 120 B read with Sections 420/511 of the IPC. They were also convicted for having committed an offence punishable under Section 380 read with Section 120 B of the IPC as also for the offence punishable under Section 468, 471 read with Section 120 B of the IPC.

5. Vide order of sentence dated 26.8.2002 all the aforesaid persons had been sentenced to undergo RI for one year and to pay fine of Rs.10,000/- for the offence punishable under Section 120 B of the IPC; they were sentenced to undergo RI for one year and to pay fine of Rs.5000/- for the offence punishable under Sections 420/511 of the IPC read with Section 120B of the IPC; they were further sentenced to undergo RI for two years and to pay a fine of Rs.10,000/- for the offence punishable under Section 380 read with Section 120B of the IPC; for the offence punishable under Section 468 of the IPC they were sentenced to undergo RI for one year and to pay a fine of Rs.5000/-; no separate sentence had been awarded for the offence punishable under Section 471 of the IPC.

6. In appeal before Additional Sessions Judge vide judgment dated 4.2.2003 co-accused Venu Gopal and Bhagya Nath had been acquitted of all the charges levelled against them. The conviction of the petitioner i.e. S.K.Bali had been maintained under Sections 120B/468 of the IPC. For the offence punishable under Section 420 read with Section 511 of the IPC, his conviction had been altered and was converted into a conviction under Section 417 of the IPC; he was acquitted of the offence under Section 380 read with Section 120B of the IPC. He was sentenced to undergo RI six months for the offence punishable under Section 120B of the IPC, no alteration was made in the fine imposed. For the offence punishable under Section 417 of the IPC he was sentenced to undergo RI for six months and to pay fine of Rs.5000/- in default of payment of fine to undergo SI for one month. For the offence punishable under Section 468 of the IPC he was sentenced to undergo RI for one year and to pay a fine of Rs.5000/- and in default of payment of fine to undergo SI for one month.

7. It is this order which has become the subject matter of this revision petition before this Court.

8. On behalf of the petitioner, it has been urged that the altered conviction by the appellate Court is illegal, arbitrary and has resulted in a mis-carriage of justice. The petitioner is the only person out of the six persons charge sheeted who now remains convicted; in the absence of any other person having allegedly hatched the conspiracy with the present petitioner the ingredients of Section 120 B of the IPC are not made out; it is not the case of

the prosecution that the petitioner had entered into a conspiracy with some unknown person; case of the prosecution is that the petitioner had hatched this conspiracy with the other known persons i.e. the other five co-accused persons; all of whom now stand acquitted; petitioner alone cannot be convicted for the offence under Section 120B of the IPC as the ingredients of the said Section necessarily postulate that a conspiracy has to be between more than one person; there is no such other person; conviction under Section 120 B of the IPC is liable to be set aside. For this proposition, learned counsel for the petitioner has placed reliance upon AIR 1956 SC 33 Topandas vs. State of Bombay; it is submitted that this judgment squarely applies to the proposition now propounded by the counsel for the petitioner; emphasis has been made on the finding which inter alia reads as follows:-

By the terms of the definition itself, there ought to be two or more persons who must be parties to such an agreement and it is trite to say that one person alone can never be held guilty of criminal conspiracy for the simple reason that one cannot conspire with oneself. If, therefore, 4 names individuals were charged with having committed the offence under S. 120-B, Penal Code, and if three out of these 4 were acquitted of the charge, the remaining accused, who was the accused No.1 in the cases before us, could never be held guilty of the offence of criminal conspiracy.

9. Ingredients of cheating as defined under Section 415 of the IPC necessarily postulate an intention; there must be an intentional deception which must be intended not only to induce the person deceived to do or omit to do something but also to cause damage or harm to that person in body, mind, reputation or property; the intentional deception presupposes the existence of a

dominant motive of the person making the inducement; such inducement should have led the person deceived or induced to do or omit to do anything which he would not have done or omitted to do if he were not deceived; further requirement is that such act or omission should have caused damage or harm to body, mind, reputation or property. It is submitted that this definition necessarily has two parts; while in the first part the person must “dishonestly” or “fraudulently” induce the complainant to deliver any property; in the second part, the person should intentionally induce the complainant to do or omit to do a thing. This is to say, in the first part inducement must be dishonest or fraudulent. In the second part inducement should be intentional; a guilty intention is an essential ingredient of cheating. None of these ingredients are contained in the allegations against the present petitioner. For this proposition reliance has been placed upon 2000(3) SCC 693 G.V. Rao vs. L.H.V. Prasad & Ors. It is submitted that at best the acts of the petitioner can qualify for a negligence or a failure to perform a duty or to observe a rule of procedure; in the absence of *mense rea* which is an essential requirement of the offence of cheating, an administrative lapse cannot establish this charge. Reliance has been placed upon 1974 (4) SCC 616 Anil Kumar Bose vs. State of Bihar to substantiate this submission.

10. Attention has also been drawn to the definition of “dishonestly” and “fraudulently” as contained in Sections 24 and 25 of the IPC; both these sections require some action resulting in disadvantage which but for the deception the person defrauded

would have avoided. Reliance has been placed upon 1997 6 SCC 499 Jibrial Diwan vs. State of Maharashtra.

11. It is submitted that in the instant case the mere verification by the petitioner of the signatures of the introducer on the current account of Mahendra Estates and the second allegation that he had counter signed the tallying of the balance in the Balance Book of the Bank with the current account of M.K.Enterprises does not by any stretch of imagination come within the ambit of the definition of either the act being dishonest or fraudulent; no offence is made out qua the present petitioner.

12. Ingredients of Section 468 of the IPC necessarily encompass within its ambit a forgery for the purpose of cheating; if there is no cheating, offence under Section 468 of the IPC is also not made out. Forgery has been defined under Section 463 of the IPC which postulates the making of a false document. Making of false document has been defined under Section 464 of the IPC; attention has been drawn to its language.

13. It is submitted that in the absence of the prosecution having been able to show that the petitioner had made any gain from the so-called forgery committed by him, the ingredients of this offence are also not made out. Reliance has been placed upon JT 2009 (13) SC 507 Parminder Kaur vs. State of U.P. & Anr. The petitioner had nothing to gain and neither is there any such allegation; it has also not been established by the prosecution that any loss has been suffered by the bank from the acts of the petitioner.

14. Admittedly there is no expert opinion on the questioned admitted and the specimen handwriting/signatures which had been sent to CFSL for comparison. Attention has been drawn to the report of the CFSL which has been proved in the version of Dr. S. C. Mittal PW-8, Ex.PW-8/A and Ex.PW-8/B, the finding in the reports are all inconclusive; it is also not a case where the judge himself had examined the said documents i.e. either the specimen or the admitted writings with the questioned documents. To establish the ingredients of an offence under Section 468 of the IPC, it was incumbent upon the prosecution to have obtained a scientific report which is absent in this case. Reliance has been placed upon [1963] 3 SCR 564 Abinash Chandra Bose vs. Bimal Chandra Bose to substantiate his submission that where there is no expert evidence before the court to come to the conclusion about authorship of the impugned portion of a document, benefit of doubt has to accrue in favour of the accused.

15. Attention has been drawn to Ex.PW-14/D i.e. the account opening form of the current account no.1732 of Mahendra Estates. This document has been counter signed by the petitioner; it is submitted that Darshan Lal Manchanda PW-3 who had purportedly introduced this account has on oath clearly stated that he had not done so; it is also not the case of the prosecution that some other person had impersonated as Darshan Lal Manchanda. The petitioner while counter verifying this document had done so on the basis of the earlier record available with the bank i.e. the signature and writing of Darshan Lal Manchanda. The petitioner is a lay person

and it was only with a naked eye that he had examined these documents before he had counter signed Ex.PW-14/D; he was not a scientific expert. He could not have gone into the nitty gritty of the handwriting of Darshan Lal Manchanda; on the face of it the signatures of the introducer on Ex.PW-14/D appear to be that of Darshan Lal Manchanda. Even otherwise the bank had not suffered any loss as no transaction had been effected from this account.

16. The second allegation against the petitioner that he had counter signed the balance in the Balance Book of the Bank with the current account i.e. the entry dated 22.8.1986 of Rs.5,00,500/- does not make out a case of forgery. Attention has been drawn to the document Ex.PW-12/H and the said entry dated 22.8.1986; forgery is not established.

17. Arguments have been rebutted by the learned counsel for the State. It is pointed out that this Court can even in the absence of a named co-conspirator convict a single person for the offence of conspiracy under Section 120 B of the IPC. Reliance has been placed upon AIR 1991 SC 318 Brathi alias Sukhdev Singh vs. State of Punjab to substantiate this submission that the Appellate Court is free to appreciate the evidence to reach its own conclusion. If on such evidence the Appellate Court arrives at a conclusion that the appellant and another co-accused had acted in furtherance of their common intention then the conviction of the appellant with the aid of Section 34 is legal; this is notwithstanding the finding that no appeal has been filed by the State against the acquittal of such a co-accused. Reliance has also been placed upon AIR 1956 SC 469

Bimdadhar Pradhan vs. The State of Orissa; it is submitted that even a single person can be convicted under Section 120 B of the IPC; it is not essential that more than one person should be convicted of the offence of criminal conspiracy; it is enough if the Court is in a position to find that two or more persons were actually concerned in the criminal conspiracy. Attention has also been drawn to the admissions of the petitioner made in his statement under Section 313 of the Cr.P.C. It is submitted that the petitioner has not disputed his handwriting and signatures either on Ex.PW-14/D or on Ex.PW-12/H. It is submitted that the petitioner has admitted that he was in charge of the bank at the relevant time; as such in this capacity it was his duty to ensure that the verification made by him of the signatures of Darshan Lal Manchanda had in fact tallied with his original signatures; he did not do so intentionally and fraudulently; this is also evident from Ex.PW-12/H in which the balance in the account had admittedly been tallied by him; he did this tallying with a dishonest intent.

18. Arguments have been heard and record perused.

19. J.C. Singhal PW-14 was the complainant; he was the Manager of the Kamla Nagar Branch Syndicate Bank from August 1984 to April 1988; incident is of the year 1986. He had lodged the complaint Ex. PW-14/C. In this complaint various allegations were levelled against the various co-accused. It had been alleged that the current account No.1732 of M/s Mahindra Estate and current account No.1738 of M.K.Enterprises were fraudulent accounts. After detailing the various allegations against the co-accused including the

petitioner a request for initiating an inquiry had been made. PW-14 has deposed that current account of M/s Mahindra Estates has been introduced by proprietor of DD Electronics namely Darshan Lal Manchanda having current account No.1636 who has however denied having introduced any such account.

20. A perusal of the account opening form and specimen signature card reflects that it had been chemically treated and original material had been erased; further in the current account No.1738 of M/s M.K.Enterprises a credit of Rs.5 lacs in the current account ledger folio had been shown on 27.7.1986; this entry appears on an erased surface of the folio and seems to have been carried out by a rubber/erasing material; further the transfer/day scroll of 27.7.1986 is missing and the loans of deposits sub day took on 27.7.1986 is pasted by a sticking material like gum. Besides these allegations there were other allegations which relate to the role of the other co-accused; these specific allegations as enumerated above related to the role of the present petitioner.

21. PW-14 has further deposed that the two forged accounts in the name of M/s M.K.Enterprises and Mahindra Estates had been opened in their branch in 1986 and both these said accounts were found to be forged. The account opening form of Mahindra Estates was verified by S.K.Bali who was the Assistant Branch Manager in the branch at the relevant time.

22. This account opening form is Ex.PW-14/D. It shows that current account No.1732 was opened in the name of Mahindra Estates; back page of the document shows that this account was

introduced by DD Electronics and the signatures of the introducer has been penned at Q-17D on Ex.PW-14/D purported to be that of Darshan Lal Manchanda.

23. Darshan Lal Manchanda has come into the witness box as PW-3. He has on oath deposed that he has a firm in the name of DD Electronics at Wazirpur Industrial Area and is having current account No.1636 at the Syndicate Bank Kamla Nagar. He has deposed that he had not introduced M/s Mahindra Estate either for a current account or for a saving account. His specimen signatures were taken vide Ex.PW-3/A & B.

24. The CFSL had examined the questioned writings on Ex.PW-14/D with the specimen handwritings of PW-3. The report of the CFSL has been proved in the testimony of Dr.S.C.Mittal PW-8. There are two reports of the scientific expert i.e. Ex.PW-8/A and Ex.PW-8/B; Ex.PW-8/A is dated 31.7.1989, vide this report the scientific expert had desired that the original documents be sent to him; in the absence of which he could not give a conclusive report. Ex.PW-8/B is dated 22.2.1991. This report is also inconclusive; there is, thus, no scientific evidence with the prosecution to affirm the statement of PW-3 that he had not signed Ex. PW-14/D. Yet his ocular version remains unchallenged.

25. It is a settled principle of law that an opinion of an expert is a relevant fact under Section 45 of the Evidence Act and no more; it can be used for corroboration but in the absence of scientific opinion the ocular testimony of a witness cannot be discarded.

26. Section 464 of the IPC describes the making of a false document. It inter alia reads as follows :-

“..... a person makes a false document if he –

(1) Dishonestly or fraudulently makes, signs, seals or executes a document, or part of a document, or makes any mark denoting the execution of a document; and

(2) Does as above with the intention of causing it to be believed that such document or part of a document was made, signed sealed or executed,

27. Petitioner S.K.Bali was the Assistant Manager at the relevant time. He had verified the introducer's signatures i.e. the signature of Darshan Lal Manchanda on Ex.PW-14/D in the said capacity; it was incumbent upon him to have verified from the account opening form i.e. the current account No. 1636 of DD Electronics as to whether the signature appended on Ex.PW-14/D was in fact the signature of Darshan Lal Manchanda or not but he did not do so. He had made a false document.

28. Necessary *mense rea* has to be gathered from the attendant circumstances. What were the attendant circumstances? Investigation had revealed that Mahindra Estates of whom the proprietor was Mahender Narula having a current account No.1732. This was a fictitious account opened on 7.6.1986 and in fact the address which had been mentioned in Ex.PW-14/D of Mahindra Estate i.e. A-347, Wazirpur Industrial Area, Delhi-43 does not exist; this has come in the categorical version of PW-14 in his complaint Ex.PW-14/C which had recorded “no premises in existence with the declared address”. Further the second account i.e. the account of M.K.Enterprises having current account No.1738 was introduced by

Mahendra Estates, a non-existent entity. This account Ex.PW-14/E and was opened on 15.6.1986. This evidence produced by the prosecution is sufficient to bring home the charge of forgery which had been levelled against the accused. Both the Courts below had given a concurrent finding on this aspect.

29. To establish the ingredients of Section 468 of the IPC, it must be established not only that the document is forged; but further that the accused had intended that this forged document would be used for the purpose of cheating. Cheating has been defined under Section 415 and necessary ingredients of the said offence have been discussed supra. Deception is the quintessence of the offence. It means causing to believe what is false or misleading as to a matter of fact or leading to error; such deception may be by word or conduct depending upon facts of the each case. This deception has to be qualified either by a fraudulent or a dishonest inducement and is coupled with an act or an omission which is likely to cause damage or harm to that person in body, mind, reputation or property.

30. The person so effected in this case is the Syndicate Bank who is the complainant. The petitioner by his act of verifying a false document i.e. verifying the introducer's signature on the account opening form Ex.PW-14/D which is an important prerequisite before an account can be opened had facilitated in the opening of this fictitious account in the Syndicate Bank i.e. of a non-existent person. Fraudulent and dishonest intention to deceive the bank is writ large qua the role of the present petitioner.

31. This is not the only instance of cheating and forgery for which the petitioner had been convicted by the two Courts below. The second incident is of the tallying of the balance of Rs.5,05,000/- in the Balance Book of the Bank with the current account No.1738 of M/s M.K.Enterprises. This document is Ex.PW-12/H i.e. entry dated 22.8.1986 showing a balance of Rs.5,00,500/- in the said account. It has admittedly been signed by the petitioner. The petitioner has also admitted this fact in his statement recorded under Section 313.

32. In answer to question no.4 he has stated that he had tallied the current account No.1738 i.e. current account of M/s M.K.Enterprises showing a balance of Rs.5,05,000/-; these are two entries which are dated 8.8.1986 and 22.8.1986 on Ex.PW-12/H i.e. the Balance Book of the Bank which had tallied the entries dated 4.7.1986 and 27.7.1986 on Ex.PW-14/F i.e. the current account NO.1738 of M/s M.K.Enterprises showing the entires of Rs.500/- and Rs.5 lac respectively.

33. Ravinder Kumar Dhawan PW-12 Special Assistant at Kamla Nagar Branch Syndicate Bank had deposed that he used to maintain the record of the loan and deposit ledger and was in charge of the loan on deposit department of the said branch. He had reported that in August 1986 the loan deposit (L.D.) ledger of the loan on deposit was found to be missing and this was reported to J.C. Singhal; he has further deposed that the entry of the loans is mentioned in the register Ex.PW-12/A and loan number 394/86 at page no.397 pertaining to M/s M.K.Enterprises shows that on 27.7.1986 there is an entry of Rs.5 lacs in favour of M/s M.K.Entrprises.

34. PW-14 J.C.Singhal has deposed that register Ex.PW-12/C shows that there was an overwriting and on account No.599/86 Ex.PW-12/D, it is pasted with a part of page no.209 which account pertains to M/s M.K.Enterprises. Ex.PW-12/G (photocopy is Ex.PW-12/H) i.e. current account balancing book of M/s M.K.Enterprises shows balance of Rs.5,05,000/- against the current account No.1738 for balance of the account taken on 08.8.1986 and 22.8.1986 which bear the signature of S.K.Bali at point A. Further the loan on the deposit account no.394/86 is in the name of M/s M.K. Enterprises; the loan in ledger Ex.PW-12/A has been raised on 27.7.1986 for Rs.5 lacs against a deposit of Rs.3.6 lacs.

35. This ocular version of the aforestated witnesses coupled with the admission of S.K.Bali that he had in fact tallied the aforestated current account evidencing a balance of Rs.5,05,000/- in the account of M/s M.K.Enterprises which is again a fictitious account, is clearly a culpable mense rea i.e. the petitioner S.K.Bali having appended his signature in token of this tally with a dishonest and a fraudulent intention; obviously with the criminal purpose of evidencing that a balance of Rs.5,05,000/- stood in this account when this was an incorrect fact; this guilty intention is manifest in the conduct of the petitioner. Ingredients of cheating as defined under Section 415 stand established.

36. Now the question which arises is as to whether in the absence of other co-accused who stand acquitted/discharged whether the petitioner single handedly can be roped in for the offence of conspiracy under Section 120 B of the IPC.

37. In AIR 1956 SC 469 Bimdadhar Pradhan supra i.e. the judgment of Topan Dass had been considered by the Supreme Court. The Apex Court had repelled the contention of the petitioner that all the other co-accused persons having been acquitted; he being a single person could not have been convicted under Section 120B of the IPC. While distinguishing the judgment as pronounced in Topan Dass the Supreme Court had held that the judgment in Topan Dass was based on the finding that the other co-accused had been rightly acquitted by the Courts below and as such a single person, in the absence of another, could not be convicted for a criminal conspiracy. Reliance placed upon [1902] 2 K.B. 339 King vs. Plummer has also been distinguished. The court observed that the rules of English law as to the acquittal of the alleged conspirator following from the acquittal of the other when the conspiracy was said to be only between the two and in a joint trial of both is based upon a rule of practice and procedure, namely, that repugnancy or contradiction on the face of the record is a ground for annulling a conviction. But such a repugnancy is not by itself a sufficient ground for quashing a conviction in India where the matter is governed by statutory law both as to the offence and the procedure for bringing the offender to justice. The court further observed that it is not essential that more than one person could only be convicted of the offence of criminal conspiracy. It is enough if the court is in a position to find that two or more persons were actually concerned in the criminal conspiracy. Moreover although the State had not challenged the correctness of the acquittal of the other co-accused

but nevertheless their acquittal may not have been entirely correct and the Appellate Court can well consider this proposition.

38. In the instant case apart from the petitioner five other persons had been charge sheeted along with him for the offence of criminal conspiracy; Venu Gopal and Bhagya Nath having been acquitted by the Sessions Judge on the ground that the scientific expert had given them a clean chit entitling them to a benefit of doubt. Charge of conspiracy had admittedly been framed against all the six accused persons; it cannot be urged or argued that the petitioner was unaware of the allegations of the conspiracy against him; he was fully apprised of the same. It is also not sure whether the acquittal of the co-accused by the Courts below was well founded in law or justified in the evidence of the case. Trial Court had not disbelieved the evidence. It had only given a benefit of doubt to the accused when they had been acquitted; this Court is also not sure as to whether the acquittal of the other co-accused was entirely correct; however since they are not before this Court, this Court need not go into this aspect.

39. In this connection the observation of the Supreme Court in the case of 1954 1 SCR 195 Dalip Singh vs. State of Punjab and the Federal Court in (1949) FCR 834 Kapil Deo Singh vs. The King are relevant. It is not essential that more than one person should be convicted of the offence of criminal conspiracy. It is enough if the Court is in a position to find that two or more persons were actually concerned in the criminal conspiracy. If the Courts below had come to the distinct finding that the evidence led on behalf of the

prosecution was unbelievable, then certainly no conclusion could have been based on such evidence and the present petitioner along with the other co-accused would have been entitled to an acquittal. But this is not borne out from the reading of the judgments below.

40. Conviction of the petitioner calls for no interference.

41. On the question of sentence, the maximum substantive sentence which the petitioner had been directed to undergo is one year for the offence under Section 468 of the IPC and a fine of Rs.5000/-. For the offence under Section 417 of the IPC the petitioner had been sentenced to undergo a substantive sentence of six months and to pay a fine of Rs.5000/-. Fine has since been deposited. Under Section 468 of the IPC punishment prescribed is imprisonment of either description for a term which may extend to seven years and shall also be liable to fine. Intention of the legislature can be gathered from this penalty clause; sentence prescribed is both imprisonment as also fine. The imprisonment may extend up to seven years.

42. The only special circumstance pleaded before this Court for the reduction of the sentence is the submission that the petitioner has suffered a long and protracted trial since the year 1986; the petitioner is an educated class-I gazetted officer posted as an Assistant Manager in the Syndicate Bank at the relevant time. It is submitted that in case this Court is not inclined to modify the conviction the petitioner in all probability will lose his job. Taking into account all the aforesaid circumstances, the maximum substantive sentence of one year awarded to the petitioner under

Section 468 of the IPC is reduced to RI six months. No modification is made in the fine and no modification is made in the other sentences which had been imposed under the other statutory provisions.

43. With these directions this petition is disposed of.

(INDERMEET KAUR)
JUDGE

November 27, 2009
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