

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

+ CRL.Rev.P.No.424/2011

% Judgment reserved on : 28th February, 2012
Judgment delivered on: 23rd April, 2012

PARSHADI LAL

..... Petitioner

Through : Mr.D.S.Kohli & Mr.D.P. Mathur, Advs.

versus

STATE GOVT OF NCT OF DELHI

..... Respondent

Through: Ms.Rajdipa Behura, APP.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. Vide instant petition, the petitioner has challenged the impugned judgment dated 04.04.2011 passed by learned Additional Sessions Judge, Dwarka Courts, Delhi, whereby he dismissed the Criminal Appeal filed by petitioner against the judgment dated 17.01.2011 passed by learned Metropolitan Magistrate, Dwarka Courts, Delhi whereby convicted the petitioner for the offence punishable under Section 419/468 Indian Penal Code, 1860.

2. The facts in brief of the case are that the complainant made complaint against the petitioner as under:-

“During routine check one individual claiming to be a ex-Lance Naik of Pioneer Corps was found in Catt.

Area. On checking his document, it was found that the individual is impersonating as an ex-serviceman of Pioneer Corps and claiming to be an PVC awardee of 1971. On checking up from concerned Unit it is confirmed that no PVC was awarded to above name individual. It is also brought to your notice that the individual had falsely represented his case to Director General, Border Road Organisation, New Delhi and cheated them of ₹5,000/- by claiming to be a PVC awardee and in financial distress. It is a clear case of impersonation with the purpose of cheating the government authority. The documents produced by the individual in support of his claim are false.”

3. On the above mentioned complaint, case was registered against petitioner for the offences punishable under Section 420/468/471 Indian Penal Code, 1860. Upon investigation, charge-sheet was filed against petitioner *prima facie* for the offences punishable under Section 420/468/471 Indian Penal Code, 1860. Accordingly, charges were framed against petitioner, to which he pleaded not guilty and claimed trial.

4. It is pertinent to mention here that the instant petition has been filed by Mr. D.P. Mathur, Advocate. During arguments, this Court felt that aforesaid Advocate was not able to assist the Court properly, therefore, this Court requested Mr. D.S. Kohli, Advocate present in court to argue the instant petition on behalf of petitioner. Mr. Kohli, learned advocate accepted the same and argued the matter and same was reserved for judgment on 28.02.2012.

5. Learned counsel for petitioner submitted that vide impugned judgment dated 17.01.2011, learned Trial Court while acquitting the petitioner for the offences punishable under Section 420/471 Indian Penal Code, 1860;

however, convicted for the offence punishable under Section 419/468 Indian Penal Code, 1860.

6. Learned counsel has drawn the attention of this Court to the fact that learned Trial Judge after filing of the charge-sheet, had directed further investigation. The petitioner continued to remain in custody; subsequently, he was medically examined. He was admitted to Institute of Human Behaviour and Allied Sciences (IHBAS). Therefore, the trial proceedings were dis-continued and the case file was consigned to Record Room.

7. As per the medical report, the petitioner was suffering from a chronic psychotic state (delusional disorder) and required long term supervision for at least one year. Subsequently, on 27.02.2006 the proceedings were revived. The director of IHBAS observed in the report that the petitioner had shown gradually improvement in the treatment and was not required to be hospitalised and not to be detained any further.

8. Thereafter, witnesses were examined and the petitioner was represented by legal practitioner of his choice. He stressed on one point that he was a *Param Veer Chakra* (in short 'PVC') awardee. The trial judge observed that illusion was with reference to this fact alone, otherwise he behaved normally and was responsive. Accordingly, the petitioner was found fit for the further proceedings, therefore the prosecution witnesses were examined.

9. Learned counsel for petitioner submitted that the charges against the petitioner were framed for the offences punishable under Section 420/468/471 Indian Penal Code, 1860. Section 420 Indian Penal Code, 1860

pre-supposes that dishonest inducement/ representation has been made and acting upon the same, the opposite party/victim had parted with valuable consideration. The victim vested with valuable consideration which caused wrongful loss to the victim and wrongful gain to the petitioner/accused.

10. PW3 Lt. Colonel J.M.Gurung deposed that the petitioner had informed that he had cheated the Director General, Border Road Organisation. However, there is no evidence to record to suggest that Director General, Border Road Organisation was cheated by the petitioner. No eye witness has been produced by the prosecution with regard to the fact that the petitioner had cheated anyone or on account of dishonest/false representation made by petitioner with respect to his claim that he was a *PVC awardee* and they had agreed to or parted with some consideration. Rather, whatever communication the petitioner had was with Hawaldar Joseph and not Lt. Colonel J.M.Gurung. Therefore, the ingredients for the offence punishable under Section 420 Indian Penal Code, 1860, therefore, not attracted in the instant case.

11. Learned Trial Judge has recorded further in its judgment that with regard to the offence punishable under Section 471 Indian Penal Code, 1860, it presupposes using as genuine any forged document. The crux of Section 471 Indian Penal Code, 1860 is that the use of document. Hawaldar Joseph was the person to whom the petitioner had informed that he was a *PVC awardee*. He too has not deposed that the petitioner had shown him certain documents to support his claim that he was a *PVC awardee*. He had taken the petitioner to his superior who had searched and then found certain documents. Thus, at no point of time, petitioner had actually used any

forged document. It is an altogether different fact that a person had in his possession a forged document then actually using the same. Unless and until the petitioner with the required *mens-rea* does an overt act, offence is not completed. Evidence qua the aforesaid offence falls short to sustain an order of conviction on the aforesaid counts.

12. Learned Trial Judge has further recorded that the remaining offence is under Section 468 Indian Penal Code, 1860. For the convenience same is reproduced as under:-

“Section 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.”

13. To satisfy the ingredients of an offence punishable under Section 468 Indian Penal Code, 1860 it has come on the record that the petitioner was not a PVC awardee. The list of PVC awardee was on the record of learned Trial Court. Further also, this is a fact which is within the public knowledge. The valour of soldiers who have performed in the defence of the nation are least forgotten and these are facts of which even judicial notice can be taken of. The documents which have been seized by the Army authorities i.e. Ex.P1, Ex.P2 and Ex.P3 found to be relevant. In the document Ex.P2, photograph of petitioner has been affixed and attested which suggests that he was an Army official serving in Pioneer Corps having No.8003643. Similarly, Ex.P3 also bears the logo and seal impression of Chief of the Army Staff and it suggests that petitioner was having No.8003643 an ex-serviceman.

14. The title/heading of the document is relevant and it reads as under:-

*“PARSHADI LAL LANS NAIK ARMY NO.8003643
PARAMVIR CHAKRA AWARDEE 1971 WAR OF
BANGLADESH IN 26TH JANUARY RESIDENCE FOR
MAKING SRI V.B. GIRI, PRESIDENT OF INDIA
ORDER GIVEN CHIEF MANIK SHAH, CHIEF OF
THE ARMY STAFF.”*

15. Learned Trial Judge also recorded in the impugned judgment that though contents of both the documents suggest that petitioner made dull attempts to fabricate. Nonetheless, since it was on a letter pad carrying logo and seal impression of the ‘Chief of the Army Staff’ makes it a serious issue. It has also been come on record through the testimony of PW5 & PW6 that Regimental No.8003643 was allotted to one Hari Murat Singh Yadav, who had retired on 01.04.1997. Thus, usage of a number which was allotted to another individual claiming oneself to be a *PVC* awardee (on the letter head of the Army authorities) suggests that petitioner possessed the required intention and had forged the said documents.

16. Therefore, learned Trial Judge was of the opinion that it has been proved on record that petitioner intended to impersonate as an Army soldier having regimental NO.8003643. The affixation of the photograph on Ex.P3 and the seizure of Ex.P1, wherein his case was also recommended by Lt. Ctl. Vijay Kumar clearly pointes that the petitioner intended to impersonate as an Army man and the primary objective was to substantiate his claim of being a *PVC* awardee which itself presupposes as an army man.

17. Therefore, learned Trial Judge has opined that the offence punishable under Section 468 Indian Penal Code, 1860 is therefore, made out against petitioner who had forged the documents knowing that the same shall be used for the purpose of cheating. Simultaneously, offence punishable under *Crl.Rev.P.No.424/2011*

Section 419 Indian Penal Code, 1860 was also made out. Accordingly, the petitioner was held guilty for the offences punishable under Section 419/468 Indian Penal Code, 1860.

18. Vide order on sentence of even dated 17.01.2011, learned Trial Court sentenced the petitioner to undergo imprisonment for the period already undergone. Learned Trial Court observed that petitioner remained in custody and then released in the year 2006. The custody period including the period in IHBAS was nearly three months, therefore, he was not sent to custody for any of the offences punishable either under Section 419 Indian Penal Code, 1860 or 468 Indian Penal Code, 1860. Accordingly, petitioner was sentenced for the period already undergone and directed to pay fine of ₹50/- each for the offence punishable under Section 419 and 468 Indian Penal Code, 1860. No imprisonment for default of payment of fine has been ordered.

19. Being aggrieved, the petitioner challenged the conviction and order on sentence, before Court of Sessions and the same has been dismissed by learned Additional Sessions Judge vide impugned judgment dated 04.04.2011.

20. Mr. D.S. Kohli, Learned counsel appearing on behalf of petitioner submitted that when learned Trial Court terminated the proceedings and sent the petitioner to IHBAS for examination and found him suffering from chronic psychotic state (delusional disorder), at that very stage, Learned Trial Court was required to close the proceedings against petitioner while observing the provisions mentioned under Section 84 Indian Penal Code, 1860, wherein it is enumerated as under:-

“Section 84. Act of a person of unsound mind:-
Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.”

21. However, learned Trial Judge even after getting the report from IBHAS acted as a super doctor and observed that his illusion was with reference to the said fact alone. Otherwise, he behaves normally and is responsive.

22. He further submitted that even otherwise on merits, the Trial Court acquitted the petitioner for the offences punishable under Section 420/471 Indian Penal Code, 1860.

23. Learned counsel submits that if the person is not found guilty for the offence punishable under Section 420 Indian Penal Code, 1860, he could not have been guilty for the offence punishable under Section 419 Indian Penal Code, 1860.

24. It is pertinent to mention here that the petitioner has been acquitted for the offences mentioned above, the same has not been challenged by the prosecution; therefore, acquittal against him attained finality.

25. Learned counsel has referred to the provisions contained in Section 415 Indian Penal Code, 1860. For the convenience same is reproduced as under:-

Section 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 deception within the meaning of this section.

26. Learned counsel submits that as per the aforementioned provision, the petitioner must have deceived any person fraudulently or dishonestly induces the person so deceived to deliver any property to any person. In the present case, there is no evidence on record that the petitioner has deceived anybody.

27. Learned counsel further submitted that the expressions ‘dishonestly’ and ‘fraudulently’ have been defined under Sections 24 & 25 Indian Penal Code, 1860 respectively; which read as under:-

“Section 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’.

Section 25. Fraudulently:--

A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise.”

28. He submitted that in the present case, petitioner has had not received any wrongful gain and has not caused any wrongful loss to any person. Perusal of the aforementioned provisions shows that a person has to do any fraudulent with intent to defraud but not otherwise. In the instant case, the petitioner has not defrauded anyone. Therefore, both the allegations i.e.

dishonestly and fraudulently have not been proved against petitioner.

29. While referring to cheating as defined under Section 415 Indian Penal Code, 1860, he submitted that as mentioned in the explanation that dishonest concealment of fact is a deception but it has to be fraudulently or dishonestly in inducing any person. However, the same has also not been established against the petitioner.

30. Learned counsel further referred to the offence punishable under Section 468 Indian Penal Code, 1860 and submits that it is clearly mentioned that whoever commits forgery intending that same shall be used for the purpose of cheating. Therefore, in the present case, the petitioner has not committed any 'forgery', which is codified under Section 463 Indian Penal Code, 1860. For the convenience same reads as under:-

Section 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."

31. Perusal of the above provisions makes it clear that one has to make a false or false electronic record with intention to cause damage or injury to the public or any person. The case against petitioner also does not fall under Section 468 Indian Penal Code, 1860 because has not caused any damage or injury to anyone.

32. Learned counsel further submits that Section 464 Indian Penal Code,

1860 enumerates as under:-

“Section 464. Making a false document :-

A person is said to make a false document or false electronic record—

First—Who dishonestly or fraudulently—

(a) makes, signs, seals or executes a document or part of a document;

(b) makes or transmits any electronic record or part of any electronic record;

(c) affixes any electronic signature on any electronic record;

(d) makes any mark denoting the execution of a document or the authenticity of the electronic signature,

with the intention of causing it to be believed that such document or part of document, electronic record or electronic signature was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or

Secondly—Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with electronic signature either by himself or by any other person, whether such person be living or dead at the time of such alteration; or

Thirdly—Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his electronic signature on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he

does not know the contents of the document or electronic record or the nature of the alteration.”

33. Learned counsel has relied upon the sub-clause (a), as mentioned above. No specimen handwriting or signature of the petitioner has been taken in the instant case and no seal at his instance has been recovered. Therefore, even the allegation of making false document is not established against the petitioner.

34. He further submitted that provision of Section 57 of the Evidence Act, 1872, bars personal knowledge and same not be considered; whereas in the present case, learned Trial Court even after observing that petitioner was suffering from chronic disorder, has opinion that the petitioner is illusory for the particular fact and not otherwise. He submitted that the petitioner is not the maker of the documents Ex.P1, Ex.P2 and Ex.P3. Therefore, he cannot be even otherwise liable for the offence punishable under Section 468 Indian Penal Code, 1860. According to the PW3 and PW4, petitioner did nothing. Therefore, mere possession of the alleged forged documents, is not punishable and same were not used for the purpose of cheating, only then the person is said to have committed offence punishable under Section 416 Indian Penal Code, 1860.

35. Neither the handwriting nor specimen signatures of the petitioner were taken; hence there is no occasion for any FSL report thereon. Therefore, the petitioner cannot be held liable for any of the offences provided under Indian Penal Code, 1860.

36. To sum up, learned counsel for petitioner has referred the observation made by Division Bench of this Court in **Mohan Lal @ Ranjan Mohan**

Bhatnagar v. The State Crl.Appeal No.350/1997 decided on 23.08.2011.

Learned counsel emphatically relied upon the observation made in para No.6, which runs as under:-

“6. Learned trial court on the basis of evidence on record rejected the defence of the accused that he was mentally unfit at the time of occurrence as such had not committed any offence in view of Section 84 of IPC. Learned Addl Sessions Judge held that the burden of proving the mental condition of the appellant at the crucial point was upon him and he had failed to prove the same and accordingly rejected the defence of insanity. On the basis of evidence on record, the learned Addl Sessions Judge had held him guilty of committing the murder of his son Aditya aged about 2½ years and also having caused grievous injuries to his wife Rajeshwari PW-7 and thereby convicted the appellant for offence under Section 302 and 325 IPC and sentenced him vide order dated 03.09.1997 as is stated above.”

37. Ld. Counsel submitted that the accused in the case of **Mohan Lal (Supra)** could not establish that he was mentally unfit at the time of occurrence. Whereas in the present case, the report of (IHBAS) and further concerned Doctor examined, established that the petitioner had a illusion to the effect that he was a PVC awardee, therefore, the said judgment is not applicable in the present case.

38. Ms.Rajdipa Behura, APP for State submitted that as per the gist of the complaint, cheating against the petitioner has been proved as he impersonated as an ex-serviceman and he cheated the Border Road Organisation. Therefore, he is liable for the offence under Section 468/419 Indian Penal Code, 1860. Learned Trial Court as well as Appellate Court after due deliberations and after going through evidence on record had

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rightly convicted the petitioner. Therefore, instant petition deserves to be dismissed.

39. To controvert the contention of petitioner, learned APP has placed reliance on the observation made in **Mohan Lal (supra)** which reads as under:-

7. The amicus curiae appearing for the appellant has contended that the appellant at the time of occurrence was suffering from paranoid schizophrenia and was mentally unsound at the time of occurrence as such he could not have been convicted of any offence and was entitled to the benefit of general exception contained in Section 84 of IPC. It is contended that the evidence on record shows that before the commencement of trial the appellant was got examined by various doctors by the learned Metropolitan Magistrate in the proceedings under Section 328 Cr.P.C. and was found to be a man of unsound mind and the learned M.M. also passed an order in this regard dated 24.02.90 and the trial had commenced only when he was declared mentally fit. The appellant also produced five witnesses in defence to substantiate his stand that he was mentally unsound and the doctors opined that he was suffering from paranoid schizophrenia. Learned amicus curiae has also referred to the evidence of Sohan Lal (PW-1) and Sarita (PW-2) to substantiate that the appellant at the time of occurrence was a man of unsound mind and as such was entitled for the benefit of general exception contained in Section 84 of IPC.

8. The learned counsel for the State has contended that burden of proof that the appellant was of unsound mind and as a result thereof he was incapable of knowing the consequence of his act was on the defence. It is contended that under Section 105 of the Evidence Act the burden of proving the existence of circumstances

bringing the case within the exception under Section 84 of IPC was upon the defence and the defence has failed to discharge the said burden. It is contended that nothing has been placed on record to show that prior to the occurrence the appellant was suffering from paranoid schizophrenia as is alleged. It is contended that for the first time, learned M.M. has been informed of mental unsoundness of appellant after about 4 months of occurrence and after about one month of filing of report under Section 173 of Cr.P.C. against the appellant. Prior to that no such stand has been taken. It is further contended that the conduct of the appellant after commission of the crime i.e., of having locked the room where incident had occurred and of concealing the weapon of offence thapi behind the door and thereafter going to the house of his brother Sohan Lal demolishes the stand of defence that appellant was a man of unsound mind at the time of occurrence. It is contended that no abnormal behavior of appellant was noticed at the time of his arrest. Further, nothing about the alleged delusion was stated during the investigation. None of his family members had stated about the delusion in the evidence during the trial. It is contended that neither the lawyer of appellant nor his relatives i.e., brother and sister took the stand of insanity at initial stages. It is contended that even if it is held that after the incident he has been found to be a patient of paranoid schizophrenia the same cannot relate back to the date of the incident. It is contended that no evidence was produced in this regard by the defence nor any treatment papers had been produced concerning the appellant prior to the occurrence. Even the application filed before the Magistrate does not give any particulars as to when the alleged ailment started. It is contended that Ld Addl. Sessions Judge has rightly appreciated the evidence and convicted the appellant and passed the order on sentence and no interference of this court is required.

10. The only plea raised while arguing the present appeal is that at the time of the commission of the offence the appellant was a person of unsound mind as he was suffering from paranoid schizophrenia and as such was entitled to the benefit of the general exception contained in Section 84 of IPC.

11. The material provisions dealing with the contention of the appellant are as under:-

Indian Penal Code

Section 84. Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.

Indian Evidence Act

Section 105. When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Indian Penal Code (45 of 1860) or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.

In Dahyabhai Chhaganbhai Thakkar v. State of Gujarat; AIR 1964 SC 1563, the doctrine of burden of proof in a case where plea of insanity has been taken is discussed. The relevant para is as under:-

‘7. The doctrine of burden of proof in the context of the plea of insanity may be stated in the following propositions:

(1) The prosecution must prove beyond reasonable doubt that the accused had committed the offence with

the requisite mens rea, and the burden of proving that always rests on the prosecution from the beginning to the end of the trial.

(2) There is a rebuttable presumption that the accused was not insane, when he committed the crime, in the sense laid down by Section 84 of the Indian Penal Code: the accused may rebut it by placing before the court all the relevant evidence oral, documentary or circumstantial, but the burden of proof upon him is no higher than that rests upon a party to civil proceedings.

(3) Even if the accused was not able to establish conclusively that he was insane at the time he committed the offence, the evidence placed before the court by the accused or by the prosecution may raise a reasonable doubt in the mind of the court as regards one or more of the ingredients of the offence, including mens rea of the accused and in that case the court would be entitled to acquit the accused on the ground that the general burden of proof resting on the prosecution was not discharged."

In Shrikant Anandrao Bhosale v. State of Maharashtra; (2002) 7 SCC 748, it is held that burden of proving the existence of circumstances bringing the case within the provision of Section 84 IPC is on the accused. What is paranoid schizophrenia has also been discussed in the said judgment.

The relevant paragraphs are reproduced as under:-

"10. What is paranoid schizophrenia, when it starts, what are its characteristics and dangers flowing from this ailment? Paranoid schizophrenia, in the vast majority of cases, starts in the fourth decade and develops insidiously. Suspiciousness is the characteristic symptom of the early stage. Ideas of reference occur, which gradually develop into delusions

of persecution. Auditory hallucinations follow, which in the beginning, start as sounds or noises in the ears, but afterwards change into abuses or insults. Delusions are at first indefinite, but gradually they become fixed and definite, to lead the patient to believe that he is persecuted by some unknown person or some superhuman agency. He believes that his food is being poisoned, some noxious gases are blown into his room and people are plotting against him to ruin him. Disturbances of general sensation give rise to hallucinations, which are attributed to the effects of hypnotism, electricity, wireless telegraphy or atomic agencies. The patient gets very irritated and excited owing to these painful and disagreeable hallucinations and delusions. Since so many people are against him and are interested in his ruin, he comes to believe that he must be a very important man. The nature of delusions thus may change from persecutory to the grandiose type. He entertains delusions of grandeur, power and wealth, and generally conducts himself in a haughty and overbearing manner. The patient usually retains his memory and orientation and does not show signs of insanity, until the conversation is directed to the particular type of delusion from which he is suffering. When delusions affect his behavior, he is often a source of danger to himself and to others. (Modi's Medical Jurisprudence and Toxicology, 22nd Edn.)

11. Further, according to Modi, the cause of schizophrenia is still not known but heredity plays a part. The irritation and excitement are effects of illness. On delusion affecting the behaviour of a patient, he is a source of danger to himself and to others."

13. in view of above discussion, the defence has failed to discharge the burden as required under Section 105 of Evidence Act in order to avail the benefit of Section 84 of IPC. It has not been established by the defence that accused was insane at the time of

occurrence nor is the evidence sufficient to throw a reasonable doubt in our minds that the act might have been committed when the appellant was in a fit of insanity.”

40. On considering the submissions and law relied upon by Id. Counsel for the parties, it is emerged that the petitioner was arrested on 10.02.2003 and thereafter during the trial he was admitted to Institute of Human Behaviour and Allied Sciences IHBAS and proceedings were discontinued. The Director of IHBAS stated that the petitioner was suffering from a chronic psychotic state (delusional disorder) and required long term supervision for at least one year. In my considered opinion, this itself was sufficient for the trial judge to close the proceedings against the petitioner, keeping in view the provisions mentioned under Section 84 of Indian Penal Code, 1860.

41. Additionally, the Id. Trial Judge acquitted the petitioner for the offences punishable under Section 420 of Indian Penal Code, 1860 and convicted the petitioner for the offences punishable under Section 419 and 468 of Indian Penal Code, 1860.

42. In my considered opinion, I find force in the submission of Id. Counsel for the petitioner that if the petitioner was acquitted from the offences punishable under Section 420 Indian Penal Code, 1860, he cannot be convicted for the offences punishable under Section 419 and 468 Indian Penal Code, 1860, because neither the petitioner deceived any person fraudulently or dishonestly or induced the person so deceived to deliver any property to any person.

43. Neither the petitioner committed forgery intending for the purpose of cheating. To bring the petitioner within the four-corners of Section 415 as mentioned in its explanation that dishonest concealment of fact is a deception but has to be fraudulently or dishonestly in inducing any person. However, the same has not been established against the petitioner.

44. Undisputedly, the petitioner has not committed any forgery, which is codified under Section 463 Indian Penal Code, 1860. It is also not established that the petitioner himself prepare the document and seal, as the prosecution neither proved his specimen handwriting nor his signature or any evidence thereto.

45. Therefore, on both the counts, the two courts below have gone wrong while convicted the petitioner in the present case. Therefore, the impugned judgment dated 04.04.2011 is set aside. Consequently, the judgment dated 17.01.2011 passed by Id. MM is also set aside. Consequently, petitioner is acquitted from all the charges.

46. Accordingly, instant petition is allowed.

47. No order as to costs.

SURESH KAIT, J

APRIL 23, 2012

Mk/jg