

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

+ **CRL.REV.P. 711/2012**

Judgment delivered on: July 11, 2013

SARVJEET MAHTO

..... Petitioner

Through: Mr. Siddhesh Kotwal and Ms.
Bansuri Swaraj, Advocates

versus

STATE THR. CBI

..... Respondent

Through: Mr. P.K. Sharma, Standing Counsel
for CBI with Mr. Anil Kumar Singh,
Advocate

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

KAILASH GAMBHIR, J.

1. By way of this petition filed under section 401 read with Section 397 of the Code of Criminal Procedure, 1873, the revisionist seeks to challenge the impugned order dated 18.09.2012, passed by Sh. P.S Teji, District Judge (East) cum Special Judge, CBI, Karkardooma Courts , New Delhi in Crl. Appeal 11/2012 and judgment dated 30.03.2012 and order on sentence dated 09.04.2012 passed by Ms. Kiran Bansal, Additional Chief Metropolitan Magistrate , Karkardooma Courts in Criminal Case no. 02/2010 in case FIR. No. RC 4 (S) /2009/ CBI/ SC-I/ N Delhi.

2. The brief facts of the case relevant for deciding the present petition

are that on 18.06.2009, the FIR was registered against the Petitioner under section 120 B read with Sections 420, 465, 467, 468, 471 and 472 of the Indian Penal Code, 1806. The allegation against the accused is that he obtained employment on the post of peon, on the basis of forged and fabricated caste certificate. The learned trial court framed charges under Section 420 IPC and 471 IPC read with section 468 IPC against the accused. While dealing with the CWP No. 5967 / 2003, the High Court directed the CBI to investigate and verify the caste certificate of the persons who have secured employment on the basis of SC/ST between year 1995-2000. In pursuance of the same, preliminary verification was conducted with regard to the caste certificate of the accused/ revisionist who was appointed as a Subordinate Staff in the Oriental Insurance Company, Jeevan Bharti Ltd., New Delhi which was reserved for ST candidate. He was appointed at this post on the basis of a caste certificate belonging to 'Kharia Tribe' as per the said certificate, however the accused belonged to 'Nonia Caste'. The certificate issued to him was found to be a forged one.

3. It is the case of the Petitioner that both the Courts below failed to appreciate the fact that the petitioner right from the stage of the investigation categorically took a stand that the caste certificate in question

was provided to him by his grandfather, Shri Chandrika Mahto, who was not alive at the time when he sought employment with the Oriental Insurance Company. Counsel further submitted that once the person himself has no knowledge about the said certificate being forged, therefore, no offence under Section 471 IPC could be attracted against him and, therefore, the conviction of the petitioner for committing the offence is *ex facie* illegal. Counsel for petitioner also argued that another aspect which has been ignored by the courts below is that the departmental inquiry by the employer of the petitioner was conducted and in the departmental inquiry, it was found that the Certificate produced by the petitioner was found to be genuine. Counsel for the petitioner also submitted that PW-15 who was an Investigating Officer of this case had duly admitted the said fact of the said SC/ST certificate being found to be genuine by the employer of the petitioner. Counsel for petitioner also argued that both the courts below have also ignored the deposition of DW-1 who was the Mukhiya of Panchayat, Khariya Deah and who in his testimony deposed that the present petitioner belongs to the 'Kharia' caste and the said caste is also known as 'Nonia' and 'Kharia Nonia'.

4. Counsel for petitioner also submitted that the said 'Kharia' and

‘Nonia’ castes are interchangeable and therefore, it cannot be said that the petitioner played any kind of fraud or the petitioner had forged the caste certificate when in fact he belongs to the same caste. Although the same very caste is known to be ‘Nonia’ caste as well.

5. Counsel for the petitioner further submitted that since there was no charge of forgery against the petitioner and there is no question of petitioner having forged the said certificate as there is no *mens-rea* or any kind of knowledge proving that the caste certificate was a forged one. Counsel further submitted that in the light of the fact that both the castes, ‘Kharia’ and ‘Nonia’ in the local area were interchangeable, the charge of forgery or cheating cannot sustain against the petitioner.

6. Counsel for petitioner further stated that even the conviction of the petitioner under Section 420 of the Indian Penal Code, 1806 is not sustainable in the eyes of law, as employer of the petitioner did not act on the said caste certificate submitted by the petitioner but has made their own inquiries to test the genuineness of the said certificates by way of necessary verification carried out by them and only then the petitioner was given employment. Contention raised by Counsel for petitioner is that once the employer had taken a decision based on their own inquiries, then it cannot

be said that the act of the petitioner caused any misrepresentation or was with an intent to deceive them in any way.

7. In support of his arguments counsel for the petitioner placed reliance on the judgment of the Apex Court in the case of *Chatt Ram vs. State of Haryana 1990 (1) SCC 462*.

8. Refuting the aforesaid contentions raised by the counsel for the Petitioner, Mr. P.K. Sharma, Standing Counsel for CBI submitted that in the statement of the petitioner, recorded under Section 313 of Cr. P.C., no such plea was raised by him at that point of time that he got his caste certificate from his grandfather. Learned Standing Counsel for CBI further submitted that the petitioner was well aware of his caste and this fact is well established from the School Leaving Certificate of the petitioner which was proved on record as Ex.P-8, wherein the name of the petitioner has been described as Sarvjeet Mahto and his father's name is shown as Shri Teju Mahto. Learned Standing Counsel for CBI further submitted that it has come in prosecution evidence that relevant gazette Notification was also proved on record, which clearly shows that 'Mahto caste' is not listed as ST.

9. I have heard learned counsel for the parties and scrupulously gone through the records.

10. There is a concurrent finding of facts been arrived at by the courts below against the petitioner. Learned counsel for the petitioner has failed to persuade this court to upset the concurrent finding of facts. Undeniably, it is the petitioner who secured employment as subordinate staff (peon) with the Oriental Insurance Company based on the forged and fabricated documents proved on record as Ex. P 13 and Ex.P-14. To say that the petitioner was not aware of the fact that the said caste certificate was a forged document as the said certificate was provided to him by his grandfather Shri Chandrika Mahto, when he was just 11 years of age cannot be given any credence at this stage when no such defence has been raised by the petitioner while recording his statement under Section 313 of Cr.P.C. In the revision petition, the petitioner cannot introduce new facts or set up a new case for the first time as foundation is laid by both the prosecution and defence is before the trial court.

11. There is also no merit in the contention raised on behalf of learned counsel for the petitioner that in the inquiry conducted by his employer, the said caste certificate produced by the petitioner was found to be genuine and therefore, it cannot be said that the petitioner had produced the forged caste certificate to secure employment on the said post of peon.

12. The kind of inquiry that was conducted by the respondent was never placed before this court, but in any case of the matter any kind of inquiry which was conducted by the department, just to find out the authenticity of the caste certificate produced by the petitioner cannot be equated with the investigation carried out by the CBI to unearth the said forgery on the part of the petitioner. The respondent/ CBI with the help of material witnesses produced by it has successfully proved on record the said caste certificate produced by the petitioner as a forged and fabricated document.

13. One can also not lose sight of the fact that PW-6 – Amit Dhar Dwivedi, an Investigating Officer alongwith other officers of the CBI had conducted a search at the instance of the petitioner and during the search, copies of caste certificates and blank certificates of backward classes were recovered and seized by them. The blank certificates have already been proved on record as Ex.PW-6/B-1 to Ex.PW6/B-4 and Ex.P-36 to Ex.P-44 and one letter dated 27.7.2005 is proved on record as Ex.P-45. The said caste certificates and also blank caste certificates were recovered from the residence of the petitioner at the time of the raid conducted by the raiding team. With the presence of the said caste certificates, the petitioner got totally exposed and therefore, he cannot raise a plea that he was not

instrumental in forging the said caste certificate or the weightage could be given to the inquiry conducted by the employer Oriental Insurance Corporation than the investigation conducted by the respondent/ CBI.

14. Another contention raised by learned counsel for the petitioner is that both the courts below had ignored the deposition of DW-1 who was Mukhia of the Panchayat and who had deposed that the petitioner belongs to 'Kharia caste' and the same is also known as 'Nonia caste'. This contention raised by learned counsel for the petitioner is devoid of any merit as no credence can be given to the oral testimony when the documentary evidence suggests otherwise.

15. The learned trial court rightly placed reliance upon the judgment of the Apex Court in the *State of Maharashtra & Ors vs. Ravi Prakash Babu Lal singh Parmar & Anr, AIR 2007 SC 295*, wherein it was held that the schedule tribe order must be read as it is. It is not even presumable to say that a tribe, sub-tribe, part of or group of any tribe or tribal community is synonymous to the one mentioned in the Scheduled Tribe order if they are not so specifically mentioned in it. The Apex Court also further held that "*notification etc. are to be read with regard to the proof of caste and oral evidence to disprove notification cannot be taken into consideration*".

16. The petitioner in the present case got an employment at the post of peon against the scheduled tribe vacancy and in the said caste certificate he disclosed his caste as 'Kharia caste' which is enlisted as a Scheduled Tribe. It is after the said forgery was detected that the petitioner introduced this plea that 'Kharia caste' is interchangeable with 'Nonia caste' and therefore, 'Nonia caste' to which the petitioner belongs is also a Scheduled Tribe although it may not be specifically enlisted in the category of Schedule Tribe.

17. Undeniably, it is not the case of the petitioner that the 'Nonia caste' is also enlisted as a 'Scheduled Tribe' and his 'caste' falls under the 'Scheduled Tribe' category although prosecution on the other hand proved on record that 'Nonia' and 'Kharia' castes are two separate castes falling under two separate categories. The argument of the learned counsel for the petitioner raising a plea that 'nonia' and 'kharia' castes are interchangeable caste also merit outright rejection.

18. Learned counsel for the petitioner also raised the contention that there is no charge of forgery against the petitioner and the petitioner has no *mensrea* or knowledge of the said certificate being a forged certificate and therefore, the petitioner has been wrongly convicted and sentenced for the

offence punishable under Section 420 of IPC. This argument of learned counsel for the petitioner also holds no ground as both the courts below have rightly held that it is the petitioner alone who had obtained the job on the basis of forged and fabricated caste certificates and on a false representation with a view to gain employment and thus, clearly committed an offence punishable under Section 420 and 471 of IPC read with Section 468 of IPC.

19. It is a settled law, in catena of decisions, that for establishing the offence under 420 IPC, the fraudulent and dishonest intentions are a mandatory requisite that has to be proved on the part of the accused at the time of making promise or representation, however for inferring guilt on the part of the accused it is not necessary that a false pretence should be in express words by the accused. It may be inferred from all the circumstances and the conduct of the accused.

20. In the case at hand, Learned trial court has also placed reliance upon the judgment of the Apex Court in the case of ***Ishwarlal Girdharilal***, AIR ***1969 SC 40*** wherein the Hon'ble Apex Court held that:

“11.....the word ‘property’ in this section (i.e. 420 of IPC) does not necessarily mean that the thing of which a delivery is dishonestly desired by the person who cheats, must have a money value or a market value, in the hand of the persons

cheated. It is further held that even if the thing of value in the hand of the person who may get possession of it, as a result of the cheating practiced by him, it would fall within the connotation of the term property in this section.”

21. One can also not lose sight of the fact that the school leaving certificate of petitioner is duly proved on record as Ex.PW-8, wherein it was stated that Sarvjeet Mahto is a son of Teju Mahto. From the said School Leaving Certificate (Ex.PW-8), it was clearly established that the petitioner was well aware of his caste but deliberately and with a view to play fraud, filed the said forged and fabricated caste certificate only for the purpose of securing employment under the Scheduled Tribe category.

22. The Apex Court in the case of ***Punit Rai vs. Dinesh Chaudhary, (2003) 8 SCC 204***, took a view that

“40. a person in fact not belonging Scheduled Caste, if claims himself to be a member thereof by procuring a bogus caste certificate, would be committing fraud on Constitution. No court of law can encourage commission of such fraud.”

23. In ***R. Vishwanatha Pillai vs. State of Kerala and ors., (2004) 2 SCC 105***, the Apex Court held as under:-

“19. It was then contended by Shri Ranjit Kumar, learned senior counsel for the appellant that since the appellant has rendered about 27 years of service the order of dismissal be substituted by an order of compulsory retirement or removal from service to protect the pensioner benefits of the appellant.

We do not find any substance in this submission, as well. The rights to salary, pension and other service benefits are entirely statutory in nature in public service. Appellant obtained the appointment against a post meant for a reserved candidate by producing a false caste certificate and by playing a fraud. His appointment to the post was void and non est in the eyes of law. The right to salary or pension after retirement flow from a valid and legal appointment. The consequential right of pension and monetary benefits can be given only if the appointment was valid and legal. Such benefits cannot be given in a case where the appointment was found to have been obtained fraudulently and rested on false caste certificate. A person who entered the service by producing a false caste certificate and obtained appointment for the post meant for Scheduled Caste thus depriving the genuine Scheduled Caste of appointment to that post does not deserve any sympathy or indulgence of this Court. A person who, seeks equity must come with clean hands. He, who comes to the Court with false claims, cannot plead equity nor the Court would be justified to exercise equity jurisdiction in his favour. A person who seeks equity must act in a fair and equitable manner. Equity jurisdiction cannot be exercised in the case of a person who got the appointment on the basis of false caste certificate by playing a fraud. No sympathy and equitable consideration can come to his rescue. We are of the view that equity or compassion cannot be allowed to bend the arms of law in a case where an individual acquired a status by practising fraud.”

24. In light of the aforesaid discussion, considering the facts of the present case, this court is inclined to uphold the order dated 18.09.2012, passed by the District Judge (East) cum Special Judge, CBI and order on conviction and sentence dated 30.03.2012 and 09.04.2012 respectively passed by the learned ACMM convicting the accused under section 120 B

read with Sections 420, 465, 467, 468, 471 and 472 of the Indian Penal Code, 1806.

25. This Court, thus, does not find any reason to upset the view taken by the courts below. The present revision petition is hereby dismissed and the petitioner is directed to serve his remaining period of sentence in terms of order on sentence dated 09.04.2012.

26. It is ordered accordingly.

KAILASH GAMBHIR J.

July 11, 2013

v