

**HIGH COURT OF TRIPURA
AGARTALA
CRL. REV.P NO.55 OF 2022**

Nabikul Islam and anr.

..... **Petitioner(s)**

Vs.

The State of Tripura.

..... **Respondent(s)**

For the Petitioner(s) : Mr. S. Bhattacharjee, Advocate.

For the Respondent(s) : Mr. S. Ghosh, Addl. P.P.

Date of hearing and delivery of
Judgment & Order : 05.10.2023.

Whether fit for reporting : YES/NO.

HON'BLE MR JUSTICE T. AMARNATH GOUD

JUDGMENT AND ORDER(ORAL)

The present criminal revision petition has been filed under Section 397(1) read with Section 401 of Cr.P.C. against the impugned Judgment dated 05.09.2022 passed by the learned Addl. Sessions Judge, Gomati District, Udaipur, in Case No. Criminal Appeal No.10 of 2021, whereby the learned Addl. Sessions Court upheld the conviction under Section 120B/468 of IPC & sentenced the petitioners to pay fine of Rs.1000/- each, i.d., SI for 10 days, under Section 120B of IPC & RI for 1(one) month and fine of Rs.1000/- each i.d., SI for 10 days, under Section 468 of IPC, passed by the learned Judicial Magistrate First Class, Court No.1, IN PRC(WP) 134 of 2017 and acquitted the petitioners from the charges under Sections 471/420 of IPC and Section 12(1)(b) of passport Act, 1967.

2. The brief fact of this case is that one S.I. of police namely, Bikash Debbarma of R.K. Pur P.S. lodged a suo-mutu complaint on 19.06.2015 to the O/C of R.K. Pur P.S. alleging *inter-alia* that, one Mustak Miah, S/o Late Riku Miah of West Khilpara P.S.- R.K. Pur, submitted a complaint, dated 27.01.2015 to the DM & Collector, Gomati District, that said Mustak Miah on 24.01.2015 received one forged international passport vide No. M-5692461, issued by the Regional Officer, Regional Passport Office, Kolkata, in his name and then on 25.01.2015 at about 09.00 hours one Nabikul Islam, S/o Ohab Miah of Jamjuri, Rajdharnagar P.S.- Kakraban along with an unknown person came to the house of said Mustak Miah to collect the same which Mustak Miah denied to handover to them. Then Mustak Miah filed the complaint to the DM & Collector, Udaipur Gomati District, to take necessary actions. Thereafter, the DM & Collector, Udaipur, Gomati District forwarded the complaint of Mustak Miah to the O/C of R.K. Pur P.S. for taking action.

3. Thereafter, the investigation was conducted and I.O. of the case filed charge sheet against the petitioners and another Rajesh Majumder under Sections 120(B)/468/471/420 of the Indian Penal Code and under Section 12(1)(b) of the Indian Passport Act 1967. The petitioners & others pleaded not guilty to the charges.

4. Thereafter, the Trial commenced and during the trial, the prosecution adduced as many as 16 witnesses. They were examined and cross-examined. The prosecution also exhibited some documents. After the closure of prosecution evidence, the petitioners

were examined under Section 313 of Cr.P.C. The petitioners did not adduce any evidence.

5. After conducting the trial, the learned Judicial Magistrate First Class, Gomati District Udaipur vide Judgment dated 03.09.2021 passed in PRC(WP)-134 of 2017 convicted the petitioners, namely, Nabikul Islam and Biswajit Sutradhar alias Sagar under Sections 120B/468/471/420 of IPC and Section 12(1)(b as mentioned here-in-above.

6. Being aggrieved and dissatisfied with the aforesaid Judgment dated 03.09.2021, the petitioners preferred the Criminal Appeal No.10 of 2021 before the learned Addl. Sessions Court, Gomati District, Udaipur. Vide Judgment dated 05.09.2022, learned Sessions Judge upheld the conviction and sentence U/s 120B/468 of IPC, passed by the learned Judicial Magistrate First Class, Court No.1 in PRC(WP)134 of 2017 and acquitted the petitioners from charges under Sections 471/420 of IPC and Section 12(1)(b) of Passport Act, 1967 and sentenced them to pay fine of Rs.1000/- each, in default S.I. for 10 days under Section 120B of IPC and R.I. for 1(one) month and fine of Rs.1000/- each in default S.I. for 10 days under Section 468 of IPC.

7. Being aggrieved by the conviction and sentence rendered against the petitioners by the learned Addl. Sessions Judge, Gomati District, Udaipur in Case No.Crl. Appeal No.10 of 2021, vide Judgment dated 05.09.2022, the petitioners herein have preferred

this present criminal revision petition seeking to quash and set aside the impugned Judgment dated 05.09.2022.

8. Heard Mr. S. Bhattacharjee, learned counsel appearing for the petitioners as well as Mr. S. Ghosh, learned Addl. P.P. appearing for the State-respondent.

9. Mr. Bhattacharjee, learned counsel appearing for the petitioner submits that the learned Court below has not properly appreciated the evidence on record and wrongly convicted the petitioners herein as stated herein above. Mr. Bhattacharjee, learned counsel further submits that one of the accused Rajesh Majumder has already been acquitted by the Court below.

10. On the other hand, Mr. Ghosh, learned Addl. P.P. countered the arguments of the learned counsel appearing for the petitioners and urged this Court to uphold the conviction and sentence as passed by the Court below.

11. Heard both sides and perused the evidence on record.

12. It is evident from the record that the Court below acquitted the petitioners from the charges under Section 471/420 of IPC and Section 12(1)(b) of the Passport Act, 1967. However, the conviction under Section 120B and Section 468 of IPC was upheld. However, this Court is of the opinion that enough room for doubt remains in proving the guilt of the petitioners under Section 468 of IPC because the investigating officer failed to determine the identity of the person whose picture was pasted in the alleged passport. As such, doubt remains about whether the alleged passport is forged or

genuine. So, the well-settled principle of presumption of innocence & proof beyond reasonable doubt favours the petitioners herein. To attract the ingredients under Section 468 of IPC, the prosecution is to establish that the petitioners are the makers of the alleged false document, the same has not been proved beyond the shadow of doubt.

13. As such, this Court is of the opinion that as because shadow of doubt is casted over the guilt of the accused herein, the conviction of the petitioners under Section 468 of IPC is liable to be set aside and the same is set aside. However, the conviction of the petitioners under Section 120(B) of IPC is supposed to pay fine of Rs.1000/-.

14. Accordingly, this present revision petition is allowed to extend the indicated here-in-above.

15. As a sequel, stay if any stands vacated. Pending application(s), if any also stands closed.

Send back the LCRs.

JUDGE

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