

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

Case No. CRAA No. 19/2007

Reserved on: - 20.12.2025

Pronounced on: - 23.12.2025

Uploaded on: - 24.12.2025

*Whether the operative part or full
judgment is pronounced: _Full*

State of Jammu and Kashmir

.... Appellant(s)

Through: - Mr. Mohsin Qadri, Sr. AAG with
Ms. Maha Majeed, Assisting Counsel

V/s

Shamas Ul Nissa

.... Respondent(s)

Through: - Ms Rehana Fayaz, Advocate vice
Mr. Z. A. Qureshi, Sr. Advocate

CORAM: HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE

JUDGMENT

01. The present acquittal appeal is directed against the judgment dated 30.08.2007 passed by the Court of the 3rd Additional Sessions Judge Srinagar (the trial court) arising out of FIR No. 29/1994 registered at Police Station Crime Branch, Srinagar, whereby the respondent, who had been tried for offences under Sections 420, 468 and 471 RPC, was acquitted of all the charges.

02. Before entering into the merits of the appeal, it is necessary to briefly recapitulate the facts leading to the present proceedings. In the

year 1994, the Crime Branch, Srinagar received a complaint alleging that the respondent had secured admission in the MBBS course for the academic session 1993–1994 on the basis of a fake and forged backward area certificate, despite not being a resident of any backward area and, therefore, being ineligible for such benefit. Upon receipt of the said complaint, a preliminary enquiry was conducted, followed by registration of FIR No. 29/1994 under Sections 420, 468 and 471 RPC. After completion of investigation, a charge-sheet was presented before the trial court. Initially, charges were framed under Sections 468, 471 and 420 RPC; however, by order dated 28.07.1999, this Court set aside the charge under Section 468 RPC and remanded the matter for framing of charges under Sections 420 and 471 RPC alone.

03. In order to establish its case, the prosecution examined as many as eighteen witnesses. **PW Sheikh Muneer Ahmad, then Tehsildar Chadoora**, denied having any personal knowledge regarding issuance of the backward area certificate but stated that the Crime Branch had sought the relevant record vide letter dated 23.03.1993. **PW Abdul Gaffar Dar** deposed that while posted in Tehsil Office Chadoora in 1994, he was asked to verify the validity of the certificate, and upon examination of the record, it was found that no such certificate had been issued in favour of the respondent, which fact was reported to the Tehsildar. **PW Abdul Majid Khan, Junior Assistant** in the office of Deputy Commissioner Budgam, stated that a photocopy of a backward certificate bearing a particular number was shown to him and that the original register was

produced before the Crime Branch for photocopying, though he could not recall in whose name the certificate had been issued. **PW Abdul Aziz Sofi** also stated that the register was produced and photocopied by the Crime Branch but professed complete ignorance regarding issuance of the certificate. **PW Rajinder Singh** spoke about seizure of a photocopy of the backward certificate and the issuance register. **PW Mohammad Ayub, Head Constable**, stated that he handed over an enquiry file to the Crime Branch but had no knowledge of its outcome. **PW Ghulam Mohammad Gujree** stated that specimen signatures of one Abdul Qadir were obtained, who had never worked in the DC Office Budgam. **PW Mohammad Hussain Dar** deposed about production of the dispatch register before the Crime Branch. PW Abdul Hamid Bhat stated that while working as Stenographer in Medical College, he provided a copy of the respondent's certificate to the Crime Branch on the directions of the Registrar, though he was unaware of its contents.

04. **PW Abdul Qadir, former Deputy Commissioner Budgam**, stated that he had retired on 31.12.1993 and could not say whether the PRC issued in favour of the respondent was valid or who had signed the certificate. **PW Bahadur Ganai, Chowkidar** of village Wathora, stated that neither the respondent nor her family was known to him and that Wathora village did not fall in a backward area. PW Habibullah Mir, Patwari, stated that he had perused a departmental enquiry report but had no personal knowledge regarding issuance of the certificate. **PW Niyaz Ahmad Kawoosa** stated that the respondent secured admission under a

special category and that the certificate was seized by the Crime Branch in 1994. **PW Zahoor Ahmad Tak, Naib Tehsildar**, stated that he forwarded a report but had not conducted any personal verification. **PW Mohammad Yousuf Khan** stated that upon enquiry he found the respondent to be residing at Wathora and not in Bichroo village, though he admitted that the respondent was not associated during the enquiry and that he had no knowledge of her father's prior residence. PW Altaf Ahmad, Scientific Officer, stated that documents were referred to him for expert opinion, but the same were not shown to him during trial.

05. Upon appreciation of the evidence, the trial court found that there was no material to establish that the respondent herself had approached any authority for issuance of the backward area certificate or had forged or used the alleged forged document as genuine. The allegations primarily centred around the role of the respondent's father, who was alleged to have managed the certificate by paying illegal gratification; however, the complainant making such allegations was neither examined nor cited as a witness. The prosecution had seized only photocopies of documents and failed to ascertain who had actually forged or prepared the certificate, thereby leaving a serious lacuna in the prosecution case. Consequently, the trial court acquitted the respondent.

06. Learned counsel for the appellant contended that the judgment of the trial court was erroneous and that even if revenue officials or the father of the respondent were involved, the respondent could not escape liability as she had used the forged certificate to secure admission in the

MBBS course. Per contra it was noted that the charge of forgery under Section 468 RPC had already been disbelieved by this Court, and therefore, the prosecution was required to establish, by clear and cogent evidence, the ingredients of offences under Sections 420 and 471 RPC. Section 420 RPC requires proof of dishonest intention and fraudulent inducement at the time of making the representation.

07. Having given thoughtful consideration to the material on record, it is evident that insofar as the aspect of forgery or making of a false document under Section 468 RPC is concerned, that part of the charge-sheet already stands disbelieved by this Court while deciding the petition wherein the respondent had questioned the framing of charge for the said offence. Once the charge of forgery for the purpose of cheating was found not to be made out, the prosecution was under a clear obligation to lead cogent and convincing evidence to establish the commission of offences under Sections 420 and 471 RPC. A plain reading of Section 420 RPC makes it abundantly clear that the offence of cheating is constituted only when the accused not only cheats another person but also dishonestly induces that person to deliver property or to do or omit to do any act as contemplated under the provision. The expression “whoever” occurring in Section 420 RPC necessarily implies that the person who makes a representation, knowing it to be false, alone can be fastened with criminal liability. Therefore, to bring home an offence under Section 420 RPC, the element of fraud or dishonest intention on the part of the accused must be demonstrably inferred from the allegations set out in the complaint. In the

present case, the complainant had alleged that it was the father of the respondent who had procured a fake backward area certificate by fraudulent means, on the basis of which the respondent secured admission in the MBBS course for the academic session 1992–1993.

08. From the record and the evidence adduced, it is an admitted position emerging from the testimony of almost every prosecution witness that what was seized during investigation were only photocopies of the alleged fake backward area certificate and photocopies of the dispatch register maintained in the office of the Deputy Commissioner, Budgam, which merely reflected dispatch numbers of certificates issued from time to time in favour of applicants. The Scientific Officer, Altaf Ahmad, categorically admitted that although certain documents were forwarded to him for forensic examination, those documents were never shown to him during trial, and consequently, he was unable to state whether the documents examined by him were originals, forged documents, or mere photocopies. The prosecution itself admitted that the respondent had used the alleged fake certificate to secure admission in the MBBS course; however, it is difficult to accept that such admission could have been granted solely on the basis of a photocopy of a certificate. In the absence of seizure of the original document, no presumption could legally be drawn that the document in question was false. Section 463 RPC defines forgery as the making of a false document or part thereof with the intention specified under the Act, including for the purpose of cheating. Once the charge under Section 468 RPC stood dislodged, the foundational

requirement of forgery for the purpose of cheating ceased to exist. The prosecution, however, proceeded on a mere assumption that the backward area certificate forming the basis of the respondent's admission was fake, without producing or proving the original document. Reliance on photocopies alone cannot lead to a definite conclusion that the prosecution version is truthful.

09. Much emphasis was laid by the prosecution on the fact that officials of the Medical College, Srinagar, had deposed that the respondent secured admission on the basis of a fake backward area certificate. Even assuming this to be correct, the crucial question that still arises is whether it was the respondent herself who was the author of the alleged false document. The prosecution was under a corresponding duty to establish that it was the respondent who had prepared or caused the preparation of the false document with the intention to cheat, namely, to secure admission in the MBBS course. The evidence on record, however, does not disclose that the respondent had ever approached the revenue authorities for issuance of the backward area certificate. Stress was also laid on the statements of revenue officials asserting that the area in which the respondent resided did not fall within a backward area. Even if such oral evidence is accepted, the fact remains that the alleged fraud was brought to the notice of the investigating agency by a complainant, on the basis of whose complaint a preliminary enquiry was initiated by the Crime Branch. In such circumstances, examination of the said complainant was imperative, as he alone could have shed light on who had actually procured the fake

certificate. The prosecution, however, failed to examine him and appears to have built its case entirely on assumptions and presumptions without collecting concrete material to fasten criminal liability upon the respondent. Section 471 RPC places the burden on the prosecution to prove that the accused used the document fraudulently or dishonestly or had reason to believe that the document was forged. This primary burden cannot be shifted onto the accused, and in the present case, the prosecution has clearly failed to discharge the same.

10. The trial Court, while appreciating the evidence on record, rightly concluded that there was no material to suggest that the respondent herself had approached any official instrumental in preparing the alleged fake certificate. On the contrary, the allegations were directed against her father, who was neither cited as an accused nor examined by the prosecution. The prosecution appears to have proceeded on the belief that merely because the respondent allegedly did not belong to a backward area, any certificate obtained in her favour must necessarily be fake. Such an approach cannot substitute proof. Unless the certificate is established to be false in material particulars, the prosecution cannot be said to have led clinching evidence against the respondent. Reiterating the position, once the respondent was not shown to have been associated with the preparation or making of the false document, it cannot be conclusively held that she had knowledge of the certificate being fake. There exists a reasonable probability that the certificate may have been procured by her father to secure her admission in the MBBS course. None of the witnesses

have stated that the respondent was seen participating in the preparation of the alleged false document, nor is there any expert evidence to link her with its fabrication. In fact, the non-seizure of the original certificate renders the claim of forensic comparison wholly questionable. The investigation appears to have been conducted in a perfunctory manner, without probing the matter to its logical end.

11. The respondent secured admission in the academic session 1992–1993, whereas the FIR was registered only in 1994, and the trial concluded in 2007 with her acquittal. The appeal against acquittal has remained pending for nearly eighteen years thereafter. The entire sequence reflects not a diligent prosecution aimed at securing conviction of an offender on the basis of credible evidence, but rather a prolonged persecution unsupported by tangible proof. The respondent has neither been proved to be the author of the alleged fake document nor shown to have been associated with its preparation, and there is not even an iota of evidence to establish that she knew the document to be forged. In the absence of such knowledge, prosecution under Section 471 RPC cannot be sustained, as mere use of a document does not constitute an offence unless it is proved that the user knew or had reason to believe that the document was forged.

12. For the foregoing reasons, the findings returned by the trial Court vide judgment dated 30.08.2007 are well-reasoned and do not call for any interference. The prolonged duration of trial and selective investigation by the prosecution further weakens its case. The acquittal of the respondent is

based on sound appreciation of evidence and settled legal principles and cannot be termed perverse. Consequently, this appeal is **dismissed**, and the judgment of acquittal recorded in her favour, is affirmed.

(Sanjay Parihar)
Judge

SRINAGAR
23.12.2025
“Mohammad Yasin Dar”

Whether the order is speaking: *Yes/No*
Whether the order is reportable: *Yes/No*