

THE HIGH COURT OF TRIPURA
AGARTALA

Crl. Rev. P. No. 62 of 2010

Dulal Miah,
Son of Umer Ali,
Resident of Hadra, P.S. Kakraban,
Udaipur, South Tripura.

.....Petitioner

- VERSUS -

The State of Tripura.

.....Respondent.

B E F O R E
THE HON'BLE MR. JUSTICE U. B. SAHA

For the petitioner	: Mr. N. Majumder, Advocate.
For the respondent	: Mr. R. C. Debnath, Addl.P.P.
Date of hearing & delivery of judgment	: 13.08.2015
Whether fit for reporting	: NO.

Judgment and Order (Oral)

The instant revision petition is filed by the accused petitioner, namely, Sri Dulal Miah, challenging the judgment and order of conviction and sentence dated 20.07.2010 passed by the learned Sessions Judge, Udaipur, South Tripura, in Crl. Appl. No. 26(4) of 2009, wherein and whereunder the learned Sessions Judge upheld the order of conviction and sentence passed by the learned Chief Judicial Magistrate, Udaipur, South Tripura, by a judgment dated 30.11.2009, in G.R. Case No. 187 of 2007, wherein, the accused petitioner was convicted under Section 471 of

the IPC and sentenced to suffer R.I for 6 months and to pay a fine of Rs. 1,000/- in default to suffer further R.I for 1 month.

[2] Heard Mr. N. Majumder, learned counsel appearing for the petitioner as well as Mr. R. C. Debnath, learned Addl. P.P. appearing for the State respondent.

[3] The case of the prosecution, in brief, is that on 06.07.2007 at about 11.00 a.m. accused-petitioner submitted a certified copy (Exbt-2) of voter list of 25-Shalghara Assembly Constituency for the year 1971 in the name of one Hossain Ali of Shalghara Constituency in Election Section purported to have been issued by Assistant Electoral Registration Officer, Udaipur, South Tripura for obtaining P.R.C. for his sister, namely, Amina Khatun. On receipt of the same, Election Section verified their official records and it is found that no such certified copy (Exbt-2) was issued from their office in the name of Hossain Ali and that certified copy, which was produced by the accused-petitioner was forged. Then, Shri R.P. Dutta, Sub-Divisional Magistrate, Udaipur, South Tripura, made complaint (Exbt-3) in writing narrating the entire incident with the O/C of R. K. Pur P. S. and on the basis of that complaint, a case bearing No. 177 of 2007 under Sections 468/471 of IPC was registered at the R.K. Pur P. S. against the accused-

petitioner. Thereafter, the case was endorsed to Shri Ratan Lal Bhowmik, S.I. of police for investigation and Shri Bhowmik, after completion of investigation submitted the charge sheet against Dulal Miah for the offence punishable under Sections 468/471 of the IPC.

[4] The accused-petitioner contested the case and accordingly, he was supplied with the copy of the incriminating papers. Thereafter, charge under Sections 468/471 of the IPC was framed against him to which he pleaded not guilty and claimed to tried.

[5] The Prosecution examined as many as 6 witnesses to prove the case and thereafter, upon closure of the prosecution evidence, the accused was examined under Section 313 of the Cr.P.C. to which he denied the veracity of all prosecution evidences and also declined to adduce any defence evidence. It appears from the trend of the cross examination that the accused person does not have any specific defence case other than total denial of the whole prosecution's story.

[6] The learned Chief Judicial Magistrate, Udaipur, South Tripura, after examining the witnesses and considering the statement under Section 313 of the Cr.P.C. acquitted the accused person from the charge leveled against him under Section 468 of the IPC and convicted him

under Section 471 of the IPC and sentenced thereto as stated supra.

[7] Being aggrieved and dis-satisfied with the judgment of the learned Chief Judicial Magistrate, South Tripura, Udaipur, the accused petitioner preferred an appeal before the learned Sessions Judge, Udaipur, South Tripura, which was registered as CrI. Appl. No. 26(4) of 2009. The learned Appellate Court, after hearing the parties and considering the evidence on record upheld the order of conviction and sentence passed by the learned Chief Judicial Magistrate, Udaipur, South Tripura, (hereinafter referred to as the learned Trial Court).

[8] Before considering the submissions of the learned counsel appearing for the parties, it would be proper to discuss about the evidence of witnesses.

[9] PW-1, Sri Gour Das Roy, a staff of Sub-Divisional Magistrate Office, has stated in his deposition that on 06.07.2007, he was posted in the Election Section of Sub-Divisional Magistrate's Office, Udaipur, South Tripura and on that day PW-2, Asish Debnath produced one certified copy of electoral role, 1971 issued in the name of one Hossain Ali of Mouja-Hadra for verification with the original records and on verification of the said certified copy with the original documents he found that certified copy

(Exbt-2) was forged one and no such certified copy had been issued from their Section. Then police seized the same and he signed (Exbt-1) in the seizure list as witness and on his identification forged certified copy was marked as Exbt-2.

[10] In cross he has stated that he did not state to the police officer that the signatures of the Section Officer as well as other clerks as required at the relevant time were not genuine. He has also stated to the Police Officer that while the certified copy of the electoral role 1971 was produced before him, he got it tallied with the office registrar. But on perusal of the statement recorded under Section 161 of the Cr.P.C., no such statement was found.

[11] PW-2, Ashish Debnath, in his deposition stated that on 06.07.2007, he was working as LDC in the Facilitation Centre of SDM's Office, Udaipur. On that day he produced the certified copy (Exbt-2) of electoral role in the name of Hussain Ali of Shalgara constituency in the election Section and PW-1, Shri Gour Das Roy, LDC of Election Section on verification found the said certified copy had no entry in the Issuing Register maintained in the Election Section.

[12] PW-3, Shri Saradindu Chowdhury, Deputy Secretary, Home, who was working at the relevant time as

SDO, Udaipur, South Tripura, in his deposition stated that on 13.02.2001 he was working as SDO, Udaipur, and the certified copy (Exbt-2) bears the signature of the SDO as being the Assistant Electoral Registration Officer but that signature on the certified copy is not his signature and such document was never issued by him. In his cross examination he has stated that without perusing the office record it was not possible on his part to say whether it was issued from his office. He has also stated that he is in doubt whether the signature on the document was written by him or not.

[13] PW-4, Sri Dulal Chakraborty, in his deposition stated that he does not know anything about this case.

[14] PW-5, Shri Rana Prasad Datta, the informant, in his deposition stated that on 06.07.2007 he was working as Sub-Divisional Magistrate, Udaipur, South Tripura and on that day he lodged a complaint (Exbt-3) in writing with the police regarding fake certified copy of voter list produced by the accused petitioner in their office.

[15] PW-6, Shri Sanjoy Sinha Roy, in his deposition stated that on 06.07.2007 he was working as Assistant Electoral Officer at Sub-Divisional Magistrate's office, Udaipur, South Tripura and on that day PW-2, Shri Asish Debnath, came to him for verification of an electoral role

and on verification of certified copy of electoral role Gour Das Roy (PW-1) found that signature of the officials in the certificate were fake. He further stated that the signature on Exbt-2 is not his signature as Assistant Electoral Inspector and also stated that on that day he was working as Election Inspector and not as Assistant Electoral Inspector. In his cross examination he has stated that the person who submitted the document was not produced before him. It also stated in his 161 Cr.P.C. statement that he did not mention that he was the only Election Inspector in the year 2001. He also stated that he did not verify it personally but his staff did it.

[16] Mr. Majumder, learned counsel appearing for the accused petitioner while urging for quashing both the judgment of the learned Appellate Court and the learned Trial Court would contend that when the accused petitioner was acquitted from the charge of Section 468 of the IPC, no offence can be proved under Section 471 of the IPC, as the prosecution failed to prove that the accused used the certified copy (Exbt-2) knowing as forged document and unless the knowledge of the accused regarding the forged document is established, no offence under Section 471 can be made out.

[17] He further submits that PW-3 in his cross examination specifically stated that he is in doubt whether the signature in the certified copy of the voter list is his signature or not. He has further submitted that one of the essential ingredients of Section 471 of IPC is the knowledge or reasonable belief on the part of the person using the document that it is a forged one which the prosecution failed to prove.

[18] On the other hand, Mr. Debnath, learned Addl. P.P. while supporting the judgment of the Appellate Court as well as the learned Trial Court, submits that from the evidence of PWs 2 and 3 it is established that the certified copy of the voter list produced by the accused is the forged one and the learned Trial Court and the learned Appellate Court did not commit any wrong to convict the accused petitioner under Section 471 of the IPC and sentenced him thereto.

[19] Upon scrutiny of the evidence as adduced by the prosecution, this Court has not found anything that the accused petitioner prepared any forged documents with intent to cause any damage or injury to public or commit any fraud. Even if the prosecution story is believed in toto, then also it appears that even PW-3 was not sure whether the signature in the certified copy of the voter list is his

signature or not. To constitute the offence under Section 471 of the IPC first an offence under Section 468 of IPC has to be established. In the instant case admittedly, the accused petitioner was acquitted from the charge leveled against him under Section 468 of the IPC.

[20] Mere suspicion that the signature in the certified copy (Exbt-2) of the voter list in question was not genuine cannot take the place of proof to bring home the charge under Section 471. Either of the two requirements, namely, "knowledge" or "reason to believe" must be proved in the sense that they are deducible from various circumstances, though such circumstances need not necessarily be capable of absolute conviction or inference, but they are sufficient to cause to believe by chain of probable reasoning leading to the conclusion or inference about the nature of the thing. In this case no such circumstances was proved by the prosecution. Not only that, in the instant case I.O was also not examined by the prosecution. Thus, the accused did not get any opportunity even to verify whether the PW-1 what stated first time in the Court was stated to the I.O or not. There is even not a single line available in the evidence that knowing the certified copy of the voter list is forged one, the accused petitioner used the same as a genuine one. It also appears from the judgment of the learned Trial Court

that the contents of the certified copy of the voter list were true.

[21] In view of the above, this Court is the considered opinion that conviction of the accused petitioner under Section 471 of the IPC is unwarranted and thus, the judgment of the learned Appellate Court as well as the learned Trial Court are hereby set aside and the accused petitioner is acquitted from the charge leveled against him. As the accused petitioner is on bail, his bail bond stands discharged.

[22] In the result, the revision petition is allowed. Send down the LCRs.

JUDGE

A.Ghosh.