

**THE HIGH COURT OF TRIPURA
AGARTALA**

CRL.REV.P. NO. 79 OF 2006

Sri Sunil Chandra Hrishidas,
S/O. Late Baisistha Hrishidas,
Resident of Gouranga Tilla,
P.S. Teliamura,
District- West Tripura.

..... Petitioner.

- Versus -

The State of Tripura,

..... Respondent.

**BEFORE
THE HON'BLE MR. JUSTICE S. C. DAS**

For the petitioner	: Mr. A. K. Bhowmik, Mr. Raju Datta, Mr. B. Deb, Ms. I Banik, Advocates,
For the respondent	: Mr.R.C.Debnath, Addl. P.P.
Date of hearing	: 20.03.2015.
Date of delivery of Judgment and Order	: 27.04.2015.
Whether fit for reporting	: No.

JUDGEMENT AND ORDER

This revisional application under Section 397 read with Section 401 of Cr.P.C. is directed against concurrent finding of conviction and sentence dated 20.10.2005 passed by learned Sub-Divisional Judicial Magistrate (for short 'SDJM'), Khowai, West Tripura in Case No. G.R. 84 of 2002 and affirmed by judgment and order dated 22.06.2006 passed by learned Additional

Sessions Judge, Khowai, West Tripura in Criminal Appeal No. 5(4) of 2005.

2. Learned SDJM by impugned judgment dated 20.10.2005 found the accused petitioner, Sunil Chandra Hrishidas guilty of the charges framed against the accused under Section 468/471/420 of IPC and sentenced him to suffer R.I. for two years and to pay a fine of Rs.1,000/-, in default of payment to suffer S.I. for six months for commission of offence punishable under Section 468 of IPC and also to suffer R.I. for two years and to pay a fine of Rs.500/-, in default of payment to suffer S.I. for three months for commission of offence punishable under Section 471 of IPC and lastly, to suffer R.I. for two years and to pay a fine of Rs.1,000/-, in default of payment to suffer S.I. for six months for commission of offence punishable under Section 420 of IPC and directed that the sentences shall run consecutively. Learned Additional Sessions Judge by impugned judgment dated 22.06.2006 dismissed the appeal and affirmed the order of conviction and sentence passed by learned SDJM.

3. Felt aggrieved, the convict accused petitioner, Sunil Chandra Hrishidas preferred the present revisional application challenging the judgment and order of conviction and sentence.

4. Heard learned senior counsel, Mr. A. K. Bhowmik for the accused-petitioner and learned Additional P.P., Mr. R. C. Debnath for the State-respondent.

5. Briefly stated, the prosecution case is that the accused petitioner, Sunil Chandra Hrishidas, was working as a Group-D staff under the Directorate of Food, Civil Supplies and Consumer Affairs, Government of Tripura. He appeared in Madhyamik examination of the year 1992, held on 16.04.1992, conducted by the Tripura Board of Secondary Education (for short 'TBSE') as an external candidate through Vivekananda Higher Secondary (+2 stage) School, Teliamura (for short 'Vivekananda School') and his Roll No. was Ext.-69682. The accused claimed that he passed Madhyamik examination and by writing a letter dated 02.03.1993 he submitted attested copies of Mark sheet and Admit card to the Director of Food, Civil Supplies & Consumer Affairs (hereinafter mentioned as 'Director') and prayed for posting him as LDC/Store Keeper. Considering his prayer of passing Madhyamik examination, he was promoted to the post of LDC by an order of the Director dated 06.11.1993 and thereafter from the post of LDC he was promoted to the post of UDC by order of the Director dated 29.08.1997.

5.1. The Director received a complaint from one Mr. S. Bhowmik dated 24.12.1999, wherein it was alleged that the document of qualification of Sunil Chandra Hrishidas was not correct and a request was made to verify the same. On receipt of that letter, the Director wrote a letter to Sunil Chandra Hrishidas to submit his Admit Card, Mark Sheet and Certificate of Madhyamik examination of the year 1992 and pursuant to that letter Sunil Chandra Hrishidas on 22.01.2000 submitted his

original Admit Card, original Mark Sheet and original Registration Card. The Director sent those Admit Card and Mark sheet to the Secretary, TBSE and requested him to examine the records and to confirm whether Sunil Chandra Hrishidas came out successfully in the examination or not.

5.2. The Secretary, TBSE by letter dated 18.02.2002 informed the Director that Sunil Chandra Hrishidas appeared in the Madhyamik examination of the year 1992 from Vivekananda School as an external candidate having Roll No. Ext.-69682 and the records of the Board shows that he secured only 47 marks in total in the examination and got plucked in the examination. However, his Admit Card was found to be genuine.

5.3. On receipt of that communication from the Secretary, TBSE, the Director (PW1) wrote a letter to SDM, Khowai (PW6) to lodge FIR against the accused petitioner, Sunil Chandra Hrishidas, and accordingly, PW6 lodged FIR on 07.05.2002 against the accused petitioner at Teliamura P.S. and accordingly, Teliamura P.S. Case No. 35/2002 was registered under Sections 468/471/420 of IPC and investigation was taken up. The accused petitioner was arrested during investigation. Material witnesses were examined and documents were seized and ultimately I/O submitted charge sheet against the accused, on the basis of which cognizance was taken and in course of trial charges were framed for commission of offence punishable under Section 468/471/420

of IPC to which the accused pleaded not guilty and claimed to be tried.

6. Record shows that the prosecution examined 10 witnesses, namely, PW1, Sri Pallab Debbarma, Director, PW2, Sri Pradip Acharjee, Deputy Collector & Magistrate, Teliamura, PW3, Sri Bijan Kanti Sarkhel, OSD of TBSE, PW4, Sri Nityananda Deb, Assistant Headmaster of Vivekananda School, PW5, Sri Sanju Datta, an employee of the Food and Civil Supplies Department, Government of Tripura, PW6, Sri Sambhu Nama, Sub-Divisional Officer, Khowai, informant, PW7, Sri Prasun Kanti Tripura, I/O of the case, who conducted maximum part of investigation, PW8, Sri Satyabrata Gupta, the later I/O, who submitted the charge sheet, PW9, Sri Kamal Adhikari, Deputy Secretary of TBSE and PW10, Sri Ajit Malakar, Headmaster of Vivekananda School.

7. During examination of the aforesaid witnesses, prosecution proved the following material documents:-

Exbt.-1 - Letter of Headmaster of Vivekananda School dated 10.05.2002 addressed to I/O with a copy of the relevant page of the Register of Madhyamik examination of 1992;

Exbt.-2 - Copy of the Registrar of Madhyamik examination 1992 of Vivekananda School (copy compared with original Register and the original Register is on record.);

Exbt.- 3 series consist of eleven items of documents and those are :

- (i) Appointment letter of Sunil Chandra Hrishidas as a Group-D staff dated 23.11.1987;*
- (ii) Promotion order of Sunil Chandra Hrishidas as LDC dated 06.11.1993;*
- (iii) Promotion order of Sunil Chandra Hrishidas as UDC dated 29.08.1997;*
- (iv) Prayer of Sunil Chandra Hrishidas dated 02.03.1993 for the post of LDC informing that he passed Madhyamik examination;*
- (v) A complaint by one Sri S. Bhowmik dated 24.12.1999 to the Director to verify the qualification of Sunil Chandra Hrishidas;*
- (vi) Letter of Director dated 14.01.2000 to Sunil Chandra Hrishidas to submit his original Admit Card, Mark sheet, Certificate etc.;*
- (vii) Letter of Director dated 14.01.2000 to Secretary, TBSE to inform as to whether Sunil Chandra Hrishidas passed Madhyamik examination or not;*
- (viii) The original Mark sheet produced by Sunil Chandra Hrishidas;*
- (ix) The original Admit Card produced by Sunil Chandra Hrishidas;*
- (x) Letter of Secretary, TBSE dated 18.02.2002 to Director informing that Sunil Chandra Hrishidas only got 47 marks and he got plucked in the examination;*

(xi) Letter of accused Sunil Chandra Hrishidas dated 22.01.2000 to Director with submission of original Mark sheet and Admit card;

Exbt.-4, 4/1 & 4/2 – Seizure list of Exbt.-3 series with signatures of PW5 and PW7;

Exbt.-5 – FIR lodged by PW6 with endorsement of PW7;

Exbt.-6– Seizure list dated 11.05.2002 of Exbt.-1 & 2;

Exbt.-7 – Letter of Secretary, TBSE to I/O dated 27.05.2002;

Exbt.-7/1 – Signature of Secretary, TBSE in Exbt.-7;

Exbt.-8 – Seizure list of Exbt.-7;

Exbt.-9 – Office order dated 15.1.2005 of Secretary, TBSE authorizing PW9 to appear with Tabulation sheet of the result of Madhyamik examination of the year 1992 of Teliamura Centre.

Exbt.-10 – Copy of Tabulation sheet of the result of Madhyamik examination of 1992 of Teliamura Centre.

8. After the closure of prosecution evidence, accused was examined under Section 313 of Cr.P.C. and in his turn accused declined to adduce any defence evidence. Defence case is that the accused appeared in the Madhyamik Examination in 1992 as an external candidate and he came out successfully and that he received the original Mark sheet from the school and produced the same before the authority. The Mark sheet which is proved as one of the item of Exbt.-3 series (mentioned in item (viii) of the exhibit list) is genuine.

9. Learned SDJM considering the evidence on record found the accused guilty of the charges and sentenced him as stated hereinbefore. The judgment and order of conviction and sentence has been affirmed by the learned Additional Sessions Judge and the appeal preferred by the accused accordingly dismissed.

Hence, this revisional application.

10. While exercising revisional jurisdiction, this Court is to see the correctness, legality and propriety of the judgment/order passed by the inferior Court and to see the regularity of the proceeding. This Court is not ordinarily required to reexamine and re-appreciate the evidence on record unless the finding recorded by the trial Court and affirmed by the appellate Court is found to be perverse or that the trial Court and the appellate Court appreciated and relied on inadmissible evidence or passed the judgment on no legal evidence.

11. It is an admitted position that the accused Sunil Chandra Hrishidas was working as a Group-D staff under the Directorate, Government of Tripura. He appeared in the Madhyamik examination of the year 1992 as an external candidate through Vivekananda School, Teliamura and his Roll Number was Ext.-69682. It is an admitted position that the accused by writing a letter dated 02.03.1993 (document in item No.(iv) of Exbt.-3 series) prayed before the Director to give him promotion claiming that he passed Madhyamik Examination and

he produced attested copy of Mark sheet and Admit Card along with his prayer. Pursuant to that, it is an undisputed fact that he was promoted to the post of LDC on 06.11.1993 (document in item No.(ii) of Exbt.-3 series) and thereafter promoted as UDC on 29.08.1997 (document in item No.(iii) of Exbt.-3 series). It is also not disputed that the accused petitioner was asked by the Director to submit his original Mark sheet, Admit Card and certificate and accordingly, he submitted the original Mark sheet and Admit Card, which were in his possession and that Mark sheet has been proved as item No.(viii) of Exbt.-3 series and Admit card as item No.(ix) of Exbt.-3 series. The Admit Card is proved as genuine.

12. It is the case of the prosecution that the Mark sheet is a forged Mark sheet manufactured by the accused with a view to get promotion fraudulently and dishonestly. It is the stand of the accused that the said Mark sheet was genuine and he received it from Vivekananda School.

13. Learned senior counsel, Mr. Bhowmik has submitted that the Mark Sheet, which is proved as item No.(viii) of Exbt.-3 series, was received by the accused through a teacher of Vivekananda School, namely, Radha Madhab Saha, which is evident at page-36 of the Register maintained by Vivekananda School. The accused on receipt of the same honestly claimed promotion as LDC and he without hesitation produced the same before the authority when Director by writing letter dated 14.01.2000 asked him to produce the original Admit Card, Mark

sheet etc. According to learned senior counsel, Mr. Bhowmik, prosecution has failed to prove that the said Mark sheet was forged or that the accused has forged the same.

14. Learned Additional P.P. has submitted that PW9, Deputy Secretary of TBSE, produced the original Tabulation sheet, a compared copy of the same has been marked as Exbt.-10, which shows that the accused only secured 47 marks, whereas the Mark sheet which is produced by the accused shows 347 marks, which is a forged Mark sheet and such forgery has also been proved by Exbt.-2, the copy of Register maintained by Vivekananda School.

15. PWs 4 and 10 were the Headmasters of Vivekananda School and PW4 was examined by the trial Court on three different dates, i.e., on 03.09.2004, 17.01.2005 and was cross-examined on 02.07.2005. PW10 was examined on 17.01.2005. PW4 proved Exbt.-1 and Exbt.-2. Exbt.-1 is the letter of PW4 addressed to the I/O (PW7) along with a copy of the relevant page of the Register of candidates of Madhyamik Admit Card and Mark Sheet of the year 1992-93, page-50 and 51. Exbt.-2 is the copy of the relevant page, proved by PW4. PW10 produced the original Register on the date of his examination, i.e. 17.01.2005 and the relevant page- 50 and 51, copy of which was marked as Exbt.-2, was compared by the learned Magistrate giving an entry at page-51 of the Register and Exbt.-2 was confirmed. The said Exbt.-2, i.e. the Register at page- 50 and 51, shows that Sunil

Chandra Hrishidas secured in total 047 marks in the Madhyamik Examination and putting initial somebody received the same.

16. Learned senior counsel, Mr. Bhowmik referring to page-36 of the Register submitted that Radha Madhab Saha received the Mark sheet. The Register has not been exhibited as a whole. However, since a submission is made on behalf of the accused, I have carefully examined the Register. The entries of the year 1992 have been made from page-32 of the Register. At page-36 of the Register, the entries have been made regarding the external candidates and that entries do not relate to issuance of Mark sheet. The entries made in the Register show that it was the list of the candidates appeared in the Madhyamik Examination 1992 with particular Roll Number, Father's Name and the recipient's signature and that may be in respect of Admit Card. Regarding issuance of Mark sheet, entries started from page-41 specifically of the year 1992 and at pages-50 and 51 show the entry in the name of Sunil Chandra Hrishidas and someone received the Mark sheet giving initial and not full signature. The submission of learned senior counsel, Mr. Bhowmik that one Radha Madhab Saha, a teacher of the School, received the Mark sheet of the accused petitioner, therefore, does not appear to be correct, rather the accused in his examination under Section 313 of Cr.P.C. in reply to question at Sl. No. 11 clearly stated that he received the Mark sheet from the School putting his signature in the Register of the School. Therefore, the argument of learned senior counsel, Mr. Bhowmik that someone else, namely, Radha

Madhab Saha, received the Mark sheet of the accused and thereafter handed over it to the accused and accused genuinely produced the same, is without any basis and having no support from the evidence on record.

17. Let us now see whether the allegation/charge that the Mark sheet produced by the accused is a forged document has been proved or not? It is in the evidence on record that the Director wrote a letter to the Secretary, TBSE on 13.01.2000, which was dispatched on 14.01.2000, requesting the Secretary, TBSE to examine the Admit Card and Mark sheet of the accused and to inform whether it was genuine or not, to which the Secretary, TBSE by letter dated 18.02.2002 (item No.(x) of Exbt.- 3 series) informed the Director that the accused only secured 47 marks in the Madhyamik Examination and the Mark sheet does not corroborate with the records of the Board and it was also mentioned in the letter that the Admit Card was genuine. So, this is the first item of evidence, which the Director received from TBSE that the Mark Sheet was not genuine.

18. PW4, Headmaster of Vivekananda School, on the requisition of I/O produced a copy of pages- 50 and 51 of the Register maintained in the School for Madhyamik Admit Card and Mark sheet for the year 1991-93 and the entries show that the accused only got 47 marks in the examination. PW4 clearly stated that the said entries were made after receipt of the original Mark sheets from TBSE and thereafter the Mark sheets were

distributed. So, the Register which was maintained by the School in course of transaction of distributing the Admit Cards and Mark sheets shows the entries are contrary to what the impugned Mark sheet produced by the accused has been reflecting. PW9, the Deputy Secretary of TBSE has produced original Tabulation Sheet and a photocopy of the same before the Court, which is marked as Exbt.-10. I have very carefully gone through the evidence of PW9. In his evidence PW9 clearly and categorically stated that Sunil Chandra Hrishidas, who appeared in the Madhyamik Examination of the year 1992 having Roll No. Ext.-69682 has secured only 22 marks in the Language Group, out of 300 marks and secured 1 mark in the Science Group, out of 300 marks and India and Her People Group (History and Geography) only 15 marks, out of 200 and Elective Subject Economics and Civics (EC) 9 marks, out of 100 marks and in total, out of 900 marks, Sunil Chandra Hrishidas got only 47 marks.

19. Regarding the Mark sheet which is exhibited as item No.(viii) of Exbt.3 series, PW9, an officer of TBSE, has made categorical statement that it was not genuine. According to PW9, all the Mark sheets were computerized including the signature of the Secretary, TBSE. But the impugned Mark sheet was not a computerized Mark sheet rather in the prescribed format, Name, Father's name, Roll No., Name of school and the mark obtained were all typed written and the type writer is very clear from a bare examination of the document.

20. Regarding the veracity of the questioned Mark sheet, the witness in his deposition stated :-

".... .. Referring to disputed marksheet by prosecution under Exbt- 3 series puts a question as regards the signature bears in the marksheet as Secretary. PW replied the signature seems to be the signature of the then Secretary Sri N.G. Chakraborty which is pre-printed. But the subject wise marks in the mark sheet name, Roll No, Marksheet No. etc. are required to be computerized and not typed. In the marksheet subject wise marks, names Roll No. etc. are not computerized but all these are of typed by manual type writer machine. Marks of the sheets also does not tally with my tabulation sheet. Admit Card under Exbt-3 series of Sri Sunil Hrishi Das is genuine one. He appeared for following subject namely:-

Ist Language : Bengali Ist paper - 2nd paper

2nd Language : English one paper.

Science Group:

Mathematics

Physical Science

Life Science

India & Her People :- Group:-

History

Geography

Elective Subject:-

Economic & Civic

For each paper contains full marks = 100.

But in the mark sheet as produced, it appears that against Elective subject it is "CE" but on the reverse of the marksheet abbreviation of the subject Economic & Civic shows EC but not as CE as mentioned in the disputed marksheet. Signature of a particular person puts in particular place for a definite purpose may be scanned in a scanner machine and thereafter may be installed in any paper /documents etc., as the present printing technology so advanced. In the Madhyamik examination 1992 I myself conducted the Madhyamik examination including preparation of marksheet. The disputed marksheet ought to have been entirely computerized including subject wise marks, names of the Candidate, Father's name, name of the School, Roll No. etc. But the marksheet in question dispute under I find the name of the candidate, father's name, Roll No., name of the school and subject wise marks including total marks and grade prepared from manually typed writer machine. Not only in the year 1992 but at present also we are issuing computerized marksheet entirely. In the year 1992 during preparation of marksheet for the year 1992 it is prepared at computerized Maintenance Centre, Kolkata and I was present there. I am sure that the disputed marksheet never issued by our Board in the year 1992 in the name of Sri Sunil Hrishi Das. "

21. This evidence of PW9 has not been shaken in any manner. The trial Court in para-44 of the judgment has observed that the Court carefully examined the Mark sheet putting it to the sun shines as well as electric emergency light and he found that some figures and words were perforated because it was typed by a type writer manually and not a computerized one. Learned Additional Sessions Judge further meticulously examined the evidence and in para-14 of the judgment observed :-

"14. PW.9 specifically stated that T.B.S.E issued computerized marksheet in the year 1992 whereas the marksheet in question submitted by the appellant (Exbt. 3 series) containing total 347 marks was never issued by the T.B.S.E. and in support of his statement he stated that the disputed marksheet of the accused is not a computerized one. The name of the student, name of the school, Roll No, Father's name, subjectwise marks and the total marks i.e. 347 is typed manually by a typewriting machine and there is not question of issuing such a marksheet from the board. The marksheet in dispute also written Economics and Civics as 'CE'. It ought to have been written as 'EC' and not 'CE'. The abbreviation of 'EC' as Economics and Civics is written in the reverse page of the marksheet and this type of mistake would not do if the marksheet was at all issued by the Board. I have also meticulously examined the disputed marksheet and found the truthfulness of the statement given by PW.9 in his deposition. The witness further stated that the marks in disputed marksheet does not tally with the record kept in the board. He specifically stated the subjectwise marks and the total marks obtained by the accused in the Examination i.e. total 47 marks was scored by the appellant. Here, in the disputed marksheet I find total marks is written as 347. I have compared both the disputed marksheet and the certified copy of tabulation sheet (EXbt.10), the deposition of the witnesses in respect of subjectwise marks and the total marks and totally agree with the testimony of PW.9 that it was never issued from the Board. On mere perusal of the marksheet in dispute I find that name, father's name of the appellant, the school, the roll number, the subjectwise marks and the total marks is typed manually with a typewriting machine. I do not find any little bit of doubt from the testimony of PW.9 as well as from the documents produced by him before the Court (Exbt.10). Ld. Counsel for the appellant argued only that the tabulation sheet was prepared on the basis of a marks foil which is not produced in this case by the Board. The satisfactory explanation was given by the Deputy Secretary of T.B.S.C i.e. PW.9 and PW.3 that three copies of marks foil are prepared, two copies are kept in the board while one copy is sent to Indo-Net CMC, Kolkata for

computerization. The copies of the marks foil kept in the office of the Board only for one year and after that those were destroyed as per rules. The copy sent to Indo-Net CMC are also destroyed by the company according to their rules. So, there is no question of producing the marks foil before the Court. Moreover, after preparing the marks foil by the examiner those were scrutinized and after that sent to Head examiner and from Head Examiner to Officer-in-Charge of the examination and thereafter to CMC, Kolkata. All those documents are prepared during the official course of business of the Board and there is no question of preparing the tabulation sheet erroneously. The explanation given by PW.9 is very much cogent and satisfactory and as such I am unable to accept the contention of the Ld. Counsel for the appellant that the tabulation sheet cannot be accepted as evidence without being supported by marks foil."

22. The finding of the trial Court and the appellate Court regarding the genuinity of the Mark sheet, as I find, is based on the evidence recorded during trial. There is nothing to arrive at a contrary finding than that the trial Court and the appellate Court have already arrived. I have very carefully examined the Mark sheet and on examination in the necked eye shows that the entries in the prescribed format were typed written and not computerized one. PW9 makes specific statement that all the Mark sheets of the examination prepared through computer and delivered to the concerned School according to the procedure followed by the Board. The PWs have no animosity with the accused to make out a false allegation against him. The stand of the accused is that the Mark sheet is genuine and he received it from the school, but the school says that the Mark sheet with 347 marks as claimed by the accused was not delivered from the school and that the accused only secured 47 marks in the examination what the school records speak. The Tabulation sheet proved the fact that the entries of marks in the Mark sheet is not

the correct Mark sheet of Tabulation sheet though during cross examination the defence has raised several points, those are not at all required to be considered since the procedure followed was uniform and there is nothing to show that a different procedure was followed in the case of the accused to give him any benefit that there was no signature of any person in the Tabulation sheet, which was produced by the Board. The submission of learned senior counsel, Mr. Bhowmik that the prosecution has failed to prove the charge against the accused is found to be devoid of any merit.

23. Learned senior counsel, Mr. Bhowmik has further submitted that the accused has not been properly examined under Section 313 of Cr.P.C. and so he is entitled to get benefit of doubt. According to Mr. Bhowmik, learned senior counsel, the substance of accusation were put to the accused, but those were put in such a manner that the accused was deprived of giving proper answer. He has referred the case of **Subhash Rabidas & anr. V. State of Assam**, reported in **(1993) 2 GLR 46** and the case of **Ranvir Yadav V. State of Bihar**, reported in **(2009) 6 SCC 595**. It is a settled position of law that examination under Section 313 of Cr.P.C. is not a mere formality, but is a strict requirement of law. The law requires that the accused should be examined before he is called upon to enter in his evidence, and questioned him generally in the case referring to the incriminating evidence on record.

24. On perusal of the Memorandum of examination of accused under Section 313 of Cr.P.C, I find that the trial Court referring to the evidence of 10 witnesses on record put as many as 19 questions and elaborately stated the part of incriminating evidence while putting those questions. I find no infirmity in the examination of accused under Section 313 of Cr.P.C. to apply the ratio of the case of **Subhash Rabidas(supra) and Ranvir Yadav(supra)**. There is nothing to show that the accused has been prejudiced in any manner because of not putting any incriminating substance to him during the examination under Section 313 of Cr.P.C.

25. The Division of the Gauhati High Court in **Subhash Rabidas(supra)** has observed the purpose of examination under Section 313 and the manner how the questions to be put to the accused. In the present case, I find that the learned Magistrate put the questions to the accused referring to the evidence on record and there is nothing to hold that the questions were not put referring to any part of the incriminating evidence. The case of **Ranvir Yadav(supra)** stands differently and the ratio is not at all applicable in the present case.

26. Learned senior counsel, Mr. Bhowmik has further argued that after institution of the criminal case, the accused was demoted to the post of Group-D from the post of UDC and he has already retired on 26.12.2011 from the post of Group-D. He has suffered a lot and, therefore, he may be given the benefit of

Section 360 of Cr.P.C., or that of Section 4 of the Probation of Offenders Act. In support of his contention, he has referred a decision of this Court in the case of **Mithun Debnath V. State of Tripura**, reported in **(2014) 2 TLR 922**.

27. Learned Additional P.P. has submitted that the accused manufactured a forged Mark sheet and produced the same before the authority and thereby obtained promotion to the post of LDC and UDC. He being a public servant committed the offence and so, he should not be given the benefit of Section 360 of Cr.P.C. or Section 4 of the Probation of Offenders Act.

28. The trial Court and the appellate Court did not give the benefit of Section 360 of Cr.P.C. or Section 4 of the Probation of Offenders Act. There is no clear finding also to that effect. The trial Court as well as the appellate Court was bound to give reasons for not giving the benefit to the accused under Section 360 of Cr.P.C. or Section 4 of the Probation of Offenders Act.

29. The case of **Mithun Debnath(supra)** clearly stands on a different context. No doubt the trial Court and the appellate Court did not assign any reason, but in the facts and circumstances of the present case where the accused being a public servant working as a Group-D staff fraudulently claimed that he passed Madhyamik examination and produced a forged Mark sheet, I think in the given facts and circumstances the accused should not be given the benefit of Section 360 of Cr.P.C. or Section 4 of the Probation of Offenders Act. The case of

Mithun Debnath(supra) was conviction of Section 341 and 325 of IPC and the factual situation of this case is distinguishable to that of the fact of **Mithun Debnath(supra)**. I find nothing to apply the ratio of that decision in the case of the accused petitioner, who has created a forged document and applied it for his wrongful gain while working as a public servant. The conduct of the accused does not deserve any lenient view to give him such benefit.

30. Learned senior counsel, Mr. Bhowmik has further argued that the ingredient for punishment under Section 468 of IPC has not been proved and so, the punishment under Section 468 of IPC was not justified.

31. Section 468 prescribes punishment for forgery for the purpose of cheating. The word 'forgery' is defined in Section 463 of IPC, which reads thus :-

"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."

32. Section 464 of IPC prescribes the making of a false document, which reads thus :-

***"464. Making a false document. –[A person is said to make a false document of 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 [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 or mind or intoxication cannot, or that by reason of deception practiced upon him, he does not know the contents of the document or electronic record or the nature of the alteration.]”

33. The prosecution has proved the case that the Mark sheet which the accused produced claiming that he passed Madhyamik examination is forged. By producing such a forged document to his department the accused claimed promotion and accordingly, secured two promotions. The department would not give him such promotion had the accused not produced such forged document. Since the accused manufactured a forged

document and claimed benefit fraudulently and dishonestly from his authority producing such document, the trial Court and the appellate Court rightly observed that the accused committed offence punishable under Section 468 of IPC. Therefore, the finding of conviction and sentence under Section 468 of IPC does not deserve any interference.

34. Section 471 of IPC prescribes punishment for using as genuine a forged document. The accused petitioner used the forged Mark sheet as genuine and availed some benefit of such forged Mark sheet. Since the accused petitioner has already been found guilty under Section 468 of IPC he is not required to be punished separately under Section 471 of IPC.

35. Regarding punishment under Section 420 of IPC, I am of considered opinion that the prosecution has successfully proved that the accused cheated his department by producing that forged Mark sheet and the ingredients of cheating as defined in Section 415 of IPC is proved. There is no evidence of dishonest inducing of delivery of property by cheating to have a punishment under Section 420 of IPC, but since the cheating has been proved the accused is liable to be punished under Section 417 of IPC. Hence, the punishment awarded by the trial Court and affirmed by the appellate Court under Section 420 of IPC is converted to one under section 417 of IPC and the accused is sentenced to suffer R.I. for one year and to pay a fine of Rs.1,000/-, in default of payment to suffer S.I. for one month. I do not agree with the

finding of the trial Judge of suffering the sentences consecutively, rather considering the fact that the accused has already been retired from service and he was demoted as a Group-D staff after the criminal case was instituted, I think the accused should suffer the sentences concurrently and that shall meet the ends of justice.

36. Accordingly, the revisional application stands dismissed. The judgment and order of conviction and sentence under Section 468 of IPC is affirmed. The judgment and order of conviction and sentence under Section 471 of IPC is set aside. The judgment and order of conviction and sentence under section 420 is converted to Section 417 of IPC and the accused is sentenced to suffer R.I. for one year and to pay a fine of Rs.1,000/-, in default of payment to suffer S.I. for one month. The sentences shall run concurrently. The convict accused petitioner is directed to serve out the sentence.

37. Send back the lower court records along with a copy of this judgment and order.

JUDGE