

**IN THE HIGH COURT OF TRIPURA
AGARTALA**

Crl. Rev. P. 49 of 2011

Md. Khaleque Mia,
son of late Mafijuddin Mia,
resident of Nabinagar,
P.O. Nabinagar,
P.S. Bishargarh,
District- West Tripura

..... Petitioner

- V e r s u s -

The State of Tripura,
represented by the Secretary,
Home Department, Government
of Tripura, Agartala

.....Respondent

**BEFORE
THE HON'BLE MR.JUSTICE S. TALAPATRA**

For the petitioner : Mr. R. Dutta, Advocate

For the respondent : Mr. R.C. Debnath, Addl. PP

Date of hearing and : **26.06.2015**
delivery of judgment & order

Whether it is fit for reporting :

Yes	No
	√

JUDGMENT & ORDER (ORAL)

Heard Mr. R. Dutta, learned counsel appearing for the petitioner as well as Mr. R.C. Debnath, learned Addl. Public Prosecutor appearing for the State.

[2] As the appeal being Criminal Appeal No. 26(4) of 2010, preferred by the convict in the court of Sessions Judge, South Tripura, Udaipur, now Gomati Judicial District against the

judgment and sentence dated 15.09.2010 delivered in GR 85 of 2006 by the Chief Judicial Magistrate, South Tripura, Udaipur has been dismissed, this petition challenging the appellate judgment and order dated 14.06.2011 has been filed.

[3] From the cursory verification of the fact it appears that, the driving license of the petitioner was seized by Sri Rabindra Debbarma, District Transport Officer (P.W.9) as it appeared suspicious to him. The petitioner is a driver by profession. On investigation, it was established that the said driving license was fake and accordingly, a written ejahar (Exbt.1) was filed by Manik Dasgupta (P.W.2) to the Officer-in-Charge, R.K Pur police station.

[4] Based on the said ejahar, R.K Pur P.S case No. 82/2006 under Sections 468/471 of the I.P.C was registered and taken up for investigation. On completion of the investigation, the final police report was submitted charge-sheeting the petitioner and another co-accused namely Subrata Singh. After taking cognizance, the charge was framed against both the accused persons. The charge under Section 471 of the I.P.C was framed against the petitioner and the charge under Section 468 of the I.P.C was framed against the other co-accused. Both the accused persons pleaded innocence and claimed to face the trial.

[5] In order to substantiate the charge, the prosecution adduced as many as 10 witnesses including the said Transport

Officer, the Licensing Authority, namely Rabindra Reang (P.W.9) and the Investigating Officer. After the prosecution evidence was recorded, the petitioner was examined under Section 313 of the Cr.P.C for having his response against the incriminating materials those surfaced in the evidence. He denied all such incriminating materials and did not make any explanation how he possessed the said license or he had put his signature over the said driving license. Another co-accused was charged for forging that document. He had also denied in the said manner. The Chief Judicial Magistrate, South Tripura, Udaipur after appreciating the evidence returned the finding of conviction against both the accused persons. The petitioner was convicted under Section 471 of the I.P.C whereas the other co-accused was convicted under Section 468 of the I.P.C. Both the accused persons filed a common appeal against the said judgment and order. It is on record that the appellate Court did not find any cogent evidence against the co-accused namely Subrata Singh and acquitted him from the charge under Section 468 of the I.P.C, but the conviction as returned against the petitioner has been maintained. However, the appellate Court modified the sentence from 3(three) years simple imprisonment and pay a fine of Rs. 10,000/- to simple imprisonment for 1(one) year and pay a fine of Rs. 1,000/-, in default of payment of fine, to suffer further simple imprisonment for 1(one) month.

[6] Mr. R. Dutta, learned counsel for the petitioner has submitted that whether the document (Exbt. 2) i.e. the driving license is a forged one or not, could not be established by the prosecution beyond reasonable doubt. The prosecution's case was that the co-accused Subrata Singh forged the driving license and handed over the same to the petitioner for its use. But the appellate Court has held that there is no reliable evidence against Subrata Singh, the co-accused to hold him guilty of committing offense punishable under Section 468 of the I.P.C. As such, Mr. R. Dutta learned counsel appearing for the petitioner has submitted that the prosecution's case which is anchored for the use of the forged document has thus fallen apart and accordingly, the petitioner cannot be convicted under Section 471 of the I.P.C. Mr. R. Dutta, learned counsel has urged this court, as a matter of alternative relief, to give the benefit of Section 360 of the Cr.P.C to the petitioner granting probation under Section 4 of Probation of Offender Act.

[7] From the other side, Mr. R.C. Debnath, learned Additional Public Prosecutor while refuting the submission of Mr. Dutta, learned counsel for the petitioner has succinctly submitted that adequate evidence has been led by the prosecution to prove the driving license (Exbt.2) fake and forged one. He has referred in particular the statement of P.W.9 namely Rabindra Reang who is the Licensing Authority where he has stated that :

"I was posted as Asst. Transport Commissioner as well as Joint Transport Commissioner at Agartala from the year 2004 to 2006. On 06.01.2006, I was serving as Asst. Transport Commissioner at Agartala. This driving license i.e. Ext. 2 was not issued by me or from my office and the signature also is not of mine. Today I have come with the concerned driving license register of the office of Joint transport commissioner Agartala and on perusal of the register I find that in the serial No. 41698 one Sri Shymal Debbarma was issued driving license on the date 20.10.1997. No driving license in the said number was issued from our office. The driving license appears to be fake. The driving license ought to have been issued from the D.T.O. Udaipur instead of Agartala as the address of the candidate is at Chanban, Udaipur, South Tripura. In the impugned driving license the issuing authority is mentioned as the licensing authority West Tripura, Agartala."

[8] That apart, Mr. R.C. Debnath, learned Additional Public Prosecutor has submitted that P.W.2 Manik Dasgupta, Deputy Commissioner has also corroborated the said statement of PW-9. Thereafter, Mr. Debnath, learned Addl. P.P has submitted that nowhere the petitioner has claimed that he did not have any knowledge of the license being forged. Even when he was examined under Section 313 of the Cr.P.C he did not raise such plea that he had no knowledge that the driving license (Exbt.2) was a fake one.

[9] Having regard to all these aspects, Mr. Debnath, learned Public Prosecutor has submitted that there is no reason to interfere with the finding of conviction.

[10] On appreciating the respective submission of the learned counsel appearing for the parties and the records, this

Court is of the firm opinion that there is no infirmity in the finding of conviction. Even this Court is not inclined to grant benefit under Section 4 of the Probation of Offenders Act, inasmuch as the conduct of the petitioner has the dithering effect as he had shown no remorse. It has appeared that the appellate Court has considered his socio-economic condition and reduced the sentence from 3(three) years' simple imprisonment to 1(one) year's simple imprisonment. Even the amount of fine has been substantially reduced.

[11] As there is no antecedent of criminal activity of the petitioner, this Court has been persuaded to reduce the sentence further. Hence, the petitioner now shall suffer simple imprisonment for 6(six) months with fine of Rs. 1,000/-, in default of paying the fine, he shall suffer further 1 (one) month's simple imprisonment.

With this modification in the sentence, this petition stands partly allowed.

Send down the LCRs forthwith.

JUDGE

Dipesh