

HON'BLE SRI JUSTICE M.S.K.JAISWAL

Criminal Revision Case No.2123 of 2004

ORDER:-

The revision is filed against the order of the learned X-Additional District and Sessions Judge (FTC), Guntur at Narasaraopet, dated 23-12-2004, in Criminal Appeal No.22 of 2003, by and under which the learned Sessions Judge has confirmed the conviction and sentence imposed on the petitioner/accused for the offence punishable under Section 420 r/w 511 IPC., by the learned II-Additional Munsif Magistrate at Narasaraopet, in C.C.No.236 of 1992, dated 06-01-2003. The petitioner/accused has been sentenced to undergo simple imprisonment for three months and a fine of Rs.1,000/- for the offence punishable under Section 420 r/w.511 IPC.

2. Originally, the petitioner/accused was charged with offences punishable under Sections 420 r/w 511, 466, 468 and 471 of IPC., and the learned trial Magistrate has acquitted her of the charges under Sections 466, 468 and 471 IPC., however, the petitioner/accused was convicted for the offence punishable under Section 420 r/w 511 IPC.

3. The case of the prosecution, in brief, is as under:-

K.C.High School, Kothareddypalem and 18 others filed writ Petition No.15921 of 1989 for a Writ of Mandamus directing the Government of Andhra Pradesh represented by the Secretary, Education Department, Regional Director of School Education, Guntur, District Educational Officer, Guntur, and Director of School Education Saifabad, Hyderabad, to refrain from enforcing Rule 15 of G.O.Ms.No.524 Education (Rules) Department, dated 20-12-1988. Insofar as it relates to the petitioners, on 29-12-1989, this Court passed interim order in WPMP No.21062 of 1989 directing the respondents therein not to insist upon the petitioners to comply with the conditions laid down in Rule 15 for six weeks. In pursuance of the directions of the D.E.O., Guntur, the petitioner/accused furnished Xerox copy of the order in WPMP No.21062 of 1989 along with other particulars. In the said Xerox copy of the order in WPMP No.21062

of 1989, the petitioner/accused was shown as 19th petitioner. As per the records of High Court, the petitioner/accused was not a petitioner before the High Court in the Writ Petition. By seeking the appointment of the Hindi Pandit in her school without approaching the High Court, the petitioner/accused deliberately produced the forged copy of the order of the High Court in W.P.M.P.No.21062 of 1989. As per the letter, dated 01-10-1990, addressed to the District Educational Officer, Guntur, the petitioner/accused was aware of the order of the High Court suspending G.O.Ms.No.524 for six weeks and requested for orders regarding appointment of Grade-II Hindi Pandit. It is a case where there was deliberate tampering of the order of the High Court for gaining an undue advantage in the appointment of a Hindi Pandit in the High School. The DEO to whom the Xerox copy of the order of the High Court was sent was attempted to be cheated by the petitioner/accused., The DEO should have been cheated had he given his approval for appointment of Smt.K.Pushpalatha as Grade-I Hindi Pandit without verification. The petitioner/accused forged the copy of the High Court order for the purpose of cheating and used the said document in the correspondence addressed to the DEO with a fraudulent and dishonest intention. The Regional Director of School Education, Guntur, who surprised the DEO Office has gone through the record and submitted report to the High Court stating that the petitioner/accused has manipulated the orders of the High Court by inserting the name of her school as 19th petitioner and sent up proposals for approval of appointment of Smt.K.Pushpalatha as Grade-I Hindi Pandit. Thus the petitioner/accused committed the offences punishable under Sections 420 r/w 511, 466, 468 and 471 IPC.

4. During the course of trial, on behalf of the prosecution, PWs.1 to 4 were examined and produced Exs.P.1 to P.16. No defence was produced. The accused denied the case of the prosecution. The learned Magistrate convicted and sentenced the accused as stated above which is confirmed in appeal. The present revision is filed challenging the same.

5. The contention of the petitioner/accused is that both the Courts below have not properly appreciated the evidence on record in proper perspective and have erroneously convicted the petitioner/accused for the offence punishable under Section 420 r/w 511 IPC. It is further submitted that the original charge of forgery viz., Section 468 IPC., was not proved and the petitioner/accused was acquitted thereof. When the original charges under Sections 466, 468 and 471 IPC., are not established, the petitioner/accused cannot be convicted for the offence punishable under Sections 420 r/w 511 IPC. The forgery is the main offence and cheating is the ancillary offence and that if there is no evidence as regards the forgery, then there is no question of committing the ancillary offence. Therefore, both the Courts below erred in holding that though the petitioner/accused did not commit the offences punishable under Sections 466, 468 and 471 IPC., she has committed the offence punishable under Section 420 r/w 511 IPC. It is further submitted that the petitioner/accused is a lady and she was Correspondent of an un-aided school and that she is aged more than 70 years.

6. On the other hand, learned Public Prosecutor submits that the prosecution proved the case against the petitioner/accused beyond reasonable doubt and hence both the Courts below have found the petitioner/accused guilty and convicted and sentenced as stated above, which do not warrant any interference.

7. Arguments of both sides heard.

8. The point for consideration is as to whether the prosecution could prove its case beyond reasonable doubt so as to sustain the conviction and sentence as imposed by both the Courts below or whether the Judgments rendered by the trial Court and the first appellate Court suffer from any material illegality or irregularity warranting interference by the revisional Court?

9. **Point:-** Briefly stated, the case of the prosecution is that the petitioner/accused is the Correspondent of SPTRKM High School, Chilakaluripet Mandal, Guntur District. About 18 schools filed

W.P.No.15921 of 1989 and in WPMP No.21062 of 1989, dated 29-12-1989, the High Court passed interim orders. The petitioner/accused was not a party in the said Writ Petition. However, the Order of the High Court was tampered with and the name of the petitioner/accused was shown as the petitioner No.19 in the said writ proceedings so as to derive benefit of the orders of the High Court. This was noticed by the Departmental authorities and accordingly the matter was informed to the High Court and the then Registrar (Judicial) of the High Court filed the complaint. The petitioner/accused was charged with offence punishable under Sections 420 r/w 511, 466, 468 and 471 IPC. The main substance of the allegation is that it is the petitioner/accused who had manipulated and tampered with the order of the High Court and submitted a Xerox copy thereof along with the representation to the Department. As already noticed, the petitioner/accused has been held to be not guilty of having committed the offence of forgery or fraudulently tampering with the order of the High Court. However, it is stated that the petitioner/accused has submitted the Xerox copy of the said tampered and manipulated order of the High Court to the authorities and therefore she attempted to cheat the Department and derive benefit from out of the interim orders. Learned Counsel appearing for the petitioner/accused vehemently submits that once the charges of forgery and tampering with the orders of the Court have not been proved, the petitioner/accused cannot be convicted for having attempted to cheat the Department with the help of such a tampered or forged order. In support of this contention, the learned Counsel appearing for the petitioner/accused relied upon the decisions of the Supreme Court reported in **HIRA LAL PANNA LAL MAHI v. STATE OF GUJARAT**^[1] and **ARVIND BALASHANKER JOSHI v. STATE OF GUJARAT**^[2].

10. In **Hira Lal's case (referred 1st supra)**, the Supreme Court held that once the conviction of an accused under Section 471 IPC., has been set aside, he cannot be convicted for the offence under Section 420 IPC. The

Supreme Court has accepted the contention of the accused that when once his conviction under Section 471 IPC., has been set aside, there is no justification for convicting him under Section 420 IPC. In **Arvind Balashanker Joshi's case (referred 2nd supra)**, the Supreme Court held that when once the accused is acquitted of the offence punishable under Section 468 IPC., he cannot be convicted for the offences punishable under Sections 420 and 471 IPC., unless there is a direct independent witness as regards the knowledge of a forged document. The Supreme Court further observed that the prosecution having failed to prove the case for the offence punishable under Section 471 IPC. beyond doubt and consequently the offence under Section 420 IPC., is to be held not proved.

11. What is manifest from the above authorities is that when the prosecution alleges that it is the petitioner/accused who has forged the order of the High Court and submitted the same with an intention to cheat the Department and when once the allegation of forgery is not substantiated, the petitioner/accused cannot be said to have attempted to cheat the Department with the help of a forged document unless it is proved that she has knowledge that the document being forged.

12. In the instant case, the learned Magistrate in para 26 of his Judgment categorically held that the charges against the accused under Sections 466, 467 and 471 IPC., are not sustainable and consequently acquitted her. That acquittal is not challenged. When that be the case, the petitioner/accused cannot be convicted for the offence punishable under Section 420 r/w 511 IPC. Both the Courts below have erred in holding that the petitioner/accused guilty of the said charge and sentencing her to undergo simple imprisonment for three months and a fine of Rs.1,000/-, and the same is liable to be set aside. The point is accordingly answered.

13. In the result, the Criminal Revision Case is allowed setting aside the Judgments of both the Courts below. Consequently, the revision petitioner/accused is acquitted of the charge levelled against her. The

bail bonds executed by her shall stand cancelled. The fine amount, if any, paid by her shall be refunded.

The miscellaneous petitions, if any, pending in this revision shall stand closed.

M.S.K.Jaiswal, J

16th July, , 2015
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[\[1\]](#) 1969 (3) SCC 756

[\[2\]](#) 1991 Cr.L.J., 2241