

HON'BLE SMT JUSTICE ANIS
CRIMINAL REVISION CASE No.451 OF 2007

ORDER:

This Criminal Revision Case under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C') is filed by the revision petitioners herein challenging the judgment dated 23.03.2007, passed by the VI Additional District and Sessions Judge, Ranga Reddy District, at Vikarabad (Fast Track Court) whereunder and whereby the conviction and sentence passed against the revision petitioners for the offences punishable under Sections 417, 419, 465, 468 and 471 r/w 34 IPC, vide judgment dated 26.07.2006 in C.C. No.22 of 2002 by the Judicial Magistrate of First Class, Pargi, Ranga Reddy District, was confirmed.

2. The revision petitioners herein are Accused Nos.1 and 2 and respondent herein is the complainant in C.C. No.22 of 2002 before the trial Court. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in C.C. before the trial Court.

3. The brief facts of the case are that on 31.03.2001 at about 1.00 pm the Chief Superintendent of the Intermediate Examination, Government Junior College, Pargi, lodged a complaint stating that on 31.03.2001 intermediate public examination was going on and one V.Narasimha Reddy was caught by the invigilator (LW.2) while he was writing Telugu Second Paper in place of original student P.Srikanth, who is the student of Vignan Junior College, Pargi.

Basing on the said complaint Crime No.34 of 2002 was registered under Section 420 IPC. During the course of investigation, the Investigating Officer recorded the statement of five witnesses, conducted scene of offence, panchanama in the presence of two mediators and seized the original and duplicate hall tickets from the

petitioner/ accused No.1 and thereafter, he was taken into judicial custody on the same day. Accused No.2 surrendered himself in the police station and voluntarily confessed about the committing of crime and the same was recorded in the presence of witnesses. During the course of further investigation, the Investigating Officer submitted a requisition to the Board of Intermediate Education, Hyderabad, on which the Board sent the original answer sheet written by accused No.1 and specimen signatures and hand writings of accused No.2 to the Director of APFSL, Hyderabad, and the report of APFSL was received on 01.01.2002. It was established that A1 and A2 are the residents of same village and they are close friends. A2, who is studying intermediate, was the student of Vignan Junior College, Pargi, and A1 is the ex-student of the said college, connived with each other and planned to write the intermediate examinations of A2 by A1 with roll No.8247047. On 31.03.2001, at about 11.00 a.m. at the time of written examination, LW.2, who was invigilator, has taken the hall tickets of the students and found A1 writing examination on behalf of A2 by affixing his photograph by removing the photograph of A2 from hall ticket by forging the signature of Principal on the photograph of A1 and that when compared it with hall tickets kept in the custody of the Superintendent of Examinations, it was found that actual student was A2 but not A1. Thus, both the accused committed offences under Sections 417, 419, 465, 468, 471 r/w 34 I.P.C.

4. The learned Judicial Magistrate of First Class, Parigi, Ranga Reddy District, took cognizance of the case and framed a charge for the offences punishable under Sections 417, 419, 465, 468 and 471 r/w 34 I.P.C. During trial, to prove the case of prosecution, PWs.1 to 8 were examined and Exs.P1 to P12 were got marked.

5. After considering the oral and documentary evidence, the trial

Court convicted both the accused for the offences punishable under Sections 419 r/w 34, 468 r/w 34, 471 r/w 34 I.P.C. Accused Nos.1 and 2 were sentenced to undergo imprisonment for a period of one year for the offence u/s 419 r/w 34 I.P.C, one year for the offence u/s 471 r/w 34 I.P.C and for a period of two years for the offence u/s 468 r/w 34 IPC and to pay a fine of Rs.500/- each totalling to Rs.1,000/-.

In default of payment of fine amount, they shall undergo simple imprisonment for (6) months. All the sentences shall run concurrently. The remand period, if any, undergone by the accused shall be given set off u/s 428 Cr.P.C.

6. Aggrieved by the conviction and sentence passed by the trial Court, accused Nos.1 and 2 preferred Criminal Appeal No.12 of 2006 before the VI Additional District and Sessions Judge, Ranga Reddy District at Vikarabad (Fast Track Court). The Appellate Court, after considering the oral and documentary evidence on record, confirmed the conviction and sentence of the trial Court and dismissed the appeal.

7. Being aggrieved by the judgment dated 23.03.2007 of the Appellate Court passed in Criminal Appeal No.12 of 2006, accused Nos.1 & 2 preferred the present revision case.

8. Learned counsel appearing for the revision petitioners/ accused Nos.1 & 2 argued that the prosecution intentionally not examined LW.2, who was an invigilator when petitioner/ A-1 wrote the examination. PWs.1 & 3 are not the eye witnesses and they have not seen A-1 writing the examination by forging the hall ticket of A2. It is also argued that both the Courts have not considered the inconsistent evidence of PWs.1 to 8 while convicting the petitioners and gave opinion basing on the evidence of hand writing expert, who was examined as PW.8, and the evidence of PW.8 is not substantial piece of evidence to convict the petitioners. Further, the prosecution

failed to prove the seizure of a note book containing handwriting of A1. It is also argued that during the pendency of the case, A1 died and A2 was already undergone judicial custody for 25 days, now working as a courier boy. Therefore, lenient view may be taken and give set off for the period already undergone and also argued that this Court has ample power to extend the benefit under the provisions of Section 360 Cr.P.C and finally prayed to allow the revision petition.

9. On the other hand, the learned Public Prosecutor argued that there is no evidence to disprove the signatures on the hall tickets and with a naked eye the photographs in both the hall tickets issued in the name of Sreekanth i.e., A2 are different. Non-examination of LW.2 is not fatal to the prosecution as the evidence of PWs.1 to 3 coupled with the evidence of handwriting expert—PW8 is sufficient to proof the guilt of the accused beyond reasonable doubt. It is also argued that no lenient view can be taken in this case, as the 1st petitioner forged the signature of the Principal and affixed his photograph on the hall ticket and wrote the examination on behalf of 2nd petitioner/ A2. Thus, the petitioners/ accused cheated the authorities and the trial Court, after going through the entire record, rightly convicted them, and the same was confirmed by the appellate Court. Therefore, the findings of both the Courts below need no interference of this Court and prayed to dismiss the petition.

10. Now, the point for determination is --

Whether the prosecution could bring home the guilt of the accused for the offences punishable under Sections 417, 419, 465, 468 and 471 read with 34 I.P.C, with which they were charged?

11. **POINT:**

A perusal of the evidence of PWs.1 and 2 shows that on

31.03.2001 PW.1 was posted as Chief Superintendent of Intermediate Public Examinations at Government Junior College, Parigi, PW.2 was posted as invigilator in the same college and LW.2 was posted to verify the hall tickets of all the candidates in the said hall. On 31.03.2001, there was examination of Telugu 2nd paper for Intermediate 2nd year students and the 1st petitioner-A1, who was writing the examination, signed on the answer sheet and was having counter foil of hall tickets. During verification of the hall tickets when LW.2, found that the photograph on the hall ticket is not tallying with that of A1, he took A1 along with answer sheet to PW.1. PW.1 also stated that by the time of verification of hall tickets A1 has written the examination for two hours and thereafter, he was brought before him, and A1 admitted that he was writing the examination on behalf of the A2. PW.1 lodged a complaint with the police and the same was registered as Crime No.34/2001 by the Police, Parigi Police Station. In the cross examination of PW.1 nothing has been elicited to disprove his evidence. PW.1 admitted that he has not seen A-1 writing the examination. Further, it is not the case of the prosecution that PW.1 was also posted in the room where A1 wrote the examination on that day. When LW2 noticed that A1 was writing the examination on behalf of A2, he took A1 to PW1 and in his presence A1 confessed that he was writing the examination on behalf of A2. Admittedly, PWs.1 and 2 are the direct witnesses and they do not have any grievance against the petitioners herein and further, it is not the case of the 1st petitioner that he has not written the examination on behalf of the 2nd petitioner and he failed to explain how the hall tickets were changed.

12. A perusal of evidence of PW.1 shows that PW.2 and himself were appointed as invigilators on that day and LW.2 was also there. PW.1 stated that LW.2 has taken the 1st petitioner to him and later on

he came to know that the 1st petitioner wrote the examination on behalf of the 2nd petitioner.

13. Learned counsel for the petitioners argued that non-examination of LW.2 is fatal to the prosecution case. Admittedly, PWs.2 and 3 are the eye witnesses, who worked as invigilators in the hall where A1 wrote the examination on behalf of A2. Therefore, non-examining the LW.2 is not fatal in the presence of the evidence of PWs.1 to 3.

14. The prosecution by producing the evidence of PWs.4 to 6, who are the punch witnesses to the confession panchanama and the evidence of PW.8, categorically stated that as per Ex.P9-report the signatures on the hall ticket, which was with the possession of the 1st petitioner is not of the principal of the college. Likewise, the trial Court rightly held that by the naked eye it can be seen that the hall ticket fixed with the photograph of A1 on behalf of A2, who has written the examination on that day.

15. Therefore, the appellate Court as well as the trial Court rightly held that both the accused committed the offence for which they were charged and imposed the punishment. The petitioner has not made out any case to interfere with the findings of both the Courts below, as they rightly appreciated the oral evidence produced by prosecution. In these circumstances, the revision petition is to be dismissed confirming the judgment of the appellate Court in CrI.A. No.12 of 2006 dated 23.03.2007.

16. The counsel for the petitioners argued that the 1st petitioner died and the death certificate already filed. The 2nd petitioner is working as a Courier boy and he has already undergone 25 days in the judicial

custody and that period may be given set off for reducing the punishment, for which he was convicted.

17. Considering the facts and circumstances of the case, I am of the view that a lenient view shall be taken in favour of the 2nd petitioner by reducing the sentence of imprisonment to one month. Therefore, I am inclined to dispose of the revision as follows:

The conviction recorded against the revision petitioner/A.2 by the Judicial Magistrate of I Class, Pargi, Ranga Reddy District in C.C.No.22 of 2002 as confirmed by VI Additional District & Sessions Judge, Ranga Reddy District at Vikarabad in Crl.A.No.12 of 2006 is hereby confirmed. But, the sentence of two years Rigorous Imprisonment imposed by the trial Court is hereby modified and reduced to one month. The sentence of fine is not interfered with. The period of imprisonment already suffered by the revision petitioner/A.2 is directed to be given set off since revision petitioner/A1 died the revision against him is abated.

18. Accordingly, the Criminal Revision Case is disposed of.

19. Miscellaneous petitions pending, if any, in this Criminal Revision Case shall stand closed.

ANIS, J

Date:12.02.2015

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HON'BLE SMT JUSTICE ANIS

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