

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Crl. Appeal No.S-1507-SB of 2005(O&M)

Date of Decision: 23.03.2015

Simarjit Kaur

.. Appellant

Vs.

State of Punjab

.. Respondent

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

**Argued by:- Mr. S.C. Chhabra, Advocate
for the appellant.**

Mr. K.S. Aulakh, AAG Punjab.

ANITA CHAUDHRY, J.

Through the instant appeal, appellant Simarjit Kaur has challenged the judgment of conviction dated 24.08.2005 and order dated 25.05.2005 passed by Special Moga, sentencing her to undergo substantive sentence of four years rigorous imprisonment for committing offence punishable under Sections 465, 467, 468 and 471 read with Sections 467 and 468 IPC and under Section 13(2) of the Prevention of Corruption Act, 1988 (for brevity, 'the Act') and to pay a sum of Rs.19000/- as fine under the aforesaid heads.

The appellant and her father Mukhtiar Singh were tried for offences under Sections 465, 467, 468, 471 and 120-B IPC and under Sections 7 and 13(2) of the Act. Mukhtiar Singh had died during pendency of the trial and the proceedings against him had abated. The allegations were that, both the accused in conspiracy with each other forged and fabricated the Scheduled

Caste Certificate (Ex.PD) and on the basis thereof appellant Simranjit Kaur and in a fraudulent manner managed to get employment of a Maths Teacher, which was exclusively meant for a candidate from the Scheduled Castes.

During trial, the prosecution examined nine witnesses and tendered various documents to show that the appellant belonged to the general category and had forged and fabricated the reserve category certificate and had secured the employment.

The appellant did not dispute the factum of getting the employment on the basis of certificate Ex.PD, but her only stand was that she belonged to Sanhal caste which has been declared scheduled caste by the Punjab Government.

The evidence led by the appellant was disbelieved. The trial Court found that the certificate Ex.PD was forged by the appellant and she had cheated to obtain the job and was held guilty under the aforesaid Sections. She was acquitted of the charges under Section 120-B IPC and 7 of the Act.

Dis-satisfied with her conviction and sentence, the appellant has filed the present appeal.

Learned counsel for the appellant has not assailed the conviction of the appellant so far as offence under Sections 465, 467, 468 and 471 IPC are concerned. His contention is that the conviction and sentence awarded to the appellant under Section 13(2) read with Section 13(1) of the Act has wrongly been recorded. According to learned counsel, the certificate was forged

and on the basis thereof, employment was obtained. At the time of commission of offence, the appellant was not a government servant and the provisions of the Act have been invoked wrongly.

There is force in this contention. A perusal of the provisions make it abundantly clear that the person accused must be a government servant. The acts of omission and commission to secure the employment, which are not disputed, were done prior to procuring the government job. Therefore, the conviction and sentence of the appellant under Section 13(1) or 13(2) of the Act is not sustainable and the same is set aside.

Learned counsel for the appellant has raised plea of clemency in respect of offences under Sections 465, 467, 468 and 471 IPC under which she has been held guilty. It has been contended that the services of the appellant were terminated after registration of the FIR and the appellant though highly educated, had failed to get any job after this case. It has further been contended that the appellant was less than 17 years of age when her father procured the certificate and now she is about 41 years of age and has a seven year old daughter. It was urged that the case pertains to the year 2003 and the appellant is undergoing agony of criminal proceedings. It has also been pointed out that the appellant has remained in jail for about two months in this case. A prayer has been made for releasing the appellant on probation of good conduct. Reliance had been placed on **Gulzari Lal Meena Vs. The State of Haryana, Recent Criminal Cases 1999(1) 288, Bhausaheb Kalu Patil Vs. The State of Maharashtra AIR 1981 SC 80, Shaikh Noor**

Mohamad Shaikh Fazal Vs. The State of Maharashtra AIR 1981 SC 297, Mani Singh Vs. State of Bihar 2002(3) RCR (Crl.) 139 and decisions of this Court in **Ajit Singh Vs. State of Punjab, Crl. Revision No. 569 of 2002, decided on 05.03.2009** and **Sher Singh & Ors. Vs. State of Punjab, Crl. Revision No. 579 of 1990 decided on 4.12.2002.**

It is not in dispute that the appellant was thrown out of service after the registration of the case. She is undergoing the agony of criminal proceedings for the last about twelve years. Taking into consideration the peculiar facts and circumstances of the case, it is a fit case to grant benefit of probation. Therefore, the conviction of the appellant under Sections 465, 467, 468 and 471 IPC is maintained. Her conviction from substantive one is converted to probation. The appellant is directed to be released on probation of good conduct under Section 4(1) of the Probation of Offenders' Act, 1958 for a period of two years subject to her furnishing personal and surety bonds in the sum of Rs.20,000/- within a fortnight to the satisfaction of the trial Court. The appellant shall undertake to keep peace and good behaviour during the aforesaid period of probation and shall appear before the trial Court as and when called upon to undergo the remaining sentence during the said period in case of violation of any condition. On the failure to furnish the bonds, the appeal shall be deemed to be dismissed. The trial Court shall send intimation in this regard to the Court of Chief Judicial Magistrate concerned, who shall take steps to send the appellant to prison to serve the

unexpired period of her sentence. The petitioner is directed to deposit Rs.25000/-, apart from the fine amount, which shall be treated as cost of proceedings.

With the above modifications, the instant appeal petition stands disposed of.

March 23, 2015
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(ANITA CHAUDHRY)
JUDGE