

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Reserved on: 09th February, 2015
Judgment Pronounced on: 05th March, 2015

CRL.REV.P. 115/2007

VINOD KUMAR

..... Petitioner

Through: Mr. Tanmaya Mehta, Advocate

versus

STATE

..... Respondent

Through: Mr. Pramod Saxena, APP for State

CORAM:
HON'BLE MR. JUSTICE P.S.TEJI

P.S.TEJI, J.

1. Aggrieved by the judgment of conviction dated 15.01.2004 and order on sentence dated 17.01.2004 passed by the learned Metropolitan Magistrate, awarding the sentence to the petitioner to undergo rigorous imprisonment for a period of two years and fine of Rs.2,000/- under Section 420 IPC, in default of payment of fine to further undergo simple imprisonment for a period of six months; to undergo rigorous imprisonment for a period of one year under Section 419 IPC; to undergo rigorous imprisonment for a period of two years and fine of Rs.3,000/- under Section 468 IPC, in default

to further undergo simple imprisonment for a period of six months; to undergo rigorous imprisonment for a period of one year under Section 471 IPC and upholding the same by the learned Additional Sessions Judge vide judgment dated 20.02.2007, the present revision petition has been filed by the petitioner. However, the learned Additional Sessions Judge modified the sentence by awarding three months' rigorous imprisonment and a fine of Rs. 5,000/- for the offence under Section 420 IPC and also three months' rigorous imprisonment and a fine of Rs.5,000/- for the offence under Section 471 IPC, in default to undergo simple imprisonment for one month.

2. Factual matrix, as emerges from the record, is that on 29.10.1992, a report was lodged by Inspector Pratap Singh (Security) posted at E-Block at PS Tuglak Road that arms and ammunitions used to be issued from E-Block Security to the police personnel for permanent/temporary use and were required to be deposited on the same day and the entry to be made in the Issue Register. It was alleged that on 30.08.1992, one pistol bearing No.3273, DP No. 181, AN was issued to Ct. Virender Kumar who was posted at the residence of Ms. Rekha Malhotra at 68, Lodhi Estate, New Delhi for temporary use, who did not deposit it on the same day. An inquiry was conducted and it was revealed that no constable as such was posted at E-Block Security Line. The information was given to senior officials who ordered for conducting an inquiry. On inquiry, it was found that the petitioner Vinod Kumar had given a Casual

Leave application which was sanctioned on 14.10.1992 and the handwriting on the said application was verified with the request letter dated 30.08.1992, against which the pistol was issued. The petitioner was interrogated who disclosed that he had got issued the pistol and 6 live cartridges on 30.08.1992 at 7:30 a.m. for 68, Lodhi Estate in the name of Constable Virender Kumar by making false slip and signed on the Register. An FIR of the case was registered. The petitioner got recovered the pistol and 3 live cartridges from the house of co-accused Constable Girender Kumar. Constable Girender Kumar was also arrested. Specimen handwriting and signatures of both the Constables were obtained and sent to CFSL for obtaining expert opinion. The CFSL opined that Constable Vinod Kumar had signed as Virender and obtained the arms and ammunitions in the name of Constable Virender.

3. On completion of investigation, the accused persons were sent for trial for the offence under Sections 420/468/471/411/409 IPC read with Sections 25/54/59 of the Arms Act.
4. After complying with the requirements contemplated under Section 207 Cr.P.C., the learned MM framed charge under Sections 419/420/468/478 IPC against the petitioner, whereas co-accused Girender Kumar was charged under Section 424 IPC. Both the accused pleaded not guilty and claimed trial.
5. To prove its case, the prosecution examined 8 witnesses. After conclusion of prosecution evidence, the statements of the accused

persons were recorded under Section 313 Cr.P.C. in which they had claimed innocence. They did not opt to lead any evidence in their defence. The learned Metropolitan Magistrate vide judgment dated 15.01.2004 held the petitioner guilty for the offence punishable under Sections 419/420/468/471 IPC, whereas co-accused was held guilty under Section 424 IPC and convicted them for the said offences. The order on sentence was passed on 17.01.2004.

6. Thereafter, the petitioner filed an appeal bearing Criminal Appeal No.73/2004. The learned Additional Sessions Judge vide judgment dated 20.02.2007, modified the sentence of imprisonment by awarding three months' rigorous imprisonment and a fine of Rs. 5,000/- for the offence under Section 420 IPC and also three months' rigorous imprisonment and a fine of Rs.5,000/- for the offence under Section 471 IPC, in default to undergo simple imprisonment for one month and acquitted the petitioner for the remaining offences.
7. Feeling aggrieved by the same, the petitioner has preferred the present revision petition to set aside the judgments rendered by the Courts below and claiming acquittal.
8. At the outset, learned counsel for the petitioner has argued that PW2 ASI Ram Chander and PW5 HC Rajpal Singh did not say with certainty that the pistol and cartridges were issued to the petitioner. The stand of the prosecution is contrary with regard to issuance of arms as in the departmental inquiry, it was alleged that

Ct. Shiv Kumar issued the pistol whereas during trial it was alleged that HC Rajpal Singh (PW5) issued the arms.

9. The argument of the learned counsel for the petitioner is that the stand of the prosecution is contrary inasmuch as in the departmental inquiry witness Ct. Shiv Kumar stated that he issued the pistol whereas during trial witness HC Rajpal Singh (PW5) was examined who stated that he issued the arms. This contention of the petitioner is not sustainable in view of the fact that the departmental proceedings were not produced on the record. The prosecution has not produced any such departmental proceedings on the record nor the petitioner stated so in his statement under Section 313 Cr.P.C. The petitioner was having opportunity to examine the witnesses in his defence evidence to substantiate this plea, but he chose not to examine any witness in his defence to prove the plea that the stand of the prosecution was contrary with regard to issuance of arms.
10. The next argument advanced by the learned counsel for the petitioner is that the hand writing expert did not give any opinion as there was no specimen writing or admitted signatures of ASI Ram Chander. The opinion was given on the basis of written slip by the petitioner.
11. The register of the Security Line shows that on 30.08.1992 vide entry at serial no.34, pistol bearing No.T3273 and six live cartridges were issued to Ct. Virender Kumar. PW2 retired ASI Ram Chander had stated that on 30.08.1992, he was posted as Duty

Officer in Security Line 'E' Block; on that day, he did not issue any pistol to the petitioner Vinod Kumar; no slip was issued for weapon; investigating officer of the case obtained his specimen signatures on Ex.PW2/A to Ex.PW2/C; petitioner Vinod Kumar got issued a pistol from E Block Security Line by forging his signatures.

12. Document Ex.PW8/A is the leave application of the petitioner from which it was revealed that he was the same person who prepared the slip in the name of Ct. Virender Kumar and got issued pistol and cartridges while signing as Virender Kumar. The specimen signatures and handwriting of the petitioner were obtained. As per report of the CFSL expert, it was duly established that the petitioner had signed as Ct. Virender and got issued the arms and ammunition in the name of Ct. Virender. Thus, it was duly established that the petitioner had committed the cheating by impersonation as he got issued the arms and ammunition, which were later on recovered from the house of his co-accused.
13. Section 420 IPC deals with cheating and dishonestly inducing delivery of property, whereas Section 419 IPC deals with cheating by personation. The offence committed by the petitioner falls within the ambit of Section 419 IPC as it has duly been established that he committed cheating by getting issued arms and ammunition by way of impersonation and not for committing cheating as defined in Section 420 IPC.

14. Further argument advanced by the learned counsel for the petitioner is that the learned Additional Sessions Judge has wrongly convicted the petitioner under Section 471 IPC as the forgery was not proved and he was acquitted under Section 468 IPC.
15. It was alleged against the petitioner that he forged the signature of ASI Ram Chander on the issuance slip and used the said slip as genuine in obtaining the pistol and cartridges. The report of the handwriting expert Dr. V.K. Khanna (PW8) shows that he did not express his opinion regarding the authorship of documents Q1 and Q1A. This document was the issuance slip which was allegedly forged by the petitioner. In the absence of opinion of the handwriting expert, it cannot be said that the forgery on the issuance slip was done by the petitioner. When the prosecution has failed to establish that the forgery on the issuance slip was done by the petitioner, there was no question of using the same as genuine. As a result thereof, the conviction of the petitioner under Section 471 IPC is set aside, particularly in the absence of establishment of forgery committed under Section 468 IPC.
16. As per the judgment in case of *Ram Briksh Singh and Others vs. Ambika Yadav and Another (2004) 7 SCC 665* it was observed that the revisional court does not function as a court of appeal and, therefore, cannot re-appreciate the evidence. Sections 397 to 401 of the Code are group of sections conferring higher and superior courts a sort of supervisory jurisdiction. These powers are required to be exercised sparingly. The jurisdiction can be invoked to

correct the wrong appreciation of evidence. Though the High Court is not required to act as a court of appeal but at the same time, it is the duty of the court to correct manifest illegality resulting in gross miscarriage of justice. The High Court is not required to interfere in the concurrent finding of facts. *This Court is of the considered opinion that the present case is a fit case where the revisional jurisdiction is required to be exercised regarding conviction of the petitioner for cheating and using the forged documents as genuine, particularly in the absence of establishment of the cheating and using of the forged documents as genuine.*

17. ***In view of discussion made above, the conviction and sentence of the petitioner under Section 420 and 471 IPC is set aside.***
18. On the basis of the evidence, it has been established that the petitioner was found guilty for the commission of offence of cheating by way of personation and the trial Court had rightly reached to the conclusion regarding commission of offence of cheating by way of personation. ***Accordingly, the conviction of the petitioner under Section 419 IPC is hereby upheld.***
19. The learned counsel for the petitioner has submitted that the report of the present case was lodged on 29.10.1992; charge sheet was filed on 27.10.1993; judgment of conviction was passed by learned MM on 15.01.2004; order on sentence was passed on 17.01.2004; learned Additional Sessions Judge passed the judgment on 20.02.2007; presently we are in the year 2015; petitioner has

suffered the agony of the proceedings for about 22 years and prayed for taking a lenient view on the quantum of sentence.

20. The learned MM in the present case convicted and sentenced the petitioner for the period of one year rigorous imprisonment under Section 419 IPC. The sentence provided under Section 419 IPC is the imprisonment upto three years or fine or both. The petitioner is stated to have suffered undergone period of 12 days. The prosecution started in the present case in October, 1992. This Court is of the considered opinion that it would not serve any purpose to send the petitioner behind the bar. So, the sentence of imprisonment is modified to the period already undergone by the petitioner and to pay the fine of Rs.20,000/- for offence under Section 419 IPC, in default of payment of fine, the petitioner shall undergo simple imprisonment for four months.
21. The petitioner shall appear before the Chief Metropolitan Magistrate (New Delhi) within the period of one month from the date of order to pay the fine, failing to which surrender to serve the sentence in default of payment of fine.
22. The present revision petition is disposed of accordingly. File of the trial court be sent back.

P.S.TEJI, J.

March 05, 2015

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