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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.REV.P. 206/2015 & CrI.M.B.3239/2015**

Date of decision: 02.07.2015

VIRENDER

..... Petitioner

Through Adv. (Appearance not given)

versus

STATE

..... Respondent

Through Mr. Lovkesh Sawhney, APP
SI R.S. Tyagi PS Saket.

CORAM:

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ORDER

% **02.07.2015**

ASHUTOSH KUMAR, J. (ORAL)

1. The petitioner assails the judgment and order of conviction of the Trial Court in connection with FIR no. 352/2012 (PS. Saket) whereby he was convicted for the offences under section 468 IPC and was sentenced to undergo Rigorous Imprisonment for a period of seven years.

2. The aforementioned judgment and order of conviction and sentence, was challenged by the petitioner in criminal appeal no. 19/2014 before the ASJ, Saket Distt. Courts, New Delhi. The Appellate Court vide its judgment dated 17.11.2014, differing with the Trial Court judgment, convicted the petitioner under section 474 IPC and sentenced him to undergo RI for 3 years and a fine of Rupees

10000/-, in default of payment of fine the petitioner was directed to suffer SI for 3 months.

3. The aforesaid appellate order is also under challenge.

4. The petitioner was charged under section 120B/468/471/474 IPC. The allegation against him was of entering into a criminal conspiracy with another under trial prisoner for preparing a forged permission of a judicial officer namely Anuj Agrawal, Metropolitan Magistrate, for using inside jail premises, prohibited articles namely, sport shoes, leather belt, wrist watch etc.

5. Subhash Batra, Assistant Superintendent, Distt Jail Rohini, (PW2) deposed before the Trial Court that on 22.11.2012, the petitioner, a jail inmate, showed him the original application seeking permission to use prohibited articles like sport shoes etc. The application bore the endorsement by way of signature and stamp of Anuj Agrawal (PW1), Metropolitan Magistrate, On suspicion about the genuineness of the document, enquiry was made. Finding such endorsement and stamp of a judicial officer forged, FIR was registered against the Petitioner.

6. During Trial, Anuj Agrawal, MM (PW1) deposed that he had never made any endorsement or had signed any such application. one Anurag Sharma Assistant Director (documents) FSL, Rohini deposed that he had received 10 sheets in the laboratory consisting of disputed writing marked Q1 - Q3 in the document (Ex. PW1/A) as well as the specimen writing and signature of the petitioner marked S1-S9 upon documents exhibited as Ex.PW5/A1 to Ex. PW5/A9. After careful

examination of the aforesaid documents, he came to the conclusion that the person who wrote the enclosed writings and signatures (stamped and marked S1-S3) also wrote the enclosed writings and signature similarly stamped and marked Q1.

7. The application in question was divided in 3 segments. Q1 portion was in the handwriting of the petitioner.

8. However, with respect to endorsement and order made by the court, marked as Q2 and Q3 respectively, no positive opinion could be given by aforesaid Anurag Sharma. He has categorically stated that it was not possible to express any opinion in the absence of standard signature of the real authorized signatory.

9. The Trial Court appears to have convicted the Petitioner for the offence under section 468 IPC on the premise that the writing on the application over which the endorsement of the judicial officer was made, was of the Petitioner.

10. The Appellate Court found such finding of the Trial Court to be fallacious, as, who forged the signature and stamp of the court could not be established. Section 468 IPC provides for punishment for forgery.

“Section 468 IPC: Forgery for purpose of cheating.—
Whoever commits forgery, intending that the [document or electronic record forged] shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

11. The Appellate Court therefore rightly, held that no offence under Section 468 IPC was made out against the petitioner.

12. However, taking resort to provisions of section 106 of the Indian Evidence Act, the Appellate Court convicted the appellant under Section 474 of the IPC as the petitioner was found to be in possession of a forged document. Absence of any explanation about such possession of any forged document brought the petitioner within the mischief of sec. 474 of the IPC.

“Section 474 IPC: Having possession of document described in Section 466 or 467, knowing it to be forged and intending to use it as genuine.—[Whoever has in his possession any document or electronic record, knowing the same to be forged and intending that the same shall fraudulently or dishonestly be used as genuine, shall, if the document or electronic record is one of the description mentioned in section 466 of this Code], be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; and if the document is one of the description mentioned in section 467, shall be punished with [imprisonment for life], or with imprisonment of either description, for a term which may extend to seven years, and shall also be liable to fine.”

13. Taking the totality of the circumstances, including the young age and the criminal proclivity of the Petitioner, the Trial Court declined the benefit of probation and sentenced him to undergo RI for 3 years, fine of Rupees 10,000/- and in default of payment of fine SI for 3 months.

14. The judgment of the Appellate Court suffers from no impropriety or illegality so as to warrant any interference.

15. The conviction of the petitioner by the Appellate Court under Section 474 IPC is upheld.

16. The petitioner has remained in jail for more than 2 and a half years.

17. This court is of the opinion that the sentence imposed by the Appellate Court be modified to the extent of the period of custody already undergone by the petitioner, which would serve the ends of justice.

18. The aforesaid modification of the sentence has been made keeping in mind the submission of the Petitioner that he is the sole earning member of the family and has to look after his ailing father.

19. The revision petition is disposed of accordingly. No order need be passed in CRL.M.B.3239/2015 as it is rendered infructuous.

20. The petitioner be released from jail forthwith, if not required in any other case.

21. Copy of this order be sent to the superintendent of the concerned jail for information and compliance.

ASHUTOSH KUMAR, J

JULY 02, 2015/ab