

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 432 of 2003**

Gopal Dewangan, S/o Ramadhar, Aged about 22 years, R/o Gopal Kirana Stores, Gayanagar, District Durg, Chhattisgarh

---- Applicant

Versus

The State of Chhattisgarh through P.S. Chhawani, Bhilai, District Durg, Chhattisgarh

---- Respondent

For Petitioner	:	Shri Maneesh Sharma, Advocate.
For Respondent/State	:	Ms. Madhunisha Singh, Panel Lawyer

Hon'ble Shri Deepak Gupta, Chief Justice

C A V Order**24/06/2016**

1. This revision petition is against the judgment dated 02.09.2003 passed in Criminal Appeal No. 121 of 2003 by the Special Judge, Durg, whereby he dismissed the appeal filed by the petitioner and upheld the judgment dated 27.02.2003 of the Chief Judicial Magistrate, Durg in Criminal Case No. 5435 of 1992 (State of Chhattisgarh v. Gopal Dewangan) whereby the learned Trial Court convicted the accused of having committed offences punishable under Sections 420, 471 and 474 of the Indian Penal Code (hereinafter called 'the IPC') and sentenced him to undergo rigorous imprisonment for one year alongwith fine of Rs. 200/- for each of the offences. The sentences were ordered to be run concurrently.

2. Briefly stated, the prosecution case was that petitioner Gopal Dewangan did not pass Class X examination in first division, however, in the year 1991, he obtained admission in the Industrial Training Institute, Bhilai

(hereinafter called 'the ITI') by producing a forged certificate of Class X in which he was shown to have passed Class X in first division. Later, the authorities of the ITI sent his certificate alongwith many other's for verification to the Education Board when it was found that the marks reflected in the certificate produced before the ITI were not correct and therefore it was apparent that the said certificate was forged. On these allegations, the petitioner was charged with offence of forgery, using a false document to get admission and also for having committed an offence of cheating. After the trial, the petitioner was held guilty and convicted and sentenced as aforesaid. His appeal was also dismissed and hence the instant revision petition.

3. The main grounds raised by Shri Maneesh Sharma, learned counsel for the petitioner are that the prosecution has miserably failed to prove that the document i.e. mark-sheet in question was forged and the petitioner knew that the document was forged when he submitted it. Therefore, it is submitted that both the judgments of the Court below are illegal and liable to be set aside.

4. Shri Maneesh Sharma, learned counsel for the petitioner has relied upon judgments of the Apex Court in *Chatt Ram v. State of Haryana (1980) 1 SCC 460* and *Guru Bipin Singh v. Chongtham Manihar Singh & Another (1996) 11 SCC 622*.

5. As far as *Guru Bipin Singh (supra)* is concerned, it has no relevance to the facts of the present case. In that case, the Apex Court held that even on admitted facts no case of forgery was made out because there was no allegation that accused himself had written the manuscript which was stated to be forged. In that context, the Apex Court held that if offence of forgery is not proved, then charge of cheating cannot stand.

6. In *Chatt Ram (supra)*, the appellant before the Apex Court was prosecuted jointly with Joginder Lal and Badri Nath for offences under Sections 467 and 471 IPC. Badri Nath was acquitted by the Additional Sessions Judge but appellant Chatt Ram and Joingnder Lal were convicted.

The prosecution story was that Joginder Lal was a Sub-Agent of Haryana Lotteries. He had borrowed a sum of Rs. 3000/- from Chatt Ram and had not repaid the loan. Joginder Lal had in his possession some tickets of Haryana State Lotteries relating to the third draw because he was Sub-Agent. The third draw of the lottery took place on March 29, 1969 and the results were declared on the same day. Since Joginder Lal in his capacity as Sub-Agent was in possession of two blank (numberless tickets), he got No. X-78410 i.e. the number of winning ticket, printed on one of the blank tickets and this money was to be shared by the three accused. Joginder Lal and Chatt Ram approached the necessary authorities for the prize money and produced the ticket. Joginder Lal claimed to have sold the ticket to Chatt Ram and therefore, Joginder Lal was directed to produce counter-foil for claiming the seller's prize. He however never produced the counter-foil. Therefore, neither Joginder Lal nor Chatt Ram was given money. In the meantime, the person in whose favour the actual ticket No. X-78410 was issued also applied for the prize money and after verification it was found that the ticket produced by Joginder Lal and Chatt Ram was a forged ticket and therefore, they alongwith Badrinath were charged for commission of the offences as aforesaid. Badrinath was acquitted however, Chatt Ram and Joginder Lal were convicted. The appeals filed by both the accused were dismissed by the High Court. Joginder Lal did not challenge his conviction and only Chatt Ram came before the Apex Court and one of the main grounds raised is that Chatt Ram has not forged the ticket and he was not aware that the ticket was forged one. It was in this context the Apex Court held as follows:

“24. Assuming *arguendo* that Joginder Singh had the necessary skill, scientific knowledge and experience of an 'expert' and his opinion was admissible under Section 45, then also it would be highly unsafe to condemn Ex. P3 on his opinion alone, as a forged document. The dissimilarities between Ex. P1 and Ex. P3 on the basis of which he has characterised the number on Ex. P3 as a forged number, may be natural variations. His opinion does not

indubitably exclude the possibility of the number in question on Ex. P3 having been printed in the ordinary course on one of the eight tutilo machines of the Thompson Press. In cross-examination, he did not rule out this possibility. His opinion that the questioned number on Ex. P3 had not been printed with the same ink with which the numbers on the other lottery tickets were printed in their press cannot pass muster. The only reason for this difference in the printing ink given by him, is that the ink used in printing the questioned number on Ex. P3 is less dense or lighter in shade than that of Ex. P1. This variation in density of ink may be due to an innocuous cause. The witness never examined the ink chemically. This circumstance pointed out by the witness was too precarious to be a safe basis for a finding of forgery.

25. Even if it is assumed for the sake of argument that the number on Ex. P3 had been forged, that by itself would not show that Chatt Ram, appellant forged it or participated in its forgery. Nor would the mere fact that Chatt Ram presented this ticket before the officers concerned and claimed the special prize on its basis, necessarily stamp him with the knowledge or belief of its forged character.”

7. Relying upon the aforesaid judgments, it is submitted that first of all it is not proved that the mark-sheet was forged and secondly it is not proved that petitioner Gopal Dewangan had knowledge that the document was forged. In this context, it is necessary to refer only the statements of two witnesses. PW-1, Ranjana Katakwar, was Principal of the ITI. She had stated that petitioner Gopal Dewangan applied for admission in her institution and he has produced a certificate showing that he had passed Class X in first division. The mark-sheet which was produced by the petitioner was sent to the Education Board for verification and the report was submitted by the Board that the said mark-sheet Exhibit P-1 was not correct. This was a forged mark-sheet. In cross-examination, she admits that the applicants desirous of taking admission in the ITI has to submit a photocopy of the mark-sheet with the application form and thereafter the original mark-sheet is called for and sometimes, verified also. She denied the suggestion that there are some agents who in connivance with the clerks of the institution get the pupil admitted in the

institution. A suggestion was put to her that the petitioner had not himself submitted the application form, which she denied. She also denied the suggestion that petitioner Gopal Dewangan had not submitted the mark-sheet Exhibit P-1. PW-5, N.M.Chimote was working as Assistant Secretary in the Education Board. According to him, once the Principal of the ITI, Bhilai sent 138 mark-sheets for verification. 135 Mark-sheets were found to be correct and three mark-sheets were found to be incorrect and one of the mark-sheets at serial No. 27 relating to petitioner Gopal Dewangan was found to be false. This witness brought the original tabulation register. He has stated that Gopal Dewangan's roll number was 730970. He has also stated that Gopal Dewangan had obtained 46 marks out of 100 in Hindi (Special), 17 marks out of 50 in English (General), 15 marks out of 50 in Sanskrit (General), in which he also got grace marks, 110 marks out of 150 in Mathematics, 88 marks out of 150 in Science and 71 marks out of 150 in Social Science i.e. total 347 marks out of 650 and was placed in second division. In the mark-sheet sent by the ITI for comparison, the marks shown to be awarded to accused Gopal Dewangan did not tally and were shown to be much higher. In cross-examination, this witness states that Exhibit P-1 was not issued from their office. He however admitted that he is not an expert and could not say anything about the correctness of the seal or signature. He also stated that when the marks are awarded both file and counter-file are maintained from the secret document which is destroyed after the mark-sheets are prepared. A suggestion was put to him that there may be mistake in typing the mark-sheet and it cannot be compared now.

8. Learned counsel for the petitioner urged that the prosecution has failed to prove that the document was forged. According to him, the prosecution has failed to produce the original document from which the marks were copied on to the mark-sheet. He submits that the tabulation register is a secondary piece of evidence. He also submits that a mistake may have occurred at the time

when the original mark-sheet was issued and the petitioner was not aware that there was any forgery.

9. I am not at all in agreement with Shri Maneesh Sharma, learned counsel for the petitioner. In this case, the petitioner has not set up a case that the document which was filed with the ITI was the original document supplied to him. Even the petitioner in his statement under Section 313 CrPC states that he did not supply this mark-sheet. If the petitioner states that he did not supply the mark-sheet (Exhibit P-1) then the question that arises is that which was the original mark-sheet? This is known only to the petitioner and none else. The petitioner has also set up a case that he has paid a sum of Rs. 10,000/- to some agent to get admission and has given the original mark-sheet to the said agent. It is apparently a false case built only to escape the prosecution. It has been stated by PW-1 that the petitioner himself submitted the mark-sheet. A person who applies for admission in the college must be aware of the mark-sheet which she or he is submitting. The petitioner cannot now claim that he has paid illegal gratification to some individual to get admission by back door. Another aspect of the matter is that when the application is filed only photocopy of the mark-sheet is to be supplied and original mark-sheet has to be produced at a later stage. This has to be produced when admission is taken and obviously could have been produced by the petitioner himself.

10. The case of the petitioner is not that he ever got the mark-sheet showing that he had passed Class X getting first division. His case is that he did not produce the mark-sheet (Exhibit P-1). Therefore, he himself is admitting that Exhibit P-1 is false. None else but the petitioner has taken the benefit of this forged mark-sheet and therefore he has been rightly convicted for the offence. No other point was urged by learned counsel for the petitioner.

11. This Court is dealing with this matter in its revisional jurisdiction. Both the Courts below have come to a finding of fact and this finding of fact cannot be said to be perverse or based on no evidence. It cannot be said that the

orders of the Courts below are without jurisdiction. Even otherwise, I have gone through the merits of the case in detail. I find no merit in the revision petition.

12. Accordingly, the revision petition is dismissed.

Sd/-
(Deepak Gupta)
CHIEF JUSTICE