

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Criminal Revision No. 177 of 2015**

Jageshwar Lal Patanwar S/o Chhatram Patanwar, aged about 49 years, R/o village Kukada, PS Ratanpur, at present Qtr. No. 861, Kapilnagar, Sarkanda, PS Sarkanda, District Bilaspur, CG

---- Applicant**Versus**

State of Chhattisgarh through the District Magistrate, Janjgir-Champa, CG

---- Respondent

For Applicant	:	Shri N. K. Chatterjee, Advocate
For Respondent/State	:	Shri Bhaskar Payashi, Panel Lawyer

Hon'ble Shri Justice P. Sam Koshy**Judgment On Board****11.11.2016**

The applicant in the instant case has been convicted for the offence under Sections 468 and 471 of IPC and sentenced to undergo RI for two years and pay fine of Rs.1,000/- for each of the offences with default stipulations vide order dated 25.02.2015 passed by the 2nd Additional Sessions Judge, Janjgir, District Janjgir-Champa in Criminal Appeal No. 69 of 2012.

2. Case of the prosecution relevant for adjudication of the present revision petition in brief is that the applicant was working as a Sub Engineer at the Rural Engineering Services at Janjgir. At the same time, another person namely Mahesh Kumar was also posted as a sub engineer. It is alleged that on 16.09.2005 an order Ex. P-5 was passed by the Govt. of CG ordering PW-1 Mahesh Kumar for repatriation to his parent department i.e. the department of Water Resources. Immediately thereafter another order was passed on 06.10.2005 vide Ex. P-6 from the office of Development

Commissioner, Chhattisgarh, Raipur making the present applicant in-charge of the Sub-division Janjgir. Later on, however, another letter dated 21.10.2005 Ex. P-5A was issued from the Govt. of CG canceling the order of repatriation of PW-1 Mahesh Kumar to his parent department dated 19.09.2005. It is alleged by the prosecution that subsequently the present applicant has fabricated and forged a document dated 29.10.2005 Ex. P1 wherein it was mentioned that Mahesh Kumar has been transferred from the office of Janjgir to Bharatpur, District Korea. The said letter Ex. P-1 was not signed by any officer and had the name of Shri Parasnath Ram, Under Secretary, State of CG, Department of Panchayat and Gramin Vikas under instruction of the Governor.

3. It is said that the applicant objected to the retention of Mahesh Kumar Sharma at Janjgir and produced the said document Ex. P-1 showing him to have been transferred from Janjgir to Korea. However, PW-2 Narayan Das Khatri, the Chief Executive Engineer got the letter dated 29.10.2005 verified from the office of the Secretary, RES. The Secretary after enquiry vide letter dated 18.11.2005 Annexure P-9 clarified that no such order dated 29.10.2005 Ex.P-1 had been issued from his office and it appears to be a forged document.

4. The said document also did not bear the signature of any officer except for the designation that was mentioned. It was found that the said document was a document created by the present applicant produced in the department with an intention of ensuring the removal of PW-1 from the post that he was holding so that the applicant could replace him.

5. An FIR in this regard was lodged and the matter was subjected to investigation. Later on, a case was registered against the applicant and the matter was put to trial before the JMFC, Janjgir in Criminal Case No. 246 of 2011.

6. During the course of trial, the prosecution examined as many as 7 witnesses and the defence examined one witness on their behalf. Finally the trial Court vide its judgment dated 31.03.2012 found the applicant to be guilty of having committed the offence under Section 468 and 471 of IPC and accordingly, convicted him for the said offence and sentenced him as mentioned in paragraph-1 of this judgment.

7. The said judgment of conviction dated 31.03.2012 was subjected to challenge before the 2nd Additional Sessions Judge, Janjgir, District Janjgir-Champa whereby the appeal was registered as Criminal Appeal No.69 of 2012. The appellate Court also after considering the contentions put forth by the applicant and also upon considering the evidence which has been led by the prosecution and the defence reached to the conclusion that the finding of the trial Court is neither erroneous nor contrary to the evidence on record and thereby upheld the conviction of the applicant and dismissed the appeal vide its judgment dated 25.02.2015.

8. It is this judgment which is under challenge in the present revision petition.

9. Counsel for the applicant primarily assails the impugned order on the ground that the prosecution has not been able to prove its case of the applicant fabricating the document nor has it proved as to how the applicant can be implicated for creation of the said document dated 29.10.2005. He submits that another aspect which has not been considered by the two Courts below is that during the period when the said document was received by the department, the applicant was on sanctioned leave with permission to leave the Headquarter on a bereavement in his family. It is contended that the Court below ought to have appreciated the fact that proper investigation of the document dated 29.10.2005 has not been conducted so as to ascertain and implicate the applicant firstly for creating the said document

and secondly for using the same by the applicant. It was further as an alternative prayer made that if this Court is not inclined to interfere with the impugned order of conviction of the applicant, this Court may consider at least for reducing the sentence which has been imposed upon the applicant to the period already undergone by him.

10. State counsel however opposing the appeal submits that it is a case where the prosecution has been able to prove its case beyond all reasonable doubt. According to the State counsel, the prosecution witness particularly PW-2 Narayan Das Khatri, the Executing Engineer and PW-6 Parasnath Ram, the under Secretary of the Rural Engineering Services have categorically deposed before the Court below that no such document dated 29.10.2005 was ever issued by the official from the office of the Secretary, RES department. It was further contended by the State counsel that apart from PW-2 & 6 there are other witnesses i.e. PW-1 Mahesh Kumar Sharma and PW-3 Gyaneshwar Singh- the Clerk in the Department who have also supported the case of the prosecution and corroborated the statement of PW-2 & PW-6. As such, the offence of the applicant of fabricating the document and producing the same in the department stands proved beyond all reasonable doubts. Thus, counsel for the State prayed for dismissal of the present revision petition.

11. Having considered the rival contentions put forth by the counsel appearing on either side and on perusal of the record this Court has no hesitation in reaching to the conclusion on the basis of the statement of PW-2 & PW-6 that the document dated 29.10.2005 Ex.P-1 was not a document issued from the office of Rural Engineering Services Department nor was it an official document issued from any of its office. It was also established from the statement of the prosecution witnesses that the document dated 29.10.2005 was in fact a document which was in the possession of the

present applicant alone and it was the applicant who had produced the same in the office with an intent to ensure the removal of PW-1 from the place he was posted as Sub Engineer.

12. It would be relevant at this juncture to refer to the provisions of Section 106 of the evidence Act. As per the said Section, the person who claims that it is a document which is not prepared by him then the burden of proving would be upon him as to how he came in possession of the said document and as to from where he had received the same. Section 106 of the Evidence Act clearly stipulates that when any fact is especially within the knowledge of any person, the burden of proving is upon him. In the instant case as has been established by the prosecution witnesses it was the present applicant who had for the first time produced Ex. P-1 in the department and therefore he has to prove as to from where he had obtained the said document. The applicant having not done so further strengthens the case of the prosecution and establishes the charge which has been levelled against the applicant.

13. Thus, in the given factual matrix of the case, this Court does not find any infirmity and illegality on the part of the two Courts below in reaching to the conclusion of the applicant being found guilty of having committed the offence under Sections 468 and 471 of IPC. Accordingly, this Court affirms the conviction of the applicant upholding the two orders.

14. However, considering the fact that the document which has been forged by the applicant was with an intention of dislodging PW-1 from his place though the said act on the part of the applicant is an act of forgery but the applicant has already suffered sufficient trauma and agony for the last 11 years and the fact that actually no damage has been caused to the department and it is said at bar by the counsel appearing for the parties that the applicant has already remained in jail for a period of 1 ½ months, this

Court is of the opinion that the sentence imposed upon the applicant seems to be harsh and a lenient approach is required to be taken. Accordingly, the sentence imposed upon the applicant is reduced to the period already undergone by him.

15. At this juncture it would be relevant to mention that the view of this Court for reduction of sentence is based upon the decision of the Supreme Court in the case of **Manilal Girdharilal Shah v. State of Gujarat** reported in **AIR 1979 SC 1343** wherein in somewhat similar circumstances though the sentence by the trial Court was for a period of one year, the same was reduced to the period already undergone by the applicant wherein also the accused had remained in custody for about 2 months.

16. With the said modification in the sentence part of the impugned order, the present Criminal Revision stands dismissed.

**Sd/-
P. Sam Koshy
Judge**