*    **IN THE HIGH COURT OF DELHI AT NEW DELHI**

***Date of Decision: June 03, 2016***

\+    **<u>CRL.A. 600/2015</u>**

RANJEET KUMAR ..... Petitioner

Through: Mr. N.S. Dalal, Mr. P.K. Shisodia and Mr. Mitabh Gosain, Advocates

versus

THE STATE ..... Respondent

Through: Ms. Kusum Dhalla, Additional Public Prosecutor for respondent-State with SI Vinay Kumar, P.S. Dwarka North
Mr. Neeraj Kumar, Advocate with complaint-Pammai Kumar in person

**CORAM:**

**HON'BLE MR. JUSTICE SUNIL GAUR**

**<u>JUDGMENT</u>**
% **(ORAL)**

1. Appellant herein was charge-sheeted for the offence of rape, cheating, etc., and after trial, was convicted by the trial court for the offences under Section 420/467/468/471 of IPC while relying upon testimony of the prosecutrix (PW-1), Vice-Principal Dr. Rajiv Tyagi (PW-4) and other witnesses. Vide impugned judgment of $5^{th}$ March, 2015 and order on sentence of $11^{th}$ March, 2015, appellant has been sentenced to RI for five years with fine for the offence of cheating and to

RI for ten years with fine for the offence under Section 467 of IPC. Sentence of five years with fine has been awarded to appellant for the offence under Section 468 of IPC. For the offence under Section 471 of IPC, he has been sentenced to RI for one year. The aforesaid sentences carry default clause and have been directed to run concurrently.

2. The substratum of the prosecution case, as noted in the impugned judgment, is as under: -

> *"The case of the prosecution is that the prosecutrix namely 'P' (real name withheld in order to conceal the identity) got acquainted with the accused through the matrimonial website "jeevansathi.com" on which both had uploaded their profiles. The accused had shown himself as unmarried in his profile. Both met each other. The accused promised to marry the prosecutrix and thereafter started exploiting her sexually as well as monetarily. Whenever the prosecutrix insisted upon marriage, he avoided by giving various excuses and always bargained for more time. After sometime, the prosecutrix came to know that the accused is already married. She confronted the accused with the same and asked him why did he lie to her and cheat her to which the accused replied that he has not lied as he has filed for divorce from his wife and the divorce case is pending disposal in the Court. Meanwhile, the prosecutrix had purchased H.No.RZ-15A, Suraj Vihar, Kakrola, New Delhi from Dr. Rajiv Tyagi, the Vice Principal of Mount Carmel School on 30.08.11 for a total sale consideration of Rs.9.8 lacs. She had*

*paid a sum of Rs.2.5 lacs to Dr Rajiv Tyagi in cash and Rs.7.3 lacs by way of pay order and Dr. Raiv Tyagi has executed the requisite GPA, Agreement to Sell, Affidavit and possession letter in her favour. On the request of the accused, the prosecutrix had permitted him to reside in the said house in April, 2012 and since then accused had been residing therein.*

*It is further case of prosecution that when the prosecutrix started doubting the intentions of the accused, she asked him to vacate the said house in February, 2013 and to leave her alone. Her minor daughter was studying in Mount Carmel School. On 01.04.2013, when she had gone to the school, she paid a courtesy visit to the Vice Principal Dr. Rajiv Tyagi who told her that the accused had came to him stating that she (prosecutrix) is out of station and the papers of H.No. RZ-15A have got misplaced somewhere and he is urgent need of those papers. Since the accused had been visiting the school frequently alongwith the prosecutrix, Dr. Rajiv Tyagi believed him and agreed to help him and in good faith executed a fresh GPA and Will in favour of the accused regarding the H.No.RZ-15A. The accused also told Dr. Rajiv Tyagi that upon return of prosecutrix from her training course, he would provide him an undertaking duly signed by the prosecutrix in this regard. Upon hearing this from Dr. Rajiv Tyagi the prosecutrix became shocked as no such thing had happened. She met the persons who had stood witnesses to the GPA and Will in favour of the accused who told her* *that the accused had shown them NOC signed by her and copy of report regarding the loss of property documents. They also provided her a copy of the said NOC and NCR which had been given to them by the accused. The NOC was purportedly signed by her but she realized that her signatures have been forged upon the same as she had not signed any such NOC. She also realized that the accused had lodged a false report regarding the loss of property documents as all the original documents of the house were in her custody. When she talked to the accused about the same, he told her that he has become the owner of the house and she cannot cause any harm to him. Feeling deceived and cheated by the accused, the prosecutrix filed a typed complaint before the SHO P.S. Dwarka North on 03.05.13."*

3. While relying upon the testimony of the prosecutrix (PW-1), Dr. Rajiv Tyagi (PW-4) and other witness, trial court has acquitted appellant for the offence of rape, but has proceeded to convict the appellant for the remaining offences. To convict the appellant for the offence of cheating, the finding returned by the trial court speaks for itself. It reads as under: -

*"It is thus established beyond doubt from the evidence on record that the prosecutrix had purchased the property bearing no. RZ-15A from PW-4 on 30.08.11 vide sale documents Ex. PW1/E, Ex. PW1/F, Ex.PW1/G, Ex.PW1/H, Ex.PW1/I and Ex. PW1/J. It is further manifest from the evidence on record that there had been no transactions*

*between the accused and PW-4 regarding the said property in May, 2012 and in fact the accused approached PW-4 in March, 2013 with a request to execute a fresh set of documents in respect of the said property in his name saying that the earlier set of documents executed by PW-4 in the name of prosecutrix have got lost and he is in urgent need of fresh set of documents. The accused had lodged a report Ex. PW3/A in P.s. Parliament Street stating that he has lost his bag in the bus. Though he has not specified in this report as to what kind of documents were in the bag which he has lost but in the affidavit Ex.PW3/B annexed with the report, he has clearly mentioned that the bag contained original property documents pertaining to H.No. RZ-15A, Suraj Vihar, Kakrola, New Delhi and other articles. Pursuant to the said report lodged by the accused, NCR (first information report regarding non cognizable offence) No.1061/13 was registered in P.S. Parliament Street on 06.03.13, copy of which is Ex. PW3/C. The evidence further shows that the accused had shown to PW-4 as well as PW-9 and PW-10 the copy of aforesaid NCR Ex.PW3/C and a copy of NOC Mark A, purportedly executed by prosecutrix declaring that she has no objection if a fresh set of property documents in respect of H.No. RZ-15A is executed by PW-4 in favour of the accused. It is after going through the aforesaid NCR and NOC that PW-4 believed the representation of the accused and executed a fresh set of title documents in respect of H.No.RZ-15A in the* *name of accused to which PW-9 and PW-10 had stood witnesses.*

*The prosecution has further proved that the original documents executed by PW-4 in the name of prosecutrix on 30.08.11 i.e. Ex. PW1/F, Ex.PW1/G, Ex.PW1/H, Ex.PW1/I and Ex.PW1/J were all along in the custody of the prosecutrix and had not been misplaced or lost at all. It has also been established by the prosecution that the prosecutrix had not issued any NOC/Declaration in favour of the accused and the signatures of prosecutrix have been forged by the accused on the NOC Mark A."*

4. To convict the appellant for the offences under Sections 467/468/471 of IPC, the finding returned by the trial court deserves to be noticed. It is as under: -

*"It was argued by Ld. Counsel for the accused that since original NOC is not before this court, no finding can be given to the effect that NOC had been forged merely on the basis of its photocopy which is on record. The argument has been noted only to be rejected. The original NOC is with the accused. He has chosen not to handover the same to the IO and not to produce the same before this court, probably for the reason that he knew it is a forged document. He had shown its copy to PW4, PW9 and PW10. He had handed over its copy to PW10 who gave it to the prosecutrix and the prosecutrix handed over it to the IO who seized it. This copy*

*of NOC 'Mark-A' has been annexed alongwith the Charge Sheet and was identified by the prosecutrix. It has nowhere been asserted by the accused that it has been manipulated by the prosecutrix. Even otherwise also, since the evidence on record shows that the stamp paper on which it is typed was purchased by accused from PW13 which had then remained in his custody and hence there was no occasion for the prosecutrix to manipulate the NOC on the same.*

*Therefore, there remains no doubt the Mark 'A' is the copy of the NOC which had been prepared by the accused on which he forged the signatures of the prosecutrix. Since the said NOC purportedly authorized the accused to get the title documents of property no. RZ-15A executed from PW4 in his name thereby asserting his ownership to the same, the said NOC certainly qualifies as a 'valuable security' as referred to in sections 467 and 468 IPC.*

*In the instant case, the prosecution has been successful in proving that the accused, on showing a forged document i.e. NOC Mark A and a false NCR Ex. PW3/C to PW-4, deceived him by making a false and misleading representation to the effect that he has lost the earlier set of documents executed by PW-4 in the name of the prosecutrix and the prosecutrix has no objection if a fresh set of documents is executed by PW-4 in his name, dishonestly induced PW-4 to prepare a fresh set of title documents in respect of property bearing no.RZ-15A in his own name. Therefore, all the* *essential ingredients of the offence u/s. 420 IPC stand proved and the accused is liable to be convicted for that offence also."*

5. Both the sides have been heard at length and records have been perused. At the final hearing of this appeal, after briefly arguing, learned counsel for appellant fairly states that so far as the conviction of appellant for the offence of cheating is concerned, the same is not being contested. Rightly so, as, after going through the evidence on record, I find that the conviction of the appellant for the offence of cheating is well justified.

6. To assail the conviction of appellant for the offences under Sections 467/468/471 of IPC, learned counsel for appellant rightly contends that unless the so-called forged document i.e. *'No Objection Certificate'* is on record, there cannot be any conviction for the offence of forgery, etc..

7. Learned Additional Public Prosecutor for respondent-State submits that even if the original *'No Objection Certificate'* is not on record, still the conviction of the appellant can be maintained while relying upon the secondary evidence.

8. No doubt, it can be done, but in the instant case, no secondary evidence has been led in respect of the NOC, which is claimed by the prosecution to be forged.

9. In the factual context of this case, the original NOC ought to have been with Dr. Rajiv Tyagi (PW-4). However, on perusal of the evidence of Dr. Rajiv Tyagi (PW-4), it becomes evident that his evidence is

materially lacking regarding the whereabouts of the original *'No Objection Certificate'*. In fact, it ought to have been with Dr. Rajiv Tyagi (PW-4). Be that as it may. Neither there is original *'No Objection Certificate'* on record nor has the secondary evidence been led in respect thereto. Therefore, I am of the considered view that the conviction of the appellant for the offences under Sections 467/468/471 of IPC cannot stand in view of the evidence so led. Consequentially, while maintaining the conviction of the appellant for the offence of cheating, his conviction for the offences under Sections 467/468/471 of IPC is hereby set aside.

10. With the endeavour of both the sides, the pending civil litigation between the parties qua property No.*RZ-15A, Suraj Vihar, Kakrola, New Delhi* has been amicably brought to an end with disposal of two civil suits i.e. one Suit No.506/13 filed by the victim/complainant-Pammai Kumari against the appellant-Ranjeet Kumar herein and other Suit No.20/14 filed by the appellant-Ranjeet Kumar against the victim/complainant-Pammai Kumari, which relate to above-mentioned property in respect of which cheating had taken place. Learned counsel for appellant has placed on record certified copy of the order of 2nd June, 2016 passed in Suit No.20/2014 whereunder appellant-Ranjeet Kumar has withdrawn the said suit for permanent injunction, declaration and cancellation of instruments in respect of property in question filed by him against the victim. Similarly, copy of another order of the same date passed in Suit No.506/2013 has been placed on record, which indicates that appellant has amicably settled the said suit with the victim-herein by handing over peaceful possession of the property in question to the victim.

11. So far as other litigation between the parties is concerned, the same relates to payment by cheques and does not relate to the property in question and so, the parties have chosen to contest the other pending suits for recovery of money. Be that as it may. Since the offence of cheating stands substantially purged, therefore, the case of appellant on the quantum of sentence deserves to be considered leniently.

12. As regards the sentence awarded to appellant for the offence of cheating, it appears to be on the higher side, as during the course of hearing, it was brought to the notice of this Court by learned counsel for appellant that appellant is a Chartered Accountant by profession and is not involved in any other case. Nominal Roll of appellant reveals that no other case is pending against appellant and that out of the sentence of five years, he has already undergone the sentence of 1 ½ years as in July, 2015 and that appellant is a middle aged person. Learned counsel for appellant submits that appellant is in custody and by now, he has undergone sentence of more than 2 years and 3 months. He further submits that the offence of cheating does not carry any minimum sentence and considering the fact that the career of appellant has been ruined, a lenient view deserves to be taken.

13. In the facts and circumstances of this case and in view of the fact that the offence of cheating under Section 420 of IPC does not carry any minimum sentence, it is deemed appropriate to reduce the substantive sentence of appellant to the period already undergone by him while enhancing the fine from ₹50,000/- to ₹1 lac. In default of payment of the enhanced fine of ₹1 lac, appellant shall undergone SI for nine months. If the enhanced fine of ₹ 1 lac is realized from the appellant, then out of it,

a sum of ₹50,000/- be paid to the victim as compensation.

14. This appeal is partly allowed to the extent indicated above. This appeal stands disposed of while placing on record its appreciation for the endeavour made by both the sides in amicably resolving the pending two civil suits pertaining to the property in question.

15. The appeal stands disposed of. Appellant be apprised of this judgment forthwith through the concerned Superintendent of Jail.

**(SUNIL GAUR)**
**JUDGE**

**JUNE 03, 2016**
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