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

+ CRL.REV.P. 824/2016 & CrI. M.A. Nos. 20015-17/2016

SHYAM SINGH Petitioner
Through : Mr. D.K. Sharma, Adv.

versus

THE STATE (NCT OF DELHI) Respondent
Through : Mr. Amit Chadha, APP

CORAM:
HON'BLE MR. JUSTICE A.K. PATHAK

% **ORDER**
22.12.2016

1. Petitioner was convicted by the trial court under Sections 420/120-B of the Indian Penal Code, 1860 ("IPC", for short) and sentenced to a term of imprisonment already undergone by him; besides fine of ₹50,000/- under Section 420 IPC and ₹10,000/- under Section 120-B IPC and in default of payment of fine, to undergo rigorous imprisonment for three months and one month, respectively.
2. Petitioner preferred an appeal before the Additional Sessions Judge, Patiala House Courts, New Delhi, which has been disposed of by the judgment dated 26th August, 2016, which has been impugned in this revision

petition under Section 397 of the Code of Criminal Procedure, 1973 (“the Code”, for short). Appellate Court has concurred with the findings of trial court and confirmed the conviction under Sections 420/120-B IPC. However, sentence in default of payment of fine has been modified from rigorous imprisonment to simple imprisonment.

3. It is clear from the above that two courts have rendered the concurrent findings of facts, on appreciation of evidence, which, in my view cannot be interfered with in a routine manner by the High Court, in exercise of its revisional jurisdiction. High Court has not to scrutinize the evidence on record, and to record a finding on merits as if hearing an appeal. In *State of A.P. vs. Pituhuk Sreeinvanasa Rao*, (2000) 9 SCC 537, Supreme Court held that the exercise of the revisional jurisdiction of the High Court in upsetting concurrent finding of the facts cannot be accepted when it was without any reference, to the evidence on record or to the finding entered by the trial court and appellate court regarding the evidence, in view of the fact that revisional jurisdiction is basically supervisory in nature. In *Amar Chand Agarwala vs. Shanti Bose and Anr.* AIR 1973 SC 799, Supreme Court held that revisional jurisdiction of the High Court under Section 439 of the Code, is to be exercised, only in an exceptional case, when there is a glaring defect

in the procedure or there is a manifest error on a point of law resulting in a flagrant miscarriage of justice. The scope of revisional jurisdiction in matters where the court has to examine the factual findings, and concurrent ones at that, are extremely limited. The High Court can, if it is convinced that the approach of the courts was palpably illegal or led to a manifest failure of justice, intervene under exceptional circumstances.

4. As per the prosecution, FIR was registered on the complaint of office of Sub-Regional Employment Exchange, Government of N.C.T. of Delhi. Sub-Regional Employment Officer alleged in the FIR that Corporation Bank, Karol Bagh, New Delhi had requested to send the names of suitable candidates for filling up six vacancies in the bank. Employment Officer forwarded a list of the suitable candidates to the bank, through communications dated 13th November, 1998, 24th November, 1998 and 27th November, 1998. However, Corporation Bank vide its letter dated 30th November, 1998 informed the Employment Officer that they had already conducted the interview of candidates included in the list of 123 candidates, sent by the Employment Officer, vide covering letter 21st October, 1998. Sub-Regional Employment Officer stated that the letter dated 21st October, 1998 and the list of 123 candidates attached therewith were forged and

fabricated documents, as the same were never sent by the Sub-Regional Employment Officer to the bank. As per the FSL report, handwriting matched with that of the accused Yashwant Singh.

5. Trial court as well as Appellate Court have noted that statements of PW8, PW9, PW10, PW16, PW18, PW20 and PW23 were relevant, in respect of the petitioner. PW8 and PW20 have supported the prosecution case, though PW9, PW10, PW16, PW18 and PW23 had turned hostile. Appellate Court was of the view that statements of PW8 and PW20 were trustworthy and reliable, sufficient enough to prove the guilt of petitioner. Learned counsel for the petitioner argued before the Appellate Court that the statements of PW8 and PW20 suffered from material discrepancies and contradictions. PW8 had stated that money was paid to Shyam Singh in the presence of Shri Nanak Chand Sharma and Shri Uma Shankar; whereas as per PW20, money was paid at his in-laws' house. PW8 deposed that ₹20,000/- was paid on one occasion and thereafter ₹5,000/- each for himself and for PW20; whereas as per the PW20, ₹5,000/- was paid to petitioner once and ₹40,000/- was spent for the job of one person; PW20 said that he and PW8 met petitioner in Safdarjang Hospital. Learned Additional Sessions Judge has held that incident took place in the year 1998; whereas

PW8 was examined in 2010 and PW20 was examined in 2012, that is, after a lapse of 12 and 14 years respectively, from the date of incident, thus, such minor discrepancies were likely to arise, as a person is not expected to remember each minute detail after a lapse of such a long period. Minor discrepancies cannot be given undue emphasis. It has been further noted that PW8 and PW20 were consistent in their statements on the point that Shyam Singh (petitioner) had approached them with the promise of securing employment against payment of consideration and that they had paid consideration to him, on the basis whereof their names were included in the forged list and pursuant thereof they were called for interview. Both PW8 and PW20 have correctly identified the petitioner in Court. Contradictions, as pointed out by the learned counsel, are not material as they pertain to the place, where parties met the accused and paid the money to him. These contradictions were bound to appear as the witnesses were examined after 12 or 14 years from the date of incident. It is the quality and not the quantity of witnesses which matters. Accordingly, in my view, even if, other witnesses had turned hostile, the statements of PW8 and PW20 cannot be discarded. Trial court as well as the Appellate Court have noted, on appreciation of the statements of relevant witnesses of the employment

exchange, that prosecution had succeeded in proving that the list of 123 candidates sent vide covering letter dated 21st October, 1998 was forged and fabricated. As per the evidence adduced, petitioner had taken money from the PW8 and PW20 for the inclusion of their names in the list.

6. For the foregoing reasons, I do not find this case to be an exceptional case, suffering from glaring defects in the procedure nor do I find any manifest error on any point of law, which can be said to have resulted in a flagrant miscarriage of justice.

7. Revision petition is dismissed.

A.K. PATHAK, J.

DECEMBER 22, 2016

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