

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.595 of 2015

Arising Out of PS.Case No. -3 Year- 2006 Thana -C.B.I CASE District- PATNA

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1. Siya Ram Sahu son of Shibu Sahu, Resident of Village- Mushahari Mawatoliye, P.S. Teghra, District- Begusarai.
 2. Shiva Nandan Yadav, son of Late Ram Bharosh Yadav, Resident of Village- Marthua, P.S. Bithan, District- Samastipur.
 3. Paras Nath Choudhary, son of Late Ram Chintan Choudhary, Resident of village- Cheria Bariyarpur, P.S. Cheria Bariyarpur, District Begusarai.

.... Appellant/s

Versus

1. The State of Bihar Through C.B.I.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate
Mr. Imteyaz Ahmad, Advocate
For the Respondent/s : Mr. Sanjay Kumar, SC-CBI

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

CAV JUDGMENT

Date: 20-09-2017

Against judgment of conviction and sentence dated 26.08.2015 passed by Special Judge-CBI, Patna in Special Case No. 05/2006, RC No.3(A)/2006 whereby and whereunder appellants namely, Siya Ram Sahu, Shiva Nandan Yadav and Paras Nath Choudhary, have been found guilty for an offence punishable under Sections 467 IPC, 468 IPC, 420 IPC, 465 IPC, 471 IPC and each one has been directed to undergo RI for 3 years as well as to pay fine of Rs. 5,000/- in default thereof, to undergo SI for 3 months for an offence punishable under Sections 467 IPC, 468 IPC, 420 IPC respectively, RI for 2 years under Section 465 IPC as well as 471 IPC respectively with a further direction to run the sentences concurrently.

2. Before delving, brief history, as appears is to be



taken note of. On the score of false documents some unscrupulous persons including appellants, some of whom died during trial, some of whom absconded, got their employment as primary teachers which was traced out in due course of time, as a result of which Jai Prakash Paswan, the then Block Education Extension Officer of Shahpur Kamal Block filed a written report as instructed by District Superintendent of Education, Begusarai whereupon Shahpur Kamal PS Case No. 60/97 was registered against, Kamleshwari Chaudhary, Siya Ram Sahu, Shiva Nandan Yadav and Paras Nath Choudhary. During midst of investigation, CWJC No.9847/1998 was filed under the banner of Public Interest Litigation narrating the fact that on the basis of forged documents so many persons are working as a teacher in differ primary schools wherein order was passed on 18.12.1998 directing the CBI to register a case and investigate the same whereupon, after lapse of eight years the CBI registered a case in the year 2006. During intervening period, as is evident from the record, charge-sheet was filed, charge had already been framed. However, it is evident that after registration of the case as well as submission of charge-sheet at the end of the CBI, the other eventualities as indicated above got merged felicitating the de novo trial. Co-accused, It is also evident from the record that Shivji Mahato was not sent up as he died during investigation while charge-sheet was filed against Ram



Chandra Choudhary who absconded, Arvind Rai (Since acquitted), Kamleshwari Choudhary (since dead), Paras Nath Choudhary, appellant, Shiva Nandan Yadav, appellant and Siya Ram Sahu, appellant, who have faced trial and met with ultimate result, the subject matter of the instant appeal.

3. The gist of allegation is that accused, Kamleshwari Choudhary, the then teacher, Primary School, Mughalsarai, Siya Ram Sahu, the then teacher, Primary School, Mughalsarai, Shiva Nandan Yadav, the then teacher, Kanya Vidyalaya, Chouki, Paras Nath Choudhary, the then teacher, Primary School, Mughalsarai joined illegally at the respective Primary Schools lying within the block of Begusarai during 1995-1996 on the basis of forged transfer letter bearing forged signature of District Superintendent of Education, Begusarai purported to be issued vide Memo No. 2710, 2712 dated 20.12.1995 and 2884 dated 29.12.1994 and to facilitate the same, they have produced forged and fake LPC (Last Pay Certificate), Joining Letter, Relieving Letter bearing forged signature of concerned officials and on the basis thereof, they have drawn their salary from the respective schools and misappropriated the same.

4. As indicated above, CBI had registered the case under Sections 420 IPC, 465 IPC, 467 IPC, 468 IPC, 471 IPC, 120B IPC as well as 13(2) read with 13(1) (D) of the Prevention of



Corruption Act and proceeded with the investigation and after concluding the same, submitted charge-sheet, facilitating the trial which ultimately concluded by way of recording a finding of guilt against the appellants while acquitting Arvind Rai, subject matter of instant appeal.

5. The defence case as is evident from the mode of cross-examination as well as statement recorded under Section 313 CrPC is that of complete denial. Furthermore, it has been pleaded that they have not committed any kind of forgery nor they have created any forged and fabricated documents and produced the same knowing since before with regard to nature of the document to be fake and forged rather they have joined the service on having been allowed by the co-accused Arvind Rai, Block Education Extension Officer (since acquitted) who granted permission after going through the relevant administrative orders relating thereto. However, neither any PW nor any chit of paper has been adduced in support thereof.

6. In order to substantiate its case the prosecution had examined altogether 23 witnesses out of whom PW-1, Baijnath Prasad, PW-2, Shankar Poddar, PW-3, R.K. Singh, PW-4, Manorma Devi, PW-5, Keshva Prasad, PW-6, Shyam Babu, PW-7, Kumari Durga Jha, PW-8, Yadu Nandan Jha, PW-9, Ramjee Singh, PW-10, Jagannath Mahto, PW-11, S.K. Nutan, PW-12, D.K. Mandal, PW-13,



Krishna Devi, PW-14, Madan Mohan Prasad, PW-15, A.K. Mishra, PW-16, B.M. Chaudhry, PW-17, Ashok Kumar Mishra, PW-18, Ram Pradhan Paswan, PW-19, Ram Prasad Mandal, PW-20, Mridula Kumari, PW-21, Rewati Raman Thakur, PW-22, Satender Prasad, and PW-23, Rajeev Kumar and side by side had also exhibited Ext-1, the seizure Memo, Ext-2, the original transfer order no. 2712 dated 20.12.1995, Ext-3, the signature of DSE Ratan Kumar Singh over Ext-2, Ext-4, the original transfer order no. 2710 dated 20.02.1995, Ext-5, the signature of DDO on LPC of Siya Ram Sahu, Ext-6, the signature of DDO up on X/3, Ext-7 the letter to D.M. Begusarai by DSE, Begusarai, Ext-8, the note sheet regarding direction for lodging FIR, Ext-9, the signature of PW-9 on LPC of S.N. Yadava, Ext-10, the attendance register of S.N. Yadava, Ext-11, the production cum seizure memo, Ext-12, the GPF Register of GPF Office, Ext-13, the noting on 1st page of file, Ext-14, the information to D.M. Begusarai regarding fake teacher, Ext-15, is Direction of DSE regarding verification of teacher before permitting him to join after transfer, Ext-16, 17, 18 and 19 are production cum seizure memo, Ext-20, to Ext-20/1 is the signature and endorsement of BEEO, Arvind Rai on joining letter of Siya Ram Sahu and Paras Nath Choudhary, Ext-21 is the FIR of Sahebpur Kamal PS Case No. 60/97, Ext-22 is the statement of Ram Chandra Choudhary recorded under Section 164



CrPC, and Ext-23 is the FIR of RC 3(A)/06. Besides these documents, prosecution has filed some document for mark of identification they are Ext-X, the photo copy of forged transfer order no.2712 dated 20.12.95, Ext-X/1, the photo copy of forged transfer order no.2710 dated 29.12.95, Ext-X/2, the photo copy of forged transfer order no.2857 dated 29.12.95, Ext-X/3, the photo copy of forged LPC of Kameshwar Choudhary, Ext-X/4 and X/5, are the photo copies of forged LPC of S.N. Yadav. Accused Arvind Rai (since acquitted) had produced and examined one witness as, DW-1 Alakh Narayan Chaudhary, as well as also exhibited documentary evidence as Ext-A the CC of order sheet, Ext-B the CC of FIR of Bakhari PS, Ext-C, the CC of charge sheet submitted CBI. However, nothing has been adduced on behalf of appellants.

7. While challenging the judgment of conviction sentence, the foremost contention having been made on behalf of appellants is with regard to legality of the trial. It has been submitted that admittedly case no. 60/97 was already registered since before passing of order dated 18.12.1998 by the High Court in CWJC No. 9847/1998, then in that event, it was incumbent upon the CBI to act smoothly by way of registering a case which could have an opportunity of merger. Sitting idle for six consecutive years allowing the investigation of Shahpur Kamal PS Case No. 60/97 to come to its



logical end by way of submission of charge-sheet whereupon, after furnishing police papers charge had already been framed, then in that event, without having any order in terms of Section 173(8) of the CrPC, the investigation could not have been taken up at the end of CBI irrespective of the order of the High Court as due to the fault of the CBI, unexplained delay has caused serious prejudice to the appellants by way of denying fair and speedy trial. Furthermore, it has been submitted that at the time when order dated 18.12.98 was passed by the High Court, stage was persisting having indulgence of CBI, but later on, as the stage changed then in that circumstances only on order purported to be under Section 173(8) of the CrPC, the matter would have been sailed. No such order is available. So, the trial suffers from inherent lacuna which completely nullify the finding recorded by the lower court.

8. It has further been submitted that sheet-anchor of the prosecution happens to be co-accused, Ram Chandra Choudhary who made inculpatory extra judicial confessional statement during course of investigation and though, the CBI was of the view that he should be allowed pardon on the pretext of giving not to become approver but the aforesaid Ram Chandra Choudhary slipped and had gone in hibernation and till today, CBI failed to trace him out. That being so, whatsoever been at the end of aforesaid Ram Chandra



Choudhary, that could not be taken into consideration nor the same is legally permissible in the background of his status, being one of the co-accused as well as due to his absence, efforts of CBI vanished. So, the case of the prosecution fell like house of cards. It has also been submitted that acquittal of co-accused, Arbind Rai, who was Block Education Extension Officer at the relevant time completely smashed the prosecution case in the background of the fact that he was the person who permitted the appellants to join. So, he was also deeply involved in due process where under fake and forged document was prepared and in likewise manner, projected, acted, executed by way of allowing joining, or the documents which has been stamped by the prosecution as fake and forged was not at all. Acquittal of co-accused Arvind Rai clearly suggests that their documents were not at all fake and forged. So, appellants could not have been convicted and sentenced.

9. It has further been submitted that from the evidence having been adduced on behalf of prosecution, it is apparent that they could not succeed in proving its case. Moreover, acquittal of co-accused, Arvind Rai makes the situation worsen. Apart from this, prosecution also failed to substantiate before the court that appellants have had prepared fake and forged document, (transfer letter), produced the same before the authority for its execution knowing



since before that the documents were fake and forged as well as on the basis of forged and fake document they ever received salary and misappropriated the same. It has also been submitted that prosecution was knowing well since before and that happens to be reason behind that no charge was framed for misappropriation of the amount nay, during course of trial any effort was made on behalf of prosecution for amendment of charge.

10. That means to say, there was no misappropriation. That means to say, salary if any, paid to the appellants was in accordance with law and that being so, it rules out it a case of getting salary on the basis of fake and forged document. So submitted that the judgment impugned suffers from inherent improbability and the reasons so assigned therefor, happen to be unrealistic, unworthy.

11. Learned counsel representing the CBI has submitted that investigation conducted by the CBI is not illegal as the same was taken up in pursuance of an order passed by the High Court in CWJC No. 9847/98 tantamounting an order passed under Section 173 (8) of the CrPC. Though some delay has occurred in proper compliance of the aforesaid order but that has not been challenged at the end of the appellants at appropriate stage whereupon, now they are precluded from raising such plea.

12. Now coming to the facts of the case, it has been



submitted that at an earlier stage, the transfer letter was issued vide letter no. 2712 dated 20.12.1995 which was interpolated at the end of the appellants which in original if produced would have exposed and so its photocopy was placed, and then, basing thereupon with the forged LPC along with other documents posed themselves to teachers since before and got permission to join. In likewise manner, another transfer letter no.2710 dated 29.12.1995, was replaced by transfer letter no. 2857 dated 29.12.1995 which never been issued by PW-3, R.K. Singh and again on that very basis, placing the relevant forged document relating to their identity as teachers since before got an order in their favour whereupon joined, continued in service, withdrawn salary and so, on the basis of forged and fabricated document they availed illegal gain. It has also been submitted that co-accused, Arvind Rai, BDO (since acquitted) had mistakenly, considered the aforesaid document to be genuine and permitted joining but, his mala fide intention during discharge thereof, was not at all found from the evidences of the PWs having adduced during course of trial whereupon he was acquitted. But, the aforesaid acquittal is not going to exonerate the liability of the appellants who were ultimately gainer on the basis of the aforesaid fake and forged transfer letter.

13. Before coming to analyze the evidence available



on record, first of all status of the appellants is to be considered. For proper appreciation, the evidence of concerned officials is to be taken up firstly. PW-7, Kumari Durga Jha had deposed that on 19th February 1996, she was posted as Assistant Teacher at Middle School, Barora. On the same day, at afternoon, she was transferred to Mugalsarai School and she joined on the same day. Before her joining Kamleshwari Choudhry and during course thereof, Siya Ram Sahu (appellant) had also joined as Assistant Teacher who worked for 14 months. At that very time, Shyam Babu Ram was District Superintendent of Education who had inspected his school in the month of April, 1997 and during course of inspection, he made query from Kamleshwari Choudhary, Siya Ram Sahu and she herself. Then thereafter, directed Kamleshwari Choudhary and Siya Ram Sahu to accompany. At that very time, Arvind Rai was Block Education Extension Officer. Later on, she came to know that on the basis of fake and forged document Kamleshwari Choudhary and Siya Ram Sahu were discharging as primary teachers. During cross-examination, she had stated that she was incharge headmaster of that school. She had recommended for salary of all the teachers. Kamleshwari Choudhary and Siya Ram Sahu were discharging their function as teachers. They had signed over attendance registers like other teachers. Salary used to be prepared on the basis of attendance



report furnished by the headmaster.

14. PW-9 is Ramjee Singh who had deposed that he was headmaster of Dropadi Girls' Primary School, Chauki Shahpur Kamal from January 1996 to January 2001. During course thereof, he had accepted joining letter of Shiva Nandan Yadav (appellant). Shiva Nandan Yadav came to join on the basis of transfer letter. At an initial stage, he had not allowed joining, later on, he (Shiva Nandan Yadav) came with the order of Block Education Extension Officer-cum-Education Officer, Arvind Rai whereupon, he allowed joining. He shown to have transferred from Primary School, Khanjapur (Cheriabariarpur). At the time of joining he was not along with LPC but later on, he produced the same whereupon he had signed as headmaster (Ext-9). Then had exhibited attendance register whereupon, signature of Shiva Nand Yadav as Assistant Teacher happens to be from 14th February 96 to May 97 (exhibited). He had further stated that Shiva Nand Yadav got salary for the aforesaid period. In 1997, the District Education Officer got him arrested. During cross-examination, he had stated in para-2 that transfer letter is to be issued by the District Superintendent of Education, containing his signature. At that very time, Shyam Babu Ram was District Superintendent of Education. He was also transferred. The transfer order which was produced by Shiv Nandan Yadav containing



signature of Shyam Babu Ram was District Superintendent of Education, did not contain his name and on account thereof, he became suspicious and on account thereof, he had not accepted joining of Shiva Nandan Yadav. Shiv Nandan Yadav worked from February 1996 to May, 1997. He used to send absenting report to DDO whereupon Shiv Nandan Yadav used to get salary. He had further stated that after getting order from Block Education Officer, he had allowed joining. He had further stated that transfer letter is being directly communicated to the relevant teachers on the basis of which joining is effected. From the evidence of these witnesses, it is apparent that appellants have not challenged their status.

15. The evidence of PW-1 is with regard to Kameshwar Sahu who is not on record and as such, detailed discussions relating to his evidence is forbidden save and except, that he was also transferred vide letter no. 2712 dated 20.12.1995 from Karori school having signature of Ratan Kumar Singh, the then District Superintendent of Education which he produced before the CBI officials as required (exhibited). Evidence of PW-2 is also not relevant save and except that he was also transferred under the aforesaid letter.

16. PW-3 is Ratan Kumar Singh, the then District Superintendent of Education, Begusarai. He had deposed that in the



year 1995-96, he was posted at Begusarai as District Superintendent of Education. Transfer of primary teachers are being taken on resolution of District Education Establishment Committee and in pursuance thereof, District Superintendent of Education issues the order. He had further endorsed Ext-2, letter no. 2712 dated 20.12.1995 by which, transfer of 37 teachers were done by him. At serial no. 18, the name of Baijnath Prasad (PW-1) stood while at Serial No. 21, Shiv Shankar Poddar stood. He had further exhibited his signature as well as signature of dealing clerk. The had deposed that the photo copy of aforesaid letter no. 2712 dated 20.12.1995 happens to be the forged one, whereupon, his signature has been forged. From perusal of the same, it is evident that at Serial No. 18 in place of Baijnath Prasad, Siya Ram Sahu has been inserted and at Serial No. 21, in place of Shiv Shankar Poddar, Shiv Nandan Yadav has been inserted. Then had deposed that Transfer Order No. 2710 dated 20.12.1995 was issued by him whereunder 35 teachers were transferred wherein name of Kamleshwari Choudhary does not find place. It had further deposed that cyclostyle copies are being prepraed and not the photo copy. Then had said that the letter which has been seized relating to transfer of 34 teachers wherein at Serial No. 29, name of Kamleshwari Choudhary has been shown which happens to be forged and fabricated and in likewise manner, his signature happens to be. In



likewise manner, he had also shown the letter no. 2857 dated 29.12.1995 to be forged and fake and further, relating to his signature to be forged. By the aforesaid forged letter transfer of one Parasnath Choudhary has been shown from Primary School, Rupasbaj, Bachhwara to Primary School, Hardiya Saheb. During cross-examination, he had stated that bulk transfer is being done by the DM in capacity of Chairman of Establishment Committee. The Committee decides with regard to posting as well as tenure of placement of teachers. He had further stated that data of all the teachers are being kept at the office of District Superintendent of Education which are being placed before Establishment Committee. On the basis of the aforesaid information, transfer of teachers are being made. The resolution is sent to the office of District Superintendent of Education and then transfer letters are being issued. Then had submitted that decision of Establishment Committee is not before him during course of evidence. He had further stated that after verifying from the order of the District Magistrate, the actual affair will be known. Then had stated that apart from the concerned teachers, headmaster, school inspector, area officer are also being informed. He was not knowing since before as to how many persons were getting salary on forged and fabricated document. During course of inspection, the aforesaid event was known whereupon case was instituted. He had not made



statement before the police but, as required became present before the CBI and gave his statement.

17. PW-4 is Manorama Devi. She had deposed that she was posted as headmistress, Middle School, Teghara Bazar from 1996 to 2003. She was Drawing and Disbursing Officer of her school along with five other schools, namely, Teghara Primary School, Primary School, Kohwara, Primary School, Mathurapur Primary School, Teghraganj. She had further stated that on transfer she used to issue last pay certificate. She had further exhibited the LPC of Kamleshwari Choudhary, allegedly Assistant Teacher, Primary School, Mathurapur who was transferred to Primary School, Mughalsarai over which, her signature has been forged. She had further stated that signature of Area Officer, Shambhu Srivastava had also been forged, she had further stated that she had not issued the aforesaid LPC. During cross-examination she had stated that she had not gone to Mathurapur School. She is not remembering as to how many LPC, she had issued. She had further stated that she used to fill up LPC in her own hand-writing but the document she had exhibited is not in her pen and who had filled it, she is not knowing. She is also not knowing wherefrom it has been issued. Then had denied the suggestion that the aforesaid document happens to be issued by her and on account thereof, some sort of compulsion, she is deflecting



therefrom.

18. PW-5 had deposed that he was the headmaster at Middle School, Tarbhanga, Shahpur Kamal from 1995 to 2003 and in that capacity, was DDO of his own school as well as Primary School, Mughalsarai, Urdu Primary School, Panchvir, Urdu Girls' Primary School, Panchvir and in that capacity, he used to pass bill. Teacher, on being transferred came for joining with the LPC and salary of that teacher is being prepared on the basis of aforesaid LPC as well as attendance certificate granted by the concerned headmaster. Then had exhibited the LPC of Siya Ram Sahu which happens to be allegedly issued by the headmaster of Primary School, Shripur, Cheriabariarpur. This LPC was produced by the headmistress, Durga Jha on account of having been tendered by Siya Ram Sahu. He counter signed it (Exhibited). Then thereafter, the aforesaid LPC was transmitted to Block Education Extension Officer, Cheriabariyarpur through Siya Ram Sahu. Then had also deposed with regard to receipt of LPC relating to Kamleshwari Choudhary which was allegedly issued by the headmaster Primary School, Mathurapur, Teghara to headmaster, Mughalsarai and then to headmaster, Primary School, Tarbangha. He was headmaster of Tarbhnga and on that very score, he had signed over the same. Then thereafter, he had stated that one day District Superintendent of Education, Begusarai came along with police



personnel and got Kamleshwari Choudhary as well as Siya Ram Sahu arrested. At that very time, both were posted at Primary School, Mughalsarai on account of getting the service on the basis of forged and fabricated documents. During cross-examination, he had detailed the internal mechanism with regard to transfer and joining whereunder he had stated that on being transferred, the concerned teacher receives the transfer letter through Block Education Extension Officer and in likewise manner, concerned schools are being informed. Then thereafter, the Block Education Extension Officer orders to join and accordingly, teacher joins. He had further stated that the teachers are entitled for salary only against his attendance. Then had stated that LPC are being issued by the headmaster of that school on transfer. Attendance sheet is being issued by the headmaster of the present school where teacher is posted. The attendance sheet is being prepared on the basis of attendance register and then, thereafter, the same is sent to the DDO. Then had stated that sometimes, mass scale transfers take place. He had further stated that Shyam Babu Ram was District Superintendent of Education, Begusarai who is still working.

19. PW-6 is Shyam Babu Ram who had deposed that he was District Superintendent of Education, Begusarai from 02.07.1996 to 09.07.1999 and accordingly, Shahpur Kamal block lied within his jurisdiction. He had inspected different schools falling



under Shahpur Kamal Block in order to ascertain authenticity over appointment of school teachers as, he was confidentially informed that some unscrupulous persons are working as teachers on forged and fabricated documents. During course of inspection, he had found Kamleshwari Choudhary, Shiva Nandan Yadav, Siya Ram Sahu, Paras Nath Choudhary working on the basis of forged transfer letter, LPC whereupon, he had directed the Block Education Extension Officer, Jai Prakash to launch criminal case. Then had exhibited the same. He had also submitted his report before the District Magistrate and the same has also been exhibited (carbon process). He had further exhibited the original letter issued under memo no. 2712 dated 20.12.1995 issued by the then District Superintendent of Education, Ratan Kumar Singh with regard to transfer of 37 teachers whereunder neither the name of Siya Ram Sahu nor Shiva Nandan Yadav stood. He had further exhibited letter issued under Memo No. 2712 dated 20.12.1995 which had also been replaced by forged one wherein at Serial No.18, the name of Siya Ram Sahu stood against Baijnath Paswan who stood at Serial No. 18 in the original letter, at Serial No. 21, Shiva Nandan Yadav while in the original letter at Serial No. 21, name of Shiv Shankar Poddar stood. He had also exhibited original order issued under Memo no.2710 dated 02.12.1995 wherein at Serial No. 29, Madan Mohan Jha stood while in forged letter at Serial



No.29, name of Kamleshwari Choudhry stood. He had also stated that in Memo No. 2857 dated 22.12.1995, the transfer relating to Paras Nath Choudhary has been shown. The aforesaid original letter was replaced by forged letter as well as Memo No. 2857 as no such order was issued nor it contains the signature of Ratan Kumar Singh. During course of cross-examination, he had stated that first of all, complaint was against Kameshwar Sahu. Then thereafter, he made thorough inspection and during course thereof, he had found large number of cases wherein joining has been on the basis of forged and fabricated transfer letters. During course of inspection he had also compared the original letter as well as forged transfer letter. He had further stated that he had got no information whether Madan Mohan Prasad was made an accused or not. He had also stated that during course of inspection, he had not recorded statement of any of the witnesses. He had further stated that he had worked with Ratan Kumar Singh and on account thereof, he is aware with the signature of Ratan Kumar Singh.

20. PW-8 had deposed that he was Block Education Extension Officer, Cheriabariarpur from February 1994 to December 2007. He had further deposed that the alleged LPC relating to Siya Ram Sahu does not bear his signature as well as signature of Janardan Rai, the then DDO and in likewise manner, he had deposed that LPC



relating to Shiv Nandan Yadav does not bear his signature as well as that of Janardan Rai. All signatures are fake and forged. Furthermore, he had deposed that he had not issued relieving order no. 182/85 relating to Siya Ram Sahu. During cross-examination at para-3, he had stated that no teacher being named as Siya Ram Sahu or Shiv Nandan Yadav were ever employed.

21. PWs 10 and 11 are employees of GPF department who had produced GPF register wherefrom it is evident that name of accused Siya Ram Sahu was never at Sl No. 1135 as well as at Sl. No. 1137 name of Shiv Nandan Yadav did not find place rather it happens to be with regard to Kameshwar Choudhary as well as Baikunth Paswan. During cross-examination, nothing substantial has been elicited from their mouths.

22. PW-12 had deposed that he was Block Education Extension Officer of Bachhwara Block from 8th December 1993 to 18th March 1997. Although Ext-X/04 page no. 79 appears to be issued by his office by which Memo No. 285-87 dated 13.03.1996, Paras Nath Choudhary, Assistant Teacher, Primary School, Rupasbaj was transferred to Primary School, Hardia, Sahpur Kamal and relieved on 13.03.1996 afternoon but the aforesaid order neither been issued by his order nor it contains his signature. On that very score, he has not been cross-examination.



23. PW-13 is a clerk of District Education officer, Begusarai who had exhibited different papers concerning the steps taken up by the then District Superintendent of Education, Ratan Kumar Singh as well as Shyam Babu Ram after an inspection having been conducted to trace out regarding activity of unscrupulous persons discharging their function as primary teachers on the basis of forged and fabricated documents, submission of report before the District Magistrate as well as issuance of fake and forged office orders relating to which Ratan Kumar Singh (PW 3) as well as Shyam Babu Ram (PW 6) had already deposed. During cross-examination, it is evident that he was cross-examined with regard to internal function of the department. He shown his incompetency as a handwriting expert to identify the signatures of respective officials as forged.

24. PW-14 is a stenographer of District Superintendent of Education, Begusarai and he had typed relevant letters as per direction of PW-3 as well as PW-6 exhibited since before.

25. PW-15 had produced the relevant registers which was seized by the CBI during course of investigation and had exhibited the same.

26. In likewise manner, PW-16 who is the clerk of District Education Office had deposed over issuance of relevant



transfer orders and further the subsequent forged letters prepared, executed, at the end of accused persons. The same status happens to be with regard to PW-17, Ashok Kumar Singh who had produced relevant registers before CBI and exhibited the seizure list. PW-18, in likewise manner, produced salary register which was seized by the CBI.

27. PW-19 happens to be District Superintendent of Education, Palamu who in the year 1996 was Block Education Extension Officer, Saraihat Dumka and had come to depose with regard to procedure being followed during course of transfer of primary teachers from one school to another.

28. PW-20 is a teacher who was transferred from Punarwas to Kanya Madhya Vidyalaya, Vihar under Memo No. 2857 dated 29.12.1995.

29. PW-21 is another stenographer who was posted at the office of District Superintendent of Education, Begusarai from 1995 to 2004 and during midst thereof, he also discharged his duty under the then District Superintendent of Education, Ratan Kumar Singh as well as Shyam Babu Ram. He had further deposed with regard to Memo No. 2712 dated 20.12.1995 and forgery committed by way of preparing another transfer letter under the same Memo No. containing forged signature of the respective District Superintendent



of Education. During cross-examination it is evident that internal mechanism thereto has been exposed.

30. PW-22 is the Investigating Officer of Shahpur Kamal PS Case No. 60/97 and had exhibited the written report thereof. PW-23 is the Investigating Officer who had conducted investigation of RC Case No. 3(A) 2006. He had also deposed that the aforesaid case was registered on the basis of the order passed by the High Court under CWJC No. 9847/98 and on account thereof, he had registered FIR (Ext-A), formal FIR. As entrusted, he took up investigation, seized all the relevant documents, examined witnesses and after completing the investigation, submitted charge-sheet. During cross-examination at para-4, he had stated that Arvind Rai was not made an accused at an initial stage. He was not named in the earlier registered case. He had further stated that he could not give reason with regard to institution of the case after such long interval of passing of order by the high court. Then there happens to be cross-examination regarding Ram Chandra Choudhary, a co-accused who was to be made as an approver but could not due to his absence. Then had admitted under para-7 that Ram Chandra Choudhary had confessed and made inculpatory extra-judicial confessional statement to the effect that he had prepared forged documents after taking money from the accused persons. In para-10, he had further stated that



he had seen the original transfer letters having been issued by the department whereunder none of the accused persons were named nor shown as a teacher being transferred to different place but, subsequent forged letter does contain replacing name of some of the teachers whose name figured in the original transfer letter issued under different Memo Nos.

31. After going through oral evidence adduced on behalf of prosecution, it is evident that Investigating Officer (PW 23) had not disclosed that after taking specimen signature of the then District Superintendent of Education, Ratan Kumar Singh as well as Shyam Babu Ram, got examined by the handwriting expert, nor there happens to be cross-examination at the end of the appellants on that very score. However, the aforesaid deficiency is found duly steriled after examination of the aforesaid two District Superintendent of Education as PW-3 and PW-6 and during course of their evidence, they have disowned their signatures over the forged and fabricated documents which, the appellants, during course of cross-examination, could not succeed to discredit. So, subsequently copying Memo Nos. 2712 dated 20.12.1995, 2710 dated 29.12.1995 and 2857 dated 29.12.1995 happens to be explicitly exposed. Apart from this, the prosecution had also adduced the GPF Register, the salary register and further relieving letters, LPC which the respective witnesses disowned



to bear their signatures. Having a prima facie case duly flashed at the end of the prosecution, the onus shifted upon the accused/appellant which could have been properly discharged by way of producing their appointment letters, joining letters, earlier transfer letters by which they might have been transferred to different schools, opening of GPF account, Service book, counting of EL etc. including confidential remarks having at the end of their superior officers. On account of non submission of aforesaid document is a circumstance which goes against appellants as, during course of discharging onus having shifted upon their shoulders, it was expected to be to nullify the allegation as alleged on behalf of prosecution encircling their activity alleging that by preparing forged document, they got their entry in the service cadre of primary teacher and succeeding in joining at respective schools. Furthermore, it is evident that all the alleged forged documents are not in original but photocopy. Though there happens to be slackness on the part of concerned officials who were known to the fact that photocopies have not been issued rather it happens to be cyclostyle, even then, allowed joining, but the aforesaid activity would not exonerate the appellants as the same was produced by them, and further, they were the ultimate beneficiary.

32. Apart from this, after analyzing the evidence, it has become crystal clear that on the basis of the forged and fabricated



documents, the appellants happen to be the ultimate beneficiaries and further, withdrawing the salary would amount illegal gain at their end for which they were not at all entitled for. Consequent thereupon, the judgment of conviction and sentence recorded by the learned lower court is affirmed.

33. That being so, this appeal is found bereft of merit and is, accordingly, dismissed.

34. Since appellants are on bail, their bail bonds are cancelled with a direction to surrender before the learned lower court within a fortnight to serve out the remaining part of sentences failing which the learned lower court will be at liberty to proceed against the appellants in accordance with law.

(Aditya Kumar Trivedi, J)

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