

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CRR-2324-2017 (O&M)
Reserved on 11th October, 2017
Pronounced on 26th October, 2017

Samina ..Petitioner

versus

State of Haryana ..Respondent

CORAM: HON'BLE MR JUSTICE RAMENDRA JAIN

Present: Mr. Ashok Kaushik, Advocate, for the petitioner.

Mr. Vikas Chopra, DAG, Haryana.

RAMENDRA JAIN, J.

1. Through this petition filed under section 401 of the Code of Criminal Procedure, the petitioner has challenged judgment of conviction and order of sentence dated 06.06.2017 of the first appellate court, dismissing the appeal of the appellant, thereby maintaining the judgment of conviction dated 18.11.2016 and order of sentence dated 22.11.2016 of the trial court only under section 420 IPC and acquitting her of offences punishable under sections 468 and 471 IPC in the following terms:-

420 IPC To undergo RI for three years and pay fine of Rs.1000/-.
In default thereof, to undergo RI for 20 days.

2. The adumbrated facts, as emerged out of the statement made by complainant Balik Ram son of Nathi Ram, resident of village Raidaska, Tehsil and District Palwal on 28.7.2011 in the police station in relation to complaint bearing no. 49 NCSC dated 4.7.2011 alleging therein that in the year 2010, his wife Kishanwati had contested election to the post of

Member of Block Samiti, which was reserved for female candidate of scheduled caste. The other contestant was Samina, the wife of Shokat, who had won the election. In fact, the husband of Samina, namely, Shokat had cheated the district administration by showing him as a member of caste “Raigar”, thereby concealing his original caste. He had procured a scheduled caste certificate in favour of his wife, namely, Samina, though, in fact, both Shokat and Samina belonged to caste “Chhipi/Rangrez”, which fell within the category of backward class and not scheduled caste. Though, during the election also, he had raised an objection with respect to the caste of accused Samina, but the Inquiry Officer showed his inability to take any action in the matter, because the district administration had issued scheduled caste certificate in favour of Samina. The Inquiry Officer advised him to file a complaint before the Sub Divisional Magistrate, Hodal. Thereafter, he moved an application before the Deputy Commissioner, which was marked to Sub Divisional Magistrate, Hodal, who got the inquiry conducted with the help of the Tehsildar, Palwal and sent his report to the Deputy Commissioner. The Deputy Commissioner forwarded a complaint to the Superintendent of Police, Palwal. On the basis of the statement made by the complainant, a case under sections 420/467 and 471 IPC was registered. During the investigation, Shokat was arrested. After completion of necessary formalities, a final report under section 173, Code of Criminal Procedure, was presented against him before the Ilaqa Magistrate. It is worth mentioning that after completion of necessary investigation against the remaining two accused, namely, Samina and Banwari, a supplementary challan was presented against them.

3. Copies of challan as envisaged under section 207 of the Code

of Criminal Procedure were supplied to the accused. Thereafter, all the three accused were charge sheeted under sections 420/468 and 471 IPC, to which they pleaded not guilty and claimed trial.

4. The prosecution, in order to prove its case, examined six witnesses. After closure of the evidence by the prosecution, statement of the accused under section 313, Code of Criminal Procedure, putting entire incriminating evidence came on record against them, to which they denied and pleaded innocence. The petitioner along with other co-accused (since acquitted) opted to lead evidence in defence. After tendering certain documents, the accused closed their evidence in defence.

5. The trial court, after analysing the ocular and documentary evidence, convicted and sentenced all the three accused under sections 420/468 and 471 IPC, but in appeal, the first appellate court reversed the findings recorded by the trial court and acquitted Shokat and Banwari of all the charges framed against them, but maintained the conviction and sentence recorded by the trial court against the petitioner Samina (petitioner herein) only under section 420 IPC in the manner as set out in the preceding paragraph of this judgment and acquitted her of charges under sections 468 and 471 IPC.

6. Learned counsel for the petitioner has vehemently contended that Shokat, the husband of the petitioner, got prepared a certificate of Scheduled Caste for his wife Samina on the basis of his Scheduled Caste certificate, which was issued by the competent authority way back in the year 2001, much before his marriage with the petitioner. The allegations levelled are only against the husband of the petitioner, who has been acquitted of charges and therefore, she was also liable to be acquitted of

charges, especially when the scheduled caste certificate was issued on the basis of her husband's scheduled caste certificate. Both the learned courts below have committed a grave error in convicting and sentencing the petitioner under section 420 IPC, especially when the remaining two accused, namely, Shokat and Banwari have been acquitted of charges by the first appellate court.

7. Having given thoughtful consideration to the submissions made by learned counsel for the petitioner, this court is of the considered opinion that the revision, being without any merit, fails and is liable to be dismissed for the reasons to follow:-

8. As per the averments in the complaint moved by the complainant, the allegations levelled against the petitioner were that Shokat, the husband of the petitioner, namely, Samina fraudulently got issued a scheduled caste certificate from the concerned authority of the government in favour of Samina, his wife, to contest the election to the post of Member of Block Samiti, which was reserved for female candidate of scheduled caste by concealing his real caste "Chhipi/Rangrez. The matter was brought to the notice of the District Magistrate, who after getting the enquiry conducted from the Sub Divisional Magistrate, Hodal, forwarded a complaint to the Superintendent of Police, Palwal. On the basis of the statement made by the complainant, a case under sections 420/467 and 471 IPC was registered against the accused.

9. A perusal of the certificate dated 18.07.2001 issued by Sub Divisional Officer (Civil), Palwal, clearly spells out that Shokat, husband of the petitioner, belonged to Raigar caste, which is recognised as a Scheduled Caste in the State of Haryana. On the basis of this certificate, the husband of

the petitioner also got issued a scheduled caste certificate dated 22.5.2010 in favour of his wife Samina from the Tehsildar, Palwal, based on the reports of Lambardar and Patwari respectively showing her caste 'Raigar' by concealing her real caste "Chhipi/Rangrez". A perusal of the record further shows that application Ex.PW-3/B was submitted by the petitioner before the Tehsildar, Palwal, averring therein that she belonged to caste "Raigar" and was Hindu by caste. She prayed for issuance of a scheduled caste certificate in her favour. The application is supported by an affidavit Ex.PW-3/C. On the basis of these documents coupled with the report of the Lambardar of village Raidaska, verifying the caste of the petitioner, the Tehsildar, Palwal, issued the certificate in favour of the petitioner and thus, they cheated him. Had the petitioner not concealed her real caste in the application submitted by her as also in the affidavit, there was no occasion for the Tehsildar to issue a scheduled caste certificate in her favour. By doing this illegal act, the petitioner has committed an offence of forgery punishable under section 420 IPC. The argument of the learned counsel for the petitioner that the certificate of the petitioner was got issued by Shokat, the husband of the petitioner, on the basis of his certificate, can not at all be countenanced, especially when the certificate of the petitioner was got issued by concealing her real caste with the sole motive to give undue advantage to her for contesting the elections to the post of Member of Block Samiti so as to derive benefit of governmental post. The prosecution, in my considered view, has been able to prove its case beyond a reasonable shadow of doubt on the strength of ocular as well as documentary evidence available on the record that the petitioner belongs to caste Chhipi" and not the caste 'Raigar'. That apart, it is not the case of the defence that it was not

in the knowledge of the petitioner that caste 'Raigar' was excluded from the list of Scheduled caste category and she applied for issuance of a scheduled caste certificate inadvertently. Rather, the fact is that the petitioner submitted an application by mentioning her caste "Raigar" and not her real caste "Chhipi", which, in my considered view, is sufficient to connect the petitioner with the commission of crime, which falls under the definition of Section 420 IPC.

10 The question that arises for consideration is whether the petitioner has committed an offence of cheating punishable under section 420 IPC. A perusal of the record shows that the petitioner herself placed on record Annual Administrative Report, Ex.D1 issued by the Scheduled Caste and Backward Class Welfare Department, Haryana, pertaining to the year 1999-2000, according to which, the caste 'Raigar' falls within the category of scheduled caste as well as backward class category. According to this document Ex.D1, the members of 'Chhipi' caste falls within the backward class category. Thus, as per her own document Ex.D1, it can easily be inferred that caste 'Chhipi' falls within the backward class category and not the scheduled caste category. It has been established on the record beyond doubt that the petitioner has procured certificate Ex.PW-3/A from the Tehsildar, Palwal by inducing him to issue the same, which could be termed as "property". The petitioner, on the basis of this certificate, contested and won the elections to the post of Member of Block Samiti which was reserved for female member of scheduled caste category. Therefore, she being the beneficiary, enjoyed the governmental post until a case of forgery and cheating was registered against her. The Additional Sessions Judge, Palwal, in my considered opinion, has rightly observed in this regard in para

no.22 of his judgment dated 6.6.2017 which reads as follows:-

“As per the allegations, she had moved application Ex.PW3/B along with affidavit Ex.PW-3/C which were containing false recitals as to her caste before Tehsildar, Palwal and by concealment of her real caste and by making false recitals in the above mentioned documents, she had induced the Tehsildar, Palwal to issue scheduled caste certificate Ex.PW-3/A in her favour and thereby cheated the Tehsildar, Palwal. Before delving on the point as to her involvement in the subject crime, it is important firstly consider as to whether the certificate Ex. PW-3/A could be considered to be a 'property' within the meaning of section 415 and 420 of IPC of IPC. In this regard, it may be stated that it is well settled proposition of law that the word “property” in section 420 of IPC does not necessarily mean the thing of which delivery is dishonestly desired by the person who cheats, must have a money value or a market value. If it becomes a thing of value in the hands of the person who may get possession of it as a result of cheating practised by him, it would fall within connotation of the term “property” used in this case. Reference in this regard can be made to the Hon'ble Apex Court's pronouncement in Ishwar Lal Girdhari Lal Parekh Versus State of Maharashtra and others, AIR 1969 Supreme Court 40 wherein it was held so and upon Local Government Versus Ganga Ram, AIR 1922 Nagpur 229 (232), wherein a person who had obtained certificate from a Deputy Inspector or schools by untruly stating that he passed

examination in a certain year, was held guilty of offence punishable under section 420 of IPC and also Queen Empress versus Soski Bhusan, 1893 (ILR) 15 (Allahabad), wherein it was held that term “property” in section 463 of IPC included the written certificate to the effect that the accused had attended, during a certain period, a course of Law Literature and had paid up his fees. In view of this position of law, it is clear that the certificate Ex.PW-3/A could be termed as “property” in the hands of the accused Samina in whose favour it had been issued because on the basis of this certificate, she was capable of claiming that she was a member of scheduled caste and could procure benefit by contesting election for any governmental post reserved for candidates of Scheduled caste.”

11. In the considered opinion of this court, it has been rightly held by the first appellate court that the petitioner procured the certificate to take advantage of getting the governmental post by contesting the election for the seat reserved for female scheduled caste candidate, terming it as property in her hands, and thereby violating the offence punishable under section 420 IPC.

12 An argument that both Shokat, husband of the petitioner and Banwari Lal, Lambardar, have been acquitted of charges, therefore, the petitioner should also be acquitted, can not at all be accepted, inasmuch as she procured the scheduled caste certificate in her favour by concealing her real caste “Chhipi/Rangrez”, in the application submitted as also in the affidavit duly sworn by her, which is sufficient to connect her with the commission of crime. Both the learned courts below have rightly convicted

and sentenced the petitioner for the offence under section 420 IPC on appreciation of ocular as well as documentary evidence produced by the prosecution giving sound reasoning therein. In such circumstances, this court is not inclined to take a different view than the one taken by both the courts below on the strength of ocular as well as documentary evidence available on the record.

13. In view of the foregoing discussion, this court is of the view that both the learned courts below have recorded a concurrent finding in the judgments of conviction and orders of sentence qua the petitioner with respect to offence under section 420 IPC, which stand affirmed and do not call for interference in exercise of revisional jurisdiction by this court. Consequently, revision, being without any merit, fails and is dismissed.

26th October, 2017
VK

(RAMENDRA JAIN)
JUDGE

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| 1. | Whether reasoned/speaking | Yes/No |
| 2. | Whether Reportable | Yes/No |