

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CRR No.4649 of 2016 (O&M)
Decided on: 17.02.2018**

Anil Kumar

....Petitioner

Versus

State of U.T., Chandigarh

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. K.D.S. Hooda, Advocate
for the petitioner.

Mr. Parveen Chauhan, Advocate
for Mr. Gagandeep S. Wasu, APP, U.T., Chandigarh.

ARVIND SINGH SANGWAN, J.

Challenge in this revision petition is to the judgment of conviction and order of sentence dated 24.12.2015 passed by the Judicial Magistrate Ist Class, Chandigarh vide which the petitioner along with co-accused Sandeep were held guilty of offences punishable under Section 419 of the Indian Penal Code (in short 'IPC') i.e. cheating by impersonation and acquitted both of them under Section 420 IPC and both were sentenced to undergo rigorous imprisonment for a period of 01 year as well as the judgment dated 02.12.2016 passed by the Lower Appellate Court vide which the co-accused – Sandeep was acquitted of the charges and the appellant was though acquitted of charge under Section 420 IPC, however, his sentence under Section 419 IPC was upheld and the sentence awarded to the petitioner was reduced to the period of 06 months rigorous imprisonment from the sentence of 01 year awarded by the trial Court.

Brief facts of the case are that on a complaint received by Smt. Rattan Kaur, Deputy Registrar, Punjab and Haryana High Court (hereinafter to be referred to as 'the complainant') on 07.12.2012, it was stated that a screening test for the post of Peon, Chowkidar and Attendant was conducted in D.A.V. Model School, Sector 15, Chandigarh. One candidate with Roll no.27228 was appeared in Room No.45 where one Ram Dev was the Invigilator on duty. The name of the candidate was Sandeep and on apprehension that there was some another person appearing on his behalf, he enquired the matter and the candidate stated that the application was filled by his brother and also signed by his brother namely Mandeep. The photocopies of the handwriting on Admit Card, OMR sheet and question paper booklet front page were attached with the complaint and it was requested that the matter may be got investigated.

On receiving the complaint, an FIR under Section 419 and 420 IPC was registered. The accused persons were arrested and necessary documents were obtained from them and were recovered by the police. During the investigation, the police recorded the statement of the witnesses under Section 161 Cr.P.C. and on completion of investigation, the challan/report under Section 173 Cr.P.C. was presented in the Court.

The trial Court framed charges against the petitioner and co-accused Sandeep son of Jai Bhagwan under Sections 419 and 420 IPC to which they did not plead guilty and claimed trial.

The prosecution in support of its case examined the complainant – Rattan Kaur as PW1 who deposed on the line of the

complaint made before the police. It was stated by her that on 07.10.2012, the exam for the posts of Peon, Chowkidar/Hotel Attendant in Chandigarh Judicial Academy was held in D.A.V. Model School, Sector 15, Chandigarh and she was in-charge. During the exam, the Invigilator namely Ram Dev noticed that the identity of one candidate namely Sandeep Kumar having Roll No.27228 was doubtful as his photograph was not matching with the person who was appearing in the exam.

On enquiry, the candidate appearing in the exam informed that the form was filled up by his brother Mandeep and also signed by him. On her complaint Ex.P1, the police registered the FIR and during the investigation, the Investigating officer obtained the Admit Card Mark A, OMR sheet and question paper booklet Mark B. This witness also proved the Admit Card as Ex.PW2/A, question paper booklet as Ex.PW2/A1, the admission of the accused as Ex.PW2/A2, OMR sheet as Ex.PW2/A3.

PW2 – Ram Dev also deposed on the same line as per the deposition of the complainant. It was further stated that the accused Anil was arrested vide memo Ex.PW2/A and Sandeep was arrested vide memo Ex.PW2/B. The police has taken in possession the question paper booklet as per Ex.PW2/C and the disclosure statement of Anil Kumar as Ex.PW2/D. The identification memo was produced as Ex.PW2/E, the Voter I.D. card of both the accused persons as Ex.PW2/F and PW2/G. This witness had attested the arrest memo of the accused persons.

PW3 – Pankush Sharma, Clerk of the Judicial Academy,

Chandigarh had brought the record of the original Admit Card, an application form, question paper booklet, OMR sheet and necessary sheet and these documents were exhibited as Ex.PW2/A3, Ex.PW2/A2, Ex.PW3/1, Ex.PW2/A, Ex.PW3/2 and Ex.PW2/A1.

PW4 – Raghubir Singh, an official from the Election Office, proved the voter I.D. card of both the accused persons as Ex.PW4/A and Ex.PW4/B.

PW5 – Krishan Gopal Puri, Ex. Superintendent of D.A.V. School, Sector 15, Chandigarh proved the duty roster as Ex.PW5/A to show that Ram Dev was the Invigilator in D.A.V. Model School in Room No.45 where exam was conducted for the post of Peon, Chowkidar/Hotel Attendant.

The Investigating Officer – Kashmir Singh appeared as PW6 and stated that on receiving the complaint, he made an endorsement as Ex.PW6/1 and registered a formal FIR as Ex.PW6/2 and prepared a rough site plan as Ex.PW6/3. This witness also proved on record the arrest memo, recovery memos, the documents taken from the accused persons, the information from the election office as well as the other verification documents of the accused like Driving Licence as Ex.PW6/1 to Ex.PW6/2. This witness has further stated that he has obtained the signatures of accused – Sandeep as Ex.PW6/10 to Ex.PW6/11 which were sent to CFSL and the report of the CFSL is Ex.PW6/12.

PW7 – HC Kuldeep Singh is a formal witness of a DDR as Ex.PW7/A.

PW8 – R. Chandra, an hand-writing expert from the CFSL

proved his report as Ex.PW8/1 and photostatic reproduction as Ex.PW8/2.

Thereafter, the statement of the accused persons under Section 313 Cr.P.C. was recorded in which they denied all the incriminating evidence put to them, however, no defence evidence was led.

The trial Court vide impugned judgment dated 24.12.2015 acquitted both the accused persons under Section 420 IPC, however, convicted them under Section 419 IPC and sentenced them to undergo rigorous imprisonment for a period of 01 year.

In appeal, the Lower Appellate Court acquitted the co-accused – Sandeep of the charge framed against him under Section 419 IPC and while upholding the conviction of the petitioner, reduced the sentence from a period of 01 year to 06 months. Hence, the present revision petition has been filed by accused – Anil Kumar.

Counsel for the petitioner has submitted that as per the statement of PW6, the Investigating Officer, ASI Kashmir Singh, it is stated that the specimen hand-writing of only co-accused Sandeep were taken vide Ex.PW6/10 to Ex.PW6/11 and the same were sent to CFSL for comparison and on receiving the report it was found that the same tally with the documents referred to the CFSL for comparison. It is further submitted on behalf of the petitioner that no specimen signature or hand-writing of the petitioner – Anil Kumar who allegedly appeared in the exam in place of Sandeep Kumar were taken and were never sent to CFSL for comparison with the same and, therefore, the conviction of the petitioner under Section 419 IPC is not sustainable.

Counsel for the petitioner has further submitted that of PW8 – R. Chandra, Scientist B in CFSL, Chandigarh, it is stated as under:-

“....The document on this case were received by my office from SSP, U.T., Chandigarh vide their letter number 8963/UT/E-6 dated 20.02.2013. As per the forwarding letter, I have received the disputed signatures on photostatic reproduction copy marked Q1 on Ex.PW8/1. Q2 on photostatic reproduction copy on Ex.PW2/A (already exhibited). Q2/1 on photostatic reproduction copy on Ex.PW8/2. The specimen signatures of Sh. Sandeep marked S1 and S2 on Ex.PW6/10 and Ex.PW6/11 respectively (already exhibited).

After thorough and scientific examination, I came to the conclusion that the red enclosed signatures stamped and marked Q1, S1 and S2 have been written by one and the same person. And the person who wrote the red enclosed signatures stamped and marked S1 and S2 did not write the red enclosed signature similarly stamped and marked Q2. The report is already exhibited as Ex.PW6/12. It bears my signatures at point A. I have also submitted the detailed reasons in support of my opinion in two sheets and also bears my signatures at point B and C. The document of this case were also photographed for an examination and record purpose.”

Counsel for the petitioner with reference to the statement of PW8 has stated that the disputed signatures on the photostatic reproduction copy (Mark Q1) on Ex.PW8/1 and Q2 on the photostatic reproduction copy Ex.PW2/A and Q2/1 on the photostatic reproduction copy of Ex.PW8/2 were compared with the specimen signatures of Sandeep Mark S1 and S2 on Ex.PW6/10 and Ex.PW6/11. Counsel for

the petitioner has further submitted that with reference to these documents, that Ex.PW8/1 bearing mark Q1 is an application form for the post of Peon and Ex.PW8/2 is the original Admit Card, both bearing the signatures of Sandeep and the same were compared with specimen signatures of co-accused Sandeep and at no point of time, either the standard signatures of the petitioner Anil Kumar were obtained during the investigation was ever sent to CFSL for examination.

It is further argued that in the cross-examination, this witness has admitted that the documents Ex.PW2/A (Mark D) and Ex.PW3/2 and PW2/A1 (Mark B) were not filled in his presence and he do not know when these documents were filled up. Counsel for the petitioner has further submitted that it has come in the cross-examination of PW2 – Ram Dev, the Invigilator that when he apprehended Anil Kumar, at that time, the paper did not start and, therefore, it cannot be said that Anil Kumar had, in fact, appeared and attempted to solve the answer book in place of Sandeep Kumar.

Counsel for the petitioner has further submitted that once on the appreciation of the same set of evidence, the Lower Appellate Court has recorded a finding that the charge against co-accused Sandeep is not proved under Section 419 IPC, the conviction of the petitioner – Anil Kumar is also not proved.

It is also stated that in the statement under Section 313 Cr.P.C., the petitioner – Anil Kumar has specifically denied his disclosure statement made before the police that he was appearing in place of Sandeep. Counsel for the petitioner has further referred to the statement of co-accused Sandeep under Section 313 Cr.P.C., to submit

that even this witness has denied that the petitioner – Anil Kumar has appeared in his place in the examination and, therefore, the prosecution has failed to prove that the petitioner has appeared in place of Sandeep Kumar as he has been acquitted by the Lower Appellate Court.

In reply, counsel for the State has submitted that identity of the petitioner Anil Kumar is proved from the statement of PW2 – Ram Dev, Invigilator, however, it is not disputed that the hand-writing or signatures of Anil Kumar were not obtained during the investigation. It is further submitted that since the petitioner has made a disclosure statement during the investigation Ex.PW2/D, the Courts below have rightly convicted the petitioner under Section 419 Cr.P.C.

After hearing counsel for the parties, I find merit in the present petition for the following reasons:-

a) Both the Courts below have convicted the petitioner on the premise that as per the report of PW8 – R. Chandra, his signatures has matched with the question paper booklet as Ex.PW2/A1 with the standard signatures i.e. S2. A perusal of Mark S2 show that these are the standard signatures of Sandeep taken during the course of investigation and not of Anil Kumar and, therefore, the finding recorded by both the Courts below that his signatures have matched on the question paper booklet with his standard signatures S2 is incorrect.

b) The above fact is also corroborated from the statement of PW2 – Ram Dev, who has stated that when he had apprehended the petitioner Anil Kumar, the exam has

not started. The operative part of his statement reads as under:-

“.....It is correct that the paper did not start at the time when Anil was found in place of Sandeep Kumar.”

Therefore, in absence of comparison of hand-writing of petitioner on the disputed answer sheet Ex.PW2/A3, it can be held that prosecution has only proved that it do not tally with the hand-writing of Sandeep, co-accused but could not prove that it is the hand-writing of petitioner – Anil Kumar.

c) It has come in the statement of the Investigating Officer PW6 – Kashmir Singh that during the investigation, specimen signatures of Sandeep were taken and were sent to CFSL for comparison, therefore, both the Courts below have erred on appreciation of the entire evidence to conclude that the standard signatures of the petitioner Anil Kumar were proved from the report of CFSL, on comparison with the disputed signatures on Q1 and Q2. The operative part of the judgment passed by the Lower Appellate Court in para 14 reads as under:-

“....In that regard, this Court is of the view that accused Anil has been convicted under Section 419 of IPC. His signatures matched on question paper booklet Ex.PW2/A1 with his standard signatures i.e. S-2 as per report of Expert R. Chandra who has appeared as PW8. In this way, the offence under Section 419 IPC is established as he

was appearing at place of Sandeep.”

There is no justification to uphold this finding as it is apparent against the statement of PW8 – R. Chandra because signature or hand-writing of petitioner – Anil Kumar were never obtained or sent for comparison to CFSL.

d) It is worth noticing here that the co-accused Sandeep whose signatures were sent to CFSL for examination and as per the statement of PW8, it was found that the standard signatures S1 and S2 are of the same person on the disputed signatures Q1 and Q2 which relates to co-accused Sandeep Kumar, the charge under Section 419 IPC against the petitioner is not proved.

e) On re-appraisal of the entire evidence of the lower Court record, the prosecution has failed to prove its case beyond doubt and therefore, the petitioner is entitled to be given benefit of doubt.

In view of above facts and circumstances, the present revision petition is allowed, the judgment of conviction and order of sentence dated 24.12.2015 passed by the trial Court and dated 02.12.2016 passed by the Lower Appellate Court are set-aside and the petitioner is acquitted of the charge framed against him under Section 419 IPC.

17.02.2018
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(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No