

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****Criminal Appeal No.2018 of 1999**

State of Madhya Pradesh (Now State of Chhattisgarh)

**---- Appellant****Versus**Vishram Chandrakar, S/o. Balluram Chandrakar, aged 48 years,  
R/o. Village Kharhata, Block Pandariya Distt. Bilaspur (CG)**---- Respondent**-----  
For the appellant/State : Shri Raghavendra Verma, Govt.  
AdvocateFor the respondent : Shri RN Jha, Advocate  
-----**Hon'ble Shri Justice Ram Prasanna Sharma****Judgment on Board****13.12.2019**

1. The appeal is preferred against judgment dated 22.12.1998 passed by Judicial Magistrate First Class, Mungeli, Distt. Bilaspur in Criminal Case No.1178/1989 wherein the said Court acquitted the respondent for the charges under Section 468, 471, 417 of the Indian Penal Code, 1860.

2. As per the version of the prosecution, the respondent was failed in Class-10 of the Higher Secondary Examination in the year 1967-68. The respondent prepared forged mark sheet on the basis of the mark sheets of two persons namely Aditya Prasad and Amarjeet Singh and used the same for employment on the post of Village Assistant recruited by the department of Panchayat and Social Services, Bilaspur. On the report of one Salikram, the matter was investigated and the respondent was charge sheeted.

After completion of the trial, the respondent was acquitted by the trial Court.

3. Learned counsel for the appellant/State submits as under:

(i) The trial Court committed error in not believing the testimony of Salikram (PW-1) and other prosecution witnesses.

(ii) The trial Court has failed to see minutely that the respondent has submitted his mark sheet for getting the service, therefore, finding of the trial Court is liable to be set aside.

4. On the other hand, learned Court of the respondent submits that the finding arrived at by the trial Court is based on proper marshaling of evidence, which is not liable to be interfered with invoking the jurisdiction of the appeal. He has placed reliance in the matters of **Dr. Vimla Vs. The Delhi Administration** reported in **AIR 1963 Sc 1572** and **V. Sejappa Vs. State By Police Inspector Lokayukta** reported in **AIR 2016 SC 2045**.

5. The question for consideration before this Court is whether any forgery is committed by the respondent as defined under Section 463 IPC. As per the definition of forgery in the said section whoever makes any false documents with intent to cause damage or injury or to support any claim or with intent to commit fraud is said to have committed forgery.

6. In the present case, the prosecution examined as many as 7 witnesses to substantiate the charges. No one deposed before the trial Court that any mark sheet is prepared by the respondent. The Original mark sheet of Class-10 for which the respondent was charged is not produced before the trial Court and the case of the

prosecution is based on photocopy of the mark sheet which is Ex-P/3. The said photo copy is not the primary evidence and there is nothing on record as to when the trial Court permitted the prosecution to adduce secondary evidence. In absence of evidence against the respondent for preparation of mark sheet and non-production of original mark sheet, it is not proved that the respondent has prepared any false documents.

7. No one was examined before the trial Court to whom the mark sheet was presented by the respondent for appointment on the post of Village Assistant. It is also not clear that passing of Class Tenth was minimum qualification for the said post. Therefore, it is not established that the documents is used as genuine before the authority who acted on the said mark sheet. For commission of offence of cheating, there should be a person who has been deceived fraudulently as per Section 415 of the IPC but no one was produced before the trial Court who has been deceived by the respondent on the basis of alleged forged mark sheet. Though retired Principal RC Verma (PW-7) deposed before the trial Court that the respondent failed in the examination but the fact remains that no one was examined by the prosecution before whom the document is used as genuine and the same is used for the purpose of cheating. Investigation regarding mark sheet is incomplete that is why after assessing the entire evidence, the trial Court recorded finding of acquittal. Finding recorded by the trial Court is neither perverse nor illegal.

Therefore, it is not a case where interference of this Court is required with the judgment of the trial Court.

8. Accordingly, the appeal is liable to be and is hereby dismissed.

**Sd/-**  
**(Ram Prasanna Sharma)**  
**JUDGE**

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