

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 375 OF 1996

The State of Maharashtra

.. Appellant
(Orig. Complainant)

Vs.

1. Dilip Sakharam Shinde,
Age 22 years.
R/o. Shivaji Nagar,
Bhusawal, Dist. Jalgaon.

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2. Ganesh Prasad Jagannath Sharma
Age 33 years.
R.o. Shanimandir Ward,
Bhusawal, Dist. Jalgaon

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.. Respondents

Mr.P.H. Gaikwad, APP for appellant-State.

Mr.Mahendra N. Sandhyanshiv, Advocate for respondent Nos.1 and 2.

CORAM : N.J. JAMADAR, J.

DATE : 28TH FEBRUARY 2019

ORAL JUDGMENT :

1. This appeal is directed against the judgment and order dated 30th January 1996 in Regular Criminal Case No.235 of 1991 passed by the learned Chief Judicial Magistrate, Nashik, whereby the learned Chief Judicial Magistrate acquitted the accused of the offence punishable under Section 419 read with Section 34 of the Indian Penal Code, 1973.

2. Shorn of unnecessary details, the background facts which led to this appeal can be summarized as under :-

Shri Bhalchandra Balkrushna Joshi (hereinafter referred to as 'first informant') was posted as Principal of Industrial Training Institute, Satpur, Nashik, in the year 1991. On 25th July 1991, the examination of the external students was being conducted at ITI, Satpur.

3. Accused No.2 Ganeshprasad Jagannath Sharma had then appeared for examination for Carpentry trade as an external student. The duration of the paper was 9.00 a.m. to 12.00 noon. At about 9.00 a.m., accused No.2 approached the first informant and requested to allow the respondent No.2 to appear for examination as he had lost the identity card issued by his industrial employer. The first informant requested Shri Vijaysing Girase, who was then invigilating the class, in which the students appeared for the examination, to ascertain the identity of accused No.2 on the basis of the photograph affixed to the application form. Shri Vijaysingh Girase confirmed the identity of the accused No.2 and replied overleaf the note sent by the first informant that the accused No.2 was the same candidate and he was allowed to

appear for the examination.

4. After few minutes, another student came in front of the examination hall and met Shri Vijaysing Girase. He made enquiry about the same seat number for which the accused No.2 was allowed to sit. Shri Vijaysing Girase suspected some foul play. Thus, Shri Vijaysing took the accused No.1 to the office of the first informant. Upon enquiry, accused no.1 endavoured to assert that he was the very same Ganeshprasad Jagannath Sharma, the candidate for the said examination. Since the first informant had seen Ganeshprasad Jagannath Sharma few minutes ago and permitted him to appear for the examination, it was realised that accused No.1 impersonated the accused No.2, who was the genuine candidate. Thus, the accused No.1 was accosted and taken to Satpur Police station. The first informant lodged the report against both the accused for impersonation.

5. The crime was registered at C.R. No.208 of 1991. The accused No.1 was apprehended. The accused No.2 came to be arrested on the following day. The Investigating Officer interrogated the witnesses

and recorded their statements. The relevant documents, including the application of accused No.2 and the notes exchanged by the first informant and Vijaysing Girase were seized. As the investigation revealed complicity of the accused, charge-sheet was lodged against the accused for the offence punishable under Section 419 read with Section 34 of IPC.

6. The learned Chief Judicial Magistrate took cognizance of the offence. Charge was framed against the accused for the offence punishable under Section 419 read with Section 34 of IPC. The accused adjured their guilt and claimed for trial.

7. At the trial, in order to bring home the charge to the accused, the prosecution examined in all four witnesses, namely, Bhalchandra Balkrushna Joshi (PW-3)-the first informant, Vijaysing Girase (PW-4), the Invigilator, Ravising Gulabsing Bais (PW-2), Instructor at ITI, Nashik and Padmakar Baburao Wakhare (PW-1), the then Assistant Sub-Inspector, who had recorded the report lodged by the first informant. The accused did not lead any evidence in their defence, which consisted of denial and false implication.

8. The learned Chief Judicial Magistrate, after appraising the evidence led by the prosecution, was persuaded to return a finding of not guilty as the very factum of the alleged personation itself was not proved. Being aggrieved, the State has preferred this appeal.

9. I have heard Shri P.H. Gaikwad, the learned APP and Shri Mahendra N. Sandhyanshiv, learned counsel appearing for respondent Nos.1 and 2-accused.

10. The learned APP strenuously urged that the learned Chief Judicial Magistrate committed an error in discarding the evidence led by the prosecution. It was submitted that there was no occasion or reason for accused No.1 to be present at examination centre, while the examination was underway. There was no reason for the first informant and Vijaysing Girase (PW.4) to depose against accused Nos.1 and 2, nor there was any animosity against the respondents. Thus, their evidence could not have been disbelieved.

11. In contrast, the learned counsel for the respondents-accused, would urge that it was a case of no evidence. Taking me through the cross examination of the first informant (PW-3) and Vijaysing Girase

(PW-4), the learned counsel for the respondents stoutly submitted the impugned order is wholly sustainable. No view other than the one taken by the learned Chief Judicial Magistrate is possible, in the facts and circumstances of the case. Thus, it was submitted that the appeal is devoid of substance and deserves to be dismissed.

12. The gravamen of indictment against the accused is that accused No.2 was the genuine external candidate for the Carpentry trade examination conducted at ITI, Satpur. Initially, accused No.2 approached the first informant and sought permission to appear for the said examination on the pretext that he had lost the identity card, which was to be issued by the industrial employer. Later on, the accused No.1 come thereat and attempted to appear for the said examination for accused No.2.

13. The first informant (PW-3) claimed that he had requested Vijaysing Girase (PW-4) to ascertain the identity of the accused No.2 on the basis of the photograph affixed to the application form and thereafter permit him to appear for the said examination. The note (Exh.25) containing the said endorsement supports the claim of Shri

Joshi (PW-3). An endorsement overleaf the said note by Shri Girase (PW-4) further indicates that the later, after ascertaining the identity of accused No.2 allowed him to appear for the examination. The incident transpired thereafter is in the arena of controversy.

14. Vijaysing Girase (PW-4) endeavoured to impress upon the Court that after view minutes, accused No.1 approached him and made enquiry about the very same seat number on which the accused No.2 was allowed to sit for the said examination. He claimed to have entertained suspicion, and thus taken the accused no.1 to the first informant, resulting in apprehension of accused No. 2 and lodging of the first information report.

15. The manner in which the above witnesses fared in the cross-examination, however, belies their claim. It was brought out in the cross-examination of the first informant that when accused No.2 approached him, the examination had already started. It was further elicited that neither any question paper nor any answer sheet was given to the accused no.2. He further conceded that the incident occurred outside the examination hall. He went on to admit that he

was not present in the examination hall at the time of alleged occurrence. Whereas in the cross-examination of Shri Vijaysing Girase (PW-4), it was elicited that accused No.1 did not write any answer sheet in the examination hall.

16. In the backdrop of the aforesaid admissions, the learned Chief Judicial Magistrate was of the view that there was no personation as such. Neither accused No.1 entered the examination hall nor he attempted to write answersheet for accused No.2. Nor it was found that accused No.1 collected the hall ticket in the name of accused No.2.

17. The aforesaid view of the learned Chief Judicial Magistrate appears to be justifiable. From the tenor of the evidence, it becomes abundantly clear that the alleged occurrence took place outside the examination hall. The first informant (PW-3) as well as Vijaysing Girase (PW-4) have conceded that neither accused No.1 entered the examination hall nor he attempted to write the answer-sheet for accused No.1.

18. From the aforesaid evidence, it becomes abundantly clear that the basis of the prosecution case was the suspicion entertained by Vijaysing Girase (PW-4) consequent to the enquiry which the accused No.1 allegedly made about accused No.2. An explanation was sought to be offered on behalf of accused that since accused No.2 was unwell, accused No.1 came thereat to make enquiry as to whether accused No.2, in fact, appeared for the examination or not. Irrespective of the justifiability of the said explanation, it must be noted that there is no evidence to show that the accused No.1 was apprehended while either attempting to appear at the said examination or writing the answer-sheet for accused No.2. Even there is no evidence to suggest any attempt at impersonation.

19. In this setting of the matter, the learned Chief Judicial Magistrate was within her rights in recording that the alleged offence under Section 419 read with Section 34 of IPC was not proved. Even if the prosecution case is taken at par, the charge of cheating by impersonation cannot be sustained.

20. Moreover, this Court, while examining the legality, propriety

and correctness of an order of acquittal, is not expected to interfere with the acquittal unless there are substantial and compelling reasons. The order of acquittal by the trial Court reinforces the presumption of innocence. On this touchstone, if the material on record is scrutinized, it becomes abundantly clear that the view taken by the learned Chief Judicial Magistrate is wholly justifiable, nay, in fact, the evidence does not justify any other view of the matter. Thus, I am not inclined to interfere with the order of acquittal.

21. Resultantly, the appeal deserves to be dismissed. Hence, the appeal stands dismissed. Bail bonds stand cancelled and sureties stand discharged. Record and Proceedings be sent back to the trial Court.

[N. J. JAMADAR, J.]