

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

CRA-S-1929-SB-2003

Decided on : September 24, 2019

Dalvinder Singh

..... Appellant

Versus

State of Punjab

..... Respondent

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Argued by : Mr. Arvinder Singh, Advocate
for the appellant.

Ms. Kanica Sachdev, AAG, Punjab.

Manjari Nehru Kaul, J.

The instant appeal has been preferred against the impugned judgment of conviction and order of sentence dated 01.10.2003 passed by Special Judge, Ferozepur vide which the accused-appellant was convicted under Section 474 IPC and sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.10,000/- and in default to further undergo rigorous imprisonment for one year.

2. Prosecution case in brief as set up during the trial was that the son of complainant Tehal Singh (PW-6) appeared in the matriculation examination held by the Punjab State Education Board (for brevity 'PSEB') in the month of March, 1993 as a student of Government School, Mallanwala. As he did not fair well in the said examination, he told the complainant that one of his friends Sarbjit Singh too had not done well in the matriculation examination in the previous year but had still managed to get a “pass” matriculation certificate prepared through Sukhdev Singh,

Nazeer Chand and Raman Monga, Sarpanch, member panchayat and teacher respectively. The complainant thereafter approached Sukhdev Singh and Nazeer Chand in April, 1993 and sought their help in procuring a “pass” matriculation certificate for his son, who in turn demanded Rs.13,000/- for getting the needful done. The complainant subsequently paid the amount demanded to Sukhdev Singh, who assured him that the needful would be done. All this transaction took place in the presence of Sarabjit Singh, Jarnail Singh and Virsa Singh. The money was then passed on to co-accused Raman Monga by the Sukhdev Singh and Nazeer Chand in the presence of the complainant and the aforementioned three persons, who had accompanied him. However, when the matriculation result was declared, his son's name did not figure in the list of successful candidates. In July 1993, when the complainant approached Nazeer Chand, a detailed marks card (for short 'DMC') of his son was delivered to him in which his son was shown to have passed the matriculation examination. The complainant took the DMC to the Education Office at Mohali where it was revealed to him that the said DMC was a fake certificate. He then again approached Sukhdev Singh and Nazeer Chand and demanded back the money given by him to them. However, they refused to return the same. Further, the complainant Tehal Singh PW-6 also stated that it had come to his knowledge that the aforesaid persons had accepted money from different people for procuring such like fake certificates. On the basis of the statement of complainant Tehal Singh Ex.P-9 made to PW-9 ASI Jaswant Rai, FIR No.134 (Ex.P-9/B) was registered under Sections 420, 465, 468, 471, 201, 34 IPC and Section 8/9 of Prevention of Corruption Act, 1988

leading to the arrest of Sukhdev Singh and Nazeer Chand on 16.11.1994 whereas accused Raman Monga was arrested on 26.11.1994. On her arrest, Raman Monga suffered a disclosure statement Ex.P-14 in pursuance to which, two forged DMCs of Amrik Singh and Sat Pal Singh were recovered vide recovery memos Ex.P-16 and P-17.

3. During the investigation, the statements of the persons named by the complainant Tehal Singh (PW-6), who had purportedly given money for procuring such like fake certificates were recorded wherein it was revealed that accused Raman Monga along with a PSEB clerk namely Dalvinder Singh appellant had been accepting money from them for supplying fake matriculation certificates. Subsequently, accused-appellant Dalvinder Singh was arrested on 29.11.1994.

During his interrogation by PW-11 DSP Raghbir Singh Chahal, the accused-appellant suffered a disclosure statement Ex.P-19 in pursuance to which the appellant got recovered DMCs of two persons namely Swaran Singh and Nirvair Singh i.e. Ex.P-21 and P-22 from his house situated at Mohali. When the recovered DMCs were sent to the Board for authentication-cum-verification, it was revealed that they were fake certificates. On completion of the investigation, the accused-appellant was charged for offence under Sections 474 IPC and 13(2) of the Prevention of Corruption Act, 1988 to which he pleaded not guilty and claimed trial.

4. In support of their case, prosecution examined as many as 12 witnesses including Tehal Singh, complainant PW-6, Gagan Kumar PW-7, Virsa Singh PW-8, ASI Jaswant Rai- PW-9, Joginder Singh PW-10, Raghbir Singh Chahal, DSP – PW-11 and Labh Singh -PW-12.

5. After the conclusion of prosecution evidence, all the incriminating circumstances appearing against him in evidence were put to the appellant-accused under Section 313 Cr.PC to which he pleaded false implication.

6. Accused Raman Monga absented herself during the trial and was declared a proclaimed offender.

7. On the basis of the evidence led by the prosecution, the trial Court convicted the appellant and sentenced him as already detailed above.

8. Learned counsel for the appellant has vehemently argued that the name of the appellant nowhere figured in the FIR, which was registered at the instance of complainant Tehal Singh PW-6. The name of the appellant appeared for the first time in the statement of PW-7 Gagan Kumar recorded under Section 161 Cr.PC wherein he disclosed that he had accompanied one Gurnam Singh when the latter had gone to appellant Dalvinder Singh to pay Rs.3,500/- for procuring a "pass" matriculation certificate for the complainant Tehal Singh's son besides also disclosing that one Satnam Singh too had paid Rs.8,500/- in the presence of PW-10 Joginder Singh to the appellant Dalvinder Singh for procuring a matriculation certificate for himself. It was urged that PW-7- Gagan Kumar did not support the case of the prosecution. Moreover, neither Gurnam Singh nor Satnam Singh were ever joined for investigation nor examined by the prosecution in support of their case. Further, the matriculation certificates allegedly recovered were in the name of Nirvair Singh and Swaran Singh, who too never stepped into the witness box nor were they joined in the investigation. Finally, it was argued that there was no cogent much less convincing evidence on record to

show that the fake certificates allegedly were recovered from the possession of appellant.

9. Learned State counsel, on the other hand, has vehemently argued that no doubt the complainant Tehal Singh (PW-6) did not support the prosecution case but the fact remains that PW-7 Gagan Kumar deposed that the accused had accepted Rs.8,500/- from Satnam Singh for preparing matriculation certificate. In this background, non-examination of Satnam Singh would not be of much consequence specially when two forged certificates have been recovered from the possession of the appellant Dalvinder Singh and prayed for dismissal of the appeal.

10. I have heard learned counsel for the parties besides going through the evidence and other material available on record.

11. Learned trial Court acquitted the appellant under the Prevention of Corruption Act, 1988, however, it was only under Section 474 IPC that he was convicted. Hence, the short question, which arises for consideration is whether the appellant can be held guilty for the offence under Section 474 IPC or not, on the basis of evidence on record?

12. It would be thus, apposite to reproduce Section 474 IPC, which reads as under:

“474. Having possession of document described in section 466 or 467, knowing it to be forged and intending to use it as genuine.—1[Whoever has in his possession any document or electronic record, knowing the same to be forged and intending that the same shall fraudulently or dishonestly be used as genuine, shall, if the document or electronic record is one of the description mentioned in section 466 of this Code], be

punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; and if the document is one of the description mentioned in section 467, shall be punished with [imprisonment for life], or with imprisonment of either description, for a term which may extend to seven years, and shall also be liable to fine.”

A bare reading of the aforementioned section reveals that the essential ingredients to attract the provisions of the Section would be

- (i) possession of the forged documents
- (ii) knowledge on the part of the accused about the forgery of a document and
- (iii) intention on the part of the accused to use the said forged document fraudulently or dishonestly

13. It is thus, apparent that to attract the mischief of Section 474 IPC, first and foremost the recovery should have been effected from the exclusive possession of the accused. As per prosecution, the disclosure statement Ex.P-19 was said to have been suffered by the accused before PW-11 DSP Raghbir Singh Chahal and PW-9 ASI Jaswant Rai in pursuance to which the alleged recoveries of the fake certificates was effected by the appellant from his house vide recovery memo Ex.P-21 and P-22. However, during his deposition in the Court, PW-9 ASI Jaswant Rai admitted that he had never ever visited the house of the accused-appellant. In this background, the recovery itself becomes highly doubtful and is laced with suspicion. Once the recovery of fake documents itself is not proved to have been effected from the exclusive possession of the accused then the

other two ingredients i.e. “knowledge” and “intention” pale into insignificance. The least the prosecution could have done was to examine the two persons namely Nirvair Singh and Swaran Singh in whose name the alleged certificates were recovered to connect the appellant with the alleged forged certificates but admittedly, they were neither examined nor joined in the investigation. The complainant Tehal Singh as well as other witness PW-7 Gagan Kumar did not support the prosecution version, which also creates a serious dent in the prosecution story. Another factor, which could have nailed the accused-appellant vis-a-vis the alleged recovery would have been a comparison of his handwriting with the certificates to prove his involvement in the crime. However, for reasons best known, no such comparison was got done.

14. As a sequel to the above discussion, the appellant deserves the benefit of doubt. Consequently, the present appeal is allowed and the impugned judgment and order of conviction dated 01.10.2003 is hereby set aside. The appellant Dalvinder Singh is acquitted of the charges against him. He is on bail and accordingly, his bail bonds stand discharged.

September 24th, 2019
sonia

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned:
Whether reportable :

Yes/No
Yes/No