

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

**CRA-D-769-DBA-2002(O&M)
Date of decision:-5.11.2019**

The State (U.T.)Chandigarh

...Appellant

Versus

Nirmal Kumar and another

...Respondents

**CORAM : HON'BLE MR. JUSTICE JITENDRA CHAUHAN
HON' BLE MR. JUSTICE H.S. MADAAN**

Present : Mr.J.S. Toor, Additional Public Prosecutor,
U.T. Chandigarh for the appellant.

Respondent No.1 in person with
Mr.S.L. Chander Shekhar, Advocate
for the respondents.

H.S. MADAAN, J.

Accused Nirmal Kumar, Ram Pal and Ram Kumar were sent up to face trial by SHO Police Station East, Chandigarh for offences under Sections 420, 467, 468 and 471 IPC in FIR No.187 of 25.5.1994.

Briefly stated, facts of the case as per the prosecution version are that Inspector Charan Dass, Vigilance Haryana had sent a communication Ex.PA dated 25.5.1994 to Police Station East, Chandigarh stating therein that one Sahib Singh, Serving in PWD, B&R, Haryana had submitted a complaint that Sardara Ram, Randhir Singh, Mohinder Singh, Ram Pal, Nirmal Kumar, Ram Phal, Dharam Pal,

Mehar Singh, Ram Chander, Gulzara Ram, Ram Kumar, Mahabir Singh, Luxmi Ram and Paras Ram had got promotion by submitting fake/false matriculation certificates in their Department; the matter was probed and matriculation certificates of Ram Pal, Nirmal Kumar, Mehar Singh and Ram Chander were found to be fake/forged.

On the basis of such communication, formal FIR detailed above, was registered against the accused. The investigation in the case began. The matriculation certificates of Mehar Singh and Ram Chander were found to be genuine, whereas those of accused Nirmal Kumar, Ram Pal and Ram Kumar came out to be fake. The accused were formally arrested in this case. Several documents were seized.

On completion of investigation and usual formalities, challan against the accused was prepared and presented in the Court of Judicial Magistrate Ist Class, Chandigarh, who supplied copies of documents relied upon therein to the accused free of costs as provided under Section 207 Cr.P.C.

All the accused were formally charge-sheeted for the offences under Sections 420, 467, 468, 471 IPC, to which, they pleaded not guilty and claimed trial. The case was then fixed for evidence of the prosecution.

During the course of its evidence, the prosecution examined as many as six witnesses i.e. PW1 Charan Dass, PW2 Sh.Rajinder Sikka, PW3 Harbail Singh, PW4 Sh.Sahib Singh, PW5 SI Labh Singh, Investigating Officer and PW6 Sh.Manohar Lal.

With that the prosecution evidence stood closed.

Statements of accused were recorded under Section 313

Cr.P.C., in which all the incriminating circumstances appearing against such accused were put to them but they denied the same contending that they were innocent and had been falsely involved in this case. Accused Ram Pal and Nirmal Kumar took up a specific plea that as a matter of fact they had applied for rechecking/reevaluation of their answer-sheets and they were declared 'pass' by the Board; the matriculation certificates were sent to them in the envelope and the FIR had been registered against them after lapse of 13 years; that the officials of the concerned Board were at fault for not making correction in the Gazette Notification Ex.PW6/A.

In defence evidence, the accused had tendered two affidavits Ex.D1 and Ex.D2.

After hearing arguments, the trial Magistrate came to the conclusion that the prosecution had been able to prove that accused Nirmal Kumar and Ram Pal had obtained promotion by submitting forged matriculation certificates, thereby committing an offence under Section 420 IPC and similarly by forging the said matriculation certification, which purported to be valuable security got a promotion committing offence under Section 467 IPC and in addition to that both the accused had used forged matriculation certificates for the purpose of cheating i.e. for getting promotion and thus committed an offence under Section 468 IPC and they had made false documents i.e. matriculation certificates committing offence under Section 471 IPC. Accused Ram Kumar was acquitted of the charge giving him benefit of doubt. Convicted accused Nirmal Kumar and Ram Pal were sentenced as under:

Sr.No.	Name of accused	Offence U/S	Sentence
1.	Nirmal Kumar	420 IPC	Two years and fine of Rs.300/-. In default of payment of fine, he shall undergo R.I. two months more.
	-do-	467 IPC	2 ½ years and fine of Rs.500/-. In default of payment of fine, he shall undergo R.I. two months more.
	-do-	468 IPC	Two years and fine of Rs.300/-. In default of payment of fine, he shall undergo R.I. two months more.
	-do-	471 IPC	One year and fine of Rs.200/-. In default of payment of fine, he shall undergo R.I. for two months more.
2.	Ram Pal	420 IPC	Two years and fine of Rs.300/-. In default of payment of fine, he shall undergo R.I. two months more.
	-do-	467 IPC	2 ½ years and fine of Rs.500/-. In default of payment of fine, he shall undergo R.I. two months more.
	-do-	468 IPC	Two years and fine of Rs.300/-. In default of payment of fine, he shall undergo R.I. two months more.
	-do-	471 IPC	One year and fine of Rs.200/-. In default of payment of fine, he shall undergo R.I. for two months more.

Both the accused/convicts had preferred an appeal before the Court of Sessions, which was assigned to Additional Sessions Judge, Chandigarh, who vide judgment dated 8.5.2002 accepted the appeal, set aside the judgment of conviction and sentence passed by Judicial Magistrate Ist Class, Chandigarh against accused/convicts Nirmal Kumar and Ram Pal, resultantly acquitted them of the charge framed against them.

Now it was turn of the State to feel dissatisfied and it has approached this Court by filing an appeal, notice of which was given to respondents/accused. During the pendency of the appeal, accused Ram Pal has expired. Copy of his death certificate and other supporting documents have been placed on record in that regard as Mark 'A'. As such the appeal qua him has become infructuous and it survives as regards accused Nirmal Kumar only, who has appeared along with counsel.

We have heard learned counsel for the parties besides going through the record.

We find that the judgment of conviction recorded by the trial Magistrate against Nirmal Kumar and Ram Pal was based upon faulty analysis of the factual and judicial position, as such was not sustainable and it was rightly set aside by learned Additional Sessions Judge, Chandigarh by way of acceptance of appeal. The judgment passed by learned Additional Sessions Judge, Chandigarh, which is being impugned before this Court is well reasoned, based on proper appraisal of evidence and correct interpretation of law. Learned Additional Sessions Judge, Chandigarh has given several reasons for

arriving at the conclusion that the prosecution had been unable to establish its charge against the accused beyond a shadow of reasonable doubt. Such reasons in brief are enumerated as under:

(i) The prosecution had failed to establish that matriculation certificates of Nirmal Kumar and Ram Pal Mark 'Y' and Mark 'Z', respectively were fake and since the certificates were not got exhibited it could not be said that those were the certificates which were produced by the appellants before their employer to get promotion from the post of Peon. The certificates Mark 'Y' and Mark 'Z' could not be said to be fake since letter dated 27.9.1993 written by Haryana School Education Board to the Engineer-in-chief, PWD(B&R), Branch Haryana, copies Ex.PW6/B and Ex.PW6/C does not reveal that those certificates were fake and it has only been mentioned that the certificates were different from the record of the Board i.e. Gazette, the relevant extract of which has been produced on record as Ex.PW6/A, which is not sufficient to term those certificates as fake.

(ii) Statement of PW6 Manohar Lal, Superintendent, Office of Haryana School Education Board, Bhiwani could not be relied upon for holding the accused, who were appellants before such Court guilty for the offences for which they had been charge-sheeted as he had not brought any record pertaining to the fake certificates produced on the file since that record had been destroyed. The witness had stated that he could not say whether the seal of the Board and signatures appended by the officials of

the Board on these certificates were genuine or not. The witness had feigned ignorance whether the certificates were issued by the Board or some other agency. No other evidence had been adduced by the prosecution to establish that the certificates were fake.

(iii) Both the accused/convicts had taken up the plea that they had applied for rechecking/re-evaluation of the answer-sheets and after rechecking, they were issued certificates by the Board. When PW6 Manohar Lal was cross-examined in that regard, he stated that he was not having the record in that respect since the same was destroyed after one year which means that witness could not deny the allegations of the appellants/convicts made in that respect.

(iv) The prosecution had been unable to lead any evidence to show that the certificates were forged by the accused/convicts or by some one with their connivance and there was no cogent evidence available on the record to show that the accused were having any knowledge that the certificates issued to them were fake and they had used the same knowing fully well that the certificates were fake.

(v) Since the prosecution had been unable to show that appellants knew that the certificates were fake, even if they had submitted the same to their department for getting the promotion that does not mean that they had committed offence of cheating within purview of the Section 417 punishable under Section 420 IPC. Similarly no offence under Sections 467, 468 and 471 IPC was proved to have been committed by the accused/convicts.

We find that such reasoning given is proper and appropriate and we do not see any reason to differ with the same. There is no illegality or infirmity in the impugned judgment passed by the Additional Sessions Judge, Chandigarh. The same is upheld.

The appeal is found to be without any merit and is dismissed accordingly.

	(JITENDRA CHAUHAN)	(H.S.MADAAN)
	JUDGE	JUDGE
5.11.2019		
Brij		

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No