IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 07.11.2019

\+ **CRL.A. 428/2017 & CRL.M(BAIL) 992/2019**

ASIF HUSSAIN **..... Appellant**

versus

STATE **..... Respondent**

Advocates who appeared in this case:

For the Appellant: Mr. Salman Hashmi, Advocate (DHCLSC).

For the Respondent: Mr. Amit Gupta, APP for State with SI Data Ram, IGI/Crime Branch.

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HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The appellant has filed the present appeal impugning the judgment dated 28.10.2016 passed by the learned ASJ convicting the appellant of an offence under Section 3 of the Official Secrets Act, 1923 for being in possession of restricted documents relating to the Indian Army, which could be prejudicial to the security and interest of the State. The appellant was also convicted of an offence under Section 474 of the Indian Penal Code, 1860 (IPC) for possessing forged documents such as driving license, ration card, school certificate, false disclosure regarding his address and date of birth for obtaining his first passport.

2. The appellant also impugns an order dated 09.11.2016, whereby he was sentenced to undergo rigorous imprisonment for a period of nine years for the offence under Section 3 of the Official Secrets Act, 1923 and for a period of four years along with a fine of ₹10,000/- for the offence under Section 474 of the IPC. It was also directed that the appellant would undergo simple imprisonment for a period of nine months if he defaulted in the payment of the fine imposed on him.

3. The judgment was rendered in connection with FIR No. 36/2012 under Sections 419/420/468/471/120B of the IPC; Sections 3/9 of the Official Secrets Act, 1923; and Sections 14-A and 14-B of the Foreigners Act, 1946.

Prosecution's case

4. It is the prosecution's case that information had been received that a Pakistani national living in Kolkata, Asif Hussain (appellant herein), was working as a secret agent for the Pakistani army and collecting and sending sensitive information about the Indian Army to them. On the day of the incident – that is on 13.02.2012 – further secret information was received that the said accused was coming to Delhi for meeting his contact and would be returning the same day. He could be apprehended if an immediate raid was conducted. A raiding party was constituted and took positions near Chelmsford Road, IRCA Building, New Delhi Railway Station. A few passersby were requested to join the raiding party but they did not agree. After some time, the accused was seen coming on foot and upon identification by the secret informer, he was apprehended. The raiding party disclosed their identity and offered

the accused an option to search them, however the accused refused. On searching the accused, raiding party found a white envelope containing documents relating to the Indian army. The accused could not offer an explanation for possessing the said documents. The said documents were seized and sealed and were signed by the accused, as well as the witnesses. Accused was further searched and from his bag, his Indian passport, PAN card, Driving License, Voter identity card, debit card and railway tickets were found, which were also seized. Thereafter, the *rukka* was sent and further investigation was marked to the Investigating Officer (IO). IO arrived at the spot and arrested the accused. The documents recovered were handed over to him. On obtaining PC remand, the accused thereafter led them to his house at Kolkata, from where further documents and another driving license was recovered and seized.

5. The prosecution stated that all the documents were sent for verification and it was revealed that the documents of the Indian Army recovered from the accused were restricted and were for official use. Unauthorized communication of the same was prejudicial to the interests and safety of the State. One driving license and the accused's school certificate were found to be forged and fabricated and other documents such as the Passport, Pan card, I-card etc., were found to be obtained on the basis of forged and fabricated documents and disclosures.

6. The prosecution contended the accused had entered India under the name Kamran Akbar, registered himself with the Foreigners

Regional Officer Kolkata, but had not returned to Pakistan. It was also stated that the accused had disclosed the name of his sponsor but he was not found. He also did not reside at the address disclosed by the appellant.

7. The prosecution examined twenty-four witnesses and the defense examined two witnesses. The Trial Court had evaluated the evidence available and found the appellant guilty of the offence under Section 3 of the Official Secrets Act, 1923 and Section 474 of the IPC for possession of restricted documents and possession of forged documents.

8. The Trial Court had held that there was no evidence to show that the accused had forged the said public documents and held that the prosecution had failed to link the identity of the present accused with Kamran Akbar, who is stated to have entered India on a Pakistani passport and also has faced trial before a Court in Goa. Accordingly, the Trial Court gave the accused the benefit of doubt and acquitted him of the charges of committing offences under Sections 419 and 466 of the IPC and Sections 14A and 14B of the Foreigners Act, 1946.

9. The appellant contends that the Trial Court had erred in not appreciating that there had been no recovery of any incriminating material from the appellant. The appellant claims that the envelope was planted on him and that the raiding party did not offer the appellant any opportunity to search them; nor had the appellant refused such an opportunity. Further, no independent witness was made a party to the search in spite of the alleged arrest of the appellant from a crowded

place. The appellant also contended that neither SI Ramesh nor Inspector Prem Chandra Khanduri were empowered to investigate the present case as per Section 8 of the Official Secrets Act, 1923.

Evidence

10. Before proceeding further, it is relevant to briefly examine the evidence led by various witnesses.

11. HC Jaipal Singh, PS Crime Branch, Malviya Nagar, was examined as PW1 and he deposed that on 13.02.2012, he was on duty at PS Crime Branch. At 6:30 p.m., he received the *rukka* and recorded FIR No. 36/2012 (Ex. PW1/A), which bears his signature at point 'A'. The investigation was thereafter handed over to SI Ramesh Sharma (PW24).

12. HC Bharat Singh, Narcotics Branch, Shankar Pur, Delhi was examined as PW2 and he deposed that on 13.02.2012, he was posted as Head Constable in the Anti Extortion Cell, R.K. Puram, Delhi. On the said day, at about 2:15 pm, Inspector Prem Chandra Khaduri of the Anti-Extortion Cell, R.K. Puram, informed him and other police officials about the secret information received regarding a Pakistani official namely Kamran alias Asif. A raiding party was constituted and they reached the IRCA Building, Chelmsford Road at about 3:15 pm. Inspector Prem Chandra Khaduri asked passersby to join the raiding party but they refused and left without disclosing their names and addresses. At about 3:50 pm, one person was seen coming from Connaught Place, who was identified by the secret informer as Kamran

@ Asif Ali. Inspector Prem Chandra Khaduri apprehended the accused and gave him an opportunity to search the raiding party, but the accused refused. On cursory search of the accused, a white colored envelope was recovered from the front lower left pocket of his jacket. On checking the said envelope, three papers written in English mentioning information relating to Arms and Ammunition, Training and Military were found. Inspector Prem Chandra Khaduri seized the three documents (Ex PW2/A1 to Ex. PW2/A3) vide seizure memo (Ex. PW2/A). Accused could not justify the possession of the same. He was also carrying a black coloured hand bag made of leather/ raxin type. On checking the bag, it was found containing an Indian Passport, PAN Card, Driving License, Voter ID Card in the name of the accused and two railway tickets. Inspector Prem Chandra Khaduri prepared the *rukka* and handed it over to PW2 and he took the same to PS Crime Branch, Malviya Nagar at 5:45 pm to get an FIR registered. He came back to the spot at 8:30 pm. SI Ramesh Sharma interrogated the accused and arrested him vide arrest memo (Ex. PW2/B) and his personal search was conducted (vide memo- Ex. PW2/C). They left the spot with the accused and reached the office of Anti Extortion Cell at about 10 pm, where the accused was interrogated and his disclosure statement was recorded (Ex. PW 2/E).

13. PW2 deposed that on 15.02.2012, the accused was interrogated and his statement was recorded (Ex. PW2/F). PW2 identified the documents – Indian Passport (Ex. P1), PAN card (Ex. P2), Driving License (Ex. P3), Voter ID Card (Ex. P4), and two railway tickets to Delhi and Delhi to Kolkata (Ex. P5 and Ex. P6 respectively).

14. PW2 further deposed that on 18.02.2012, the accused led them to his house in Kolkata as he was on PC remand and some documents, including one driving license (Ex. P8) was recovered. The said documents were seized vide seizure memo (Ex. PW 2/G). The documents that were seized were twenty-five in number and were exhibited as Ex. PW2/GI to Ex. PW2/G25.

15. Sh. Subhash Khichar, LDC, RTO was examined as PW3. He deposed that had been working in RTO Sirkar as an LDC since 2005. On 06.05.2014, during his examination in chief, he brought the extract of the driving license of the accused (Ex. PW3/A) and stated that the same had been issued in the name of Mohd. Arif Tola s/o Manover Hussain Tola. He deposed that as per the order (Ex. PW3/B), the original record of the license had been destroyed vide letter No. 859 dated 12.07.2011.

16. Eklabya Chakrobarty, Asst Passport Officer, Regional Passport Office, Calcutta was examined as PW 4. On 06.05.2014, PW4 brought the records pertaining to the passports of Asif Hussain and deposed that Ex PW4/C was the previous passport, which was issued in 1996 and expired in the year 2006. Ex. PW4/D was issued on 12.01.2012, after the application was submitted for issuance of a fresh passport and he deposed that both the passports were issued by their office.

17. Sh. Kalyan Kumar Jana, Panchayat Account Audit Officer was examined as PW5 and he brought on record and verified the record relating to the Electoral Voter ID card of Asif Hussain (Ex PW5/A). Sh. Chinta Seth, Motor Vehicle Inspector (Technical), Alipur was

examined as PW6, and as a motor vehicle inspector (technical), he brought and verified the record relating to Asif Hussain (Ex. PW 6/A colly) and deposed that driving license (Ex. PW6/A) was issued by their department and was a genuine document.

18. Sh. Amit Kumar Chandra, Deputy Manager, United Bank of India was examined as PW7 and he brought the records pertaining to the bank account held by Asif Hussain. Sh. Srirup Gopal Gosami, Head Master of the Kidderpore Academy, was examined as PW8 and he deposed that the school leaving certificate (Ex. PW 8/B) was a fabricated document and the name of Asif Hussain was not found in the admission register of the school.

19. Sh. M.K. Haldar, Rationing Officer was examined as PW9 and he deposed that the ration card (Ex. PW9/B) was not genuine and the serial number mentioned in the ration card was in fact issued to one Aqswari Begum and not to Asif Hussain. Sh. Adinath Bhaje, Jailer, Sub Jail Sada Vasco, Goa was examined as PW10 and he verified Ex. PW10/A, which was a letter from Sub Inspector Crime Branch, Delhi, SI Ramesh Sharma. He further verified his written reply, which was marked as Ex. PW10/B.

20. ASI Suresh Chand was examined as PW11 and he deposed that on 15.02.2012, he along with SI Ramesh Sharma had gone to Calcutta for investigation of the present case. They reached Calcutta on 16.02.2012 and had served notices on the passport office, RTO office and the Income Tax Office. On 17.03.2012, PW11 joined the investigation of the case again and went to Goa to collect the record of

the accused from PS Panaji and on his return, he handed the same to the IO SI Ramesh Sharma.

21. Mohd Shamim was examined as PW12. He was the alleged landlord of the appellant, as per the address provided by the appellant at Point 'A' on Ex. PW 21/A. PW12 deposed that he did not know any person by the name of Kamran Akbar, who is a national of Pakistan. He stated that the police had come and made inquiries from him in the month of April, 2012. During his examination in chief, on seeing the accused, he stated that he did not know the accused and the said person had never come to his residence.

22. Sh. Rajeev Vashishth, Alternate Nodal Officer, Tata Tele Services was examined as PW13. He brought on record the details of the mobile phone bearing no. 8981680891 and stated that the said SIM was issued to one Rehana w/o Sh. Basir.

23. Inspector PC Khandoor was examined as PW14 and he deposed that on 13.02.2012, he received information that one person named Kamran Akbar, who was a resident of Pakistan and was illegally residing in Kolkata under the name of Asif Hussain had secret information relating to the Indian Army. As per the information received, he was working at the instance of the Pakistani Army. At about 2 pm, a secret informer told him that Kamran Akbar alias Asif Hussain would return back to Kolkata and would go through New Delhi railway Station towards Paharganj side via Chelmsford Road at about 4:30 pm. Sh. Ravi Shankar, DCP Anti Extortion Cell asked him to conduct the raid and he along with other police officials and the secret

informer, left to do so. At 3:15 pm, they reached Chelmsford Road IRCA building and PW14 asked 3-4 passerby to join the investigation but they refused. At about 3:50 pm, the accused was apprehended. He was wearing a black jacket at the material time. PW 11 deposed that he gave accused an opportunity to conduct search of the raiding party. However, he refused and on searching him, PW11 found a white coloured envelope from his lower front left side pocket. The said envelope contained three typed documents and on top of one document, "Addl. Dte General of Weapons and EQPTS Army Headquarter, DHQPO, New Delhi" was written. All documents related to the aforesaid department and contained secret information relating to the Indian Army. Accused was carrying a black coloured hand bag in his hand and from that bag, passport, PAN Card, Voter ID Card, DL, Debit Card and two railway tickets from Howrah to Delhi and New Delhi to Howrah were recovered. PW14 deposed that accused is a resident of Pakistan and his real name is Kamran Akbar. He stated the accused was residing in India under the name of Asif Hussain and had obtained the documents on the instructions of the Pakistani Army. PW14 prepared the *rukka* and the same was handed over to HC Bharat Singh for getting an FIR registered. On information being received, SI Ramesh came to spot at about 7 pm and further investigation was handed over to him by the order of the senior police officials. At 8:30 pm, HC Bharat Singh reached the spot with the FIR and SI Ramesh prepared the site plan at PW14's instance. They left the spot at 9:30 pm and reached the office at 10 pm. On 21.02.2012, PW14 moved a letter for getting the report of the documents recovered from the possession of the accused. He also identified all the documents that were recovered from the accused.

24. SI R. Srinivasan, SWR, Crime Branch was examined as PW15 and he deposed that on 13.02.2012, at 2:15 pm, Inspector PC Khandoori received information that the accused would come to New Delhi Railway Station towards Pahar Ganj side by Chelmsford Road, at about 4:30 pm. On being directed to conduct the raid, Insp Khanduri organized a raid and PW15 was a part of it. At 2:25 pm, they left and the secret informer was also with them. Inspector Khanduri asked for persons to join but none agreed and left without giving their names and addresses. At 3:50 pm, the accused came on foot and was apprehended. The accused refused to take the search of the raiding party on being given the opportunity. He was wearing a black coloured jacket and from its lower front left side pocket, one white coloured envelope was recovered. The white envelope contained three typed documents relating to the Indian Army – Arms and Ammunitions and Training. From the black coloured bag carried by the accused, PAN Card, Voter ID card, Indian Passport, one debit card of United Bank and two railway tickets were retrieved. He deposed that the accused had thereafter confessed that he was a resident of Pakistan; his real name is Kamran Akbar; that he was residing in India in the name of Asif Hussain, on the instructions of the Pakistani Army; and he got the illegally prepared documents recovered from his possession.

25. Bheem Sain, Commercial Inspector Northern Railway, New Delhi Railway Station was examined as PW16 and he brought on record

the PNR bookings for the two railway tickets that were recovered from the accused.

26. HC Ramesh Shivane was examined as PW17 and he brought the records relating to FIR No. 190/2012 P.S. Panaji, under Sections 448/342/392 and read with Section 34 of the IPC. Four persons including Kamran Akbar s/o Akbar Hussain were arrested in relation to the said case.

27. Narender Kumar, Under Secretary of the Government of India, Ministry of Home Affairs, was examined as PW18. He deposed that sanction was granted by him, as required under Sub Section 3 of Section 13 of the Official Secrets Act, 1923, to investigate and take action against the accused.

28. H. Lamchinthang Captain, IHQ-2/Mod (Army), CIU Delhi was examined as PW19. He verified and proved the report dated 28.03.3012 (Ex. PW14/C) issued by Lieutenant Colonel GSOI MI 9 M Directorate PTE Army HQ, according to which, the documents retrieved from the accused were classified as restricted; they were meant to be used for official purposes only; and if disclosed to unauthorized persons, could be prejudicial to the safety, security and interest of the State.

29. Arijit Das, Nodal Officer, Bharti Airtel Ltd, was examined as PW20. He brought on record the call details and ownership proof of Mobile No. 09007997620 and deposed that the said mobile phone was issued to Sh. Asif Hossain.

30. SI Animesh Majumder, Special Branch, was examined as PW 21. He brought on record the visa register belonging to Kamran

Akbar@Athar @ S/o Akbar Hosssain and deposed that the visa of the said person (obtained on a Pakistani passport) expired on 02.08.1992. Since he did not take up any departure from R.P. Section Special Branch within the stipulated time, the concerned authority had issued a LOC against him.

31. Sh. Ashok Chand, Retired Addl. CP, was examined as PW22 and deposed that on receiving the order of the Central Government, he was authorized to prefer the complaint as required under Section 13(3) of the Official Secrets Act, 1923. After satisfying himself of the commission of the offence, he filed the present complaint.

32. Sh. Ved Prakash, ACIO-I, FRRO, was examined as PW 23 and deposed that he had checked the record regarding the arrival of Pakistani resident namely Kamran Akbar @ Asif Hussain but such record of 05.05.1992, of the above Pakistani national, was not traceable.

33. SI Ramesh Sharma, IO, was examined as PW24 and he deposed that on 13.02.2012, at about 6 p.m., he received information that Inspector Khanduri had apprehended the accused and he was directed by his seniors to conduct investigation. On reaching the spot at about 7 pm., Inspector Khanduri briefed him on all facts and handed over the seizure memo, along with the documents and the possession of the accused. PW24 conducted site inspection and prepared site plan. He arrested the accused vide arrest memo (Ex. PW1/A) and prepared personal search memo of the accused. Thereafter, they went back to the office at 10 pm, where the accused was interrogated and his disclosure statement (Ex. PW 2/E) was recorded. On 14.02.2012, the accused was

produced before the Court and police custody remand was obtained for ten days. In police custody, the accused disclosed further facts (supplementary statement-Ex. PW2/F) and in pursuance of such disclosure statement, the IO left for Kolkata for verification of documents found in the possession of the accused. PW24 served notices on the Regional Passport Office, Calcutta, Head Master of Kidderpore Academy, Calcutta, Electoral Officer, Mahesh Tala Constituency, Manager, United Bank of India. The notices issued to the abovementioned persons and the replies received are exhibited. He conducted the search of the house of the accused situated at Akra Krishna. Akra Station Road, Purba Para Road, and during the search accused produced fifteen documents.

34. Thereafter, in pursuance of the disclosure statement of the accused, PW24 searched for a Pakistani National named Naved, but no clue of Naved was found. Thereafter, the accused led them to the house of Dev Priya Talukdar, from where the accused had stated to have taken one magazine relating to the Indian army. PW24 also deposed as to the manner in which he had conducted the investigation and the notices issued by him to various persons, under Section 91 of the CrPC. He also testified as to the replies received in response to such notices and exhibited the said documents. The IO visited the stay address provided by the accused at Point A on Ex. PW21/A and recorded the statement of the landlord of the said address (PW12).

35. In his statement under Section 313 of the CrPC, the accused stated that he had been falsely implicated in the case. He stated that he

was an Indian citizen and had come to Delhi for applying for a Visa on 12.02.2012 but was apprehended, when he reached the platform of the New Delhi Railway Station. He chose to lead evidence.

36. Ms. Ruma Khatun, W/o Asif Hussain, was examined as DW1 and she deposed that she was married to Asif Hussain since 2009 and she also identified him in Court. She deposed that she knows him since the last twenty years. She stated that the accused's parents had passed away and he sells clothes at a *mela*. She stated that the accused's maternal uncle and aunt are residing in Pakistan and the accused does not have any relatives and does not own any property in India.

37. Abdul Gani Khan s/o, Rizwan was examined as DW2 and he deposed that he was the father in law of the accused and that he knew the accused and his family for the past twenty years. DW2 deposed that he did not know the address of the accused where he was living prior to marriage. He deposed that the accused did not have any living relative. DW2 deposed that voter ID of the accused was issued on the basis of his previous address and the address on the ration card was DW2's address.

Reasons and Conclusion

38. Mr Hashmi, the learned counsel appearing for the appellant submitted that there are serious doubts as to whether the documents belonging to the Indian Army, stated to have been recovered from the appellant were classified as "restricted documents". He drew the attention of this Court to the testimony of PW-19 (Capt. H. Lamchinthang), who had deposed that the documents in question

(Ex.PW-2/A1, Ex.PW-2/A2 and Ex.PW-2/A3) are restricted documents. He pointed out that in his cross-examination, he had stated that there is list of restricted documents in the office. However, no such list was produced. Subsequently, PW-19 was called for further examination and he had retracted his testimony that a list of restricted documents was available in his office. In variance to his earlier testimony, he now stated that there was a circular/literature regarding classification of documents and on the basis of the same, the documents could be classified as top secret, secret, confidential, restricted and unclassified. He had also stated that the words like 'restricted' would be written on the document to suggest its classification.

39. The learned counsel for the appellant submitted that the documents in question did not bear any such notation. And, the testimony of PW-19 to the effect that the documents in question were restricted documents, could not be relied upon.

40. Mr Gupta, learned APP appearing for the State countered the aforesaid submissions.

41. During the course of arguments, Ex.PW-2/A1, Ex.PW-2/A2 and Ex.PW-2/A3 were removed from the sealed cover and perused. The said documents were also shown to the counsel. Mr Hashmi is correct in pointing out that the said documents do not bear the notation 'restricted'. This, essentially, Court is unable to accept that the said documents are unclassified. Lieutenant Col. Chander Shekhar had submitted a report (Ex.Pw-14/C) after examining the documents in question. In his opinion, the documents in question were classified as

restricted, which essentially meant that the same were for official use only and were not to be published or communicated to anyone except for official purposes. He also expressed his opinion that the information contained in the document, if disclosed to unauthorised persons, could be prejudicial to the safety, security and interest of the State. He unequivocally stated that the information contained could be directly or indirectly useful to an enemy country.

42. A plain reading of the documents indicate that information contained therein relates to defence matters. The documents relate to arms and ammunition and the manner in which the ammunition stores are to be used. Undeniably, the said information cannot be considered as one which is required to be disseminated or published to unauthorized persons. The information contained in these documents is, indisputably, only for the use of officials.

43. In view of the opinion rendered by Lieutenant Col. Chander Shekhar (Ex.PW-14/C), there can be no doubt that the documents in question are classified documents. PW-19 had also unequivocally affirmed that Ex. Pw-2/A1 to Ex.PW-2/A3 are restricted documents and the information contained in these documents can be useful to an enemy country. Initially, he had stated that a list of such documents was available in the office. However, on further examination, he clarified that he meant to say that there was a list regarding classification of documents. He also produced a Circular in this regard (Ex.PW-19/A). The fact that PW-19 had clarified his earlier testimony does not, in any manner, render his testimony unreliable. Ex.PW-19/A clearly indicates

the categories of classified documents. It specifies that classification as '*restricted' shall be applied to information and material which is essentially meant for official use only and which should not be published or communicated to anyone except for official purposes*.' A bare perusal of Ex.PW-2/A1 to Ex.PW-2/3 also indicates that the documents warrant being classified as such, cannot be disputed, considering the nature of information contained in the said documents.

44. In the given circumstances, this Court has no doubt that the documents in question are classified as restricted documents.

45. This Court has also examined the evidence as noted above and there is no doubt that the documents in question were recovered from the appellant.

46. The next question is whether the appellant's conviction under Section 474 IPC can be sustained.

47. The appellant was convicted for an offence under Section 474 IPC and sentenced to serve a period of four years. The Trial Court had examined the evidence and had concluded that the driving licence recovered (Ex.P-8) was forged. PW-3 had produced the extract of the driving licence, which established that the same had been issued in the name of Mohd. Arif Tola S/o Manover Hussain Tola. The Trial Court also found that the Ration Card (Ex.PW-9/B) and the School Certificate (Ex.PW-8/B), which were submitted by the appellant at the time of applying for his passport, were also forged. The ration card (Ex.PW-9/B) was also found to be issued to one Aqswari Begum and not to the accused. The Trial Court held that the appellant was in possession of

the forged driving licence (Ex.PW-8) and had used the forged Ration Card (Ex.PW-9/B) and the School Leaving Certificate (Ex.PW-8/B) for obtaining the passport. He had also made as false declaration as to his address for the said purpose.

48. Section 474 IPC 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. -**
>
> 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."

49. In view of the above, the next question to be examined is whether the aforesaid documents qualify the description as set out in Section 466 or 467 of the IPC. Section 467 relates to forgery of valuable security, will, etc. Clearly, the documents mentioned do not fit the said description. However, the forged Ration Card and Driving Licence do qualify the description of documents as set out in Section 466 of the IPC.

50. In view of the above, this Court finds no infirmity in the decision of the Trial Court convicting the accused for offence under Section 3 of the Official Secrets Act, 1923 and Section 474 of the IPC.

51. The appellant was sentenced to undergo rigorous imprisonment for a period of nine years for committing an offence under Section 3 of the Official Secrets Act, 1923 and to undergo rigorous imprisonment of four years along with fine of ₹10,000/- for an offence under Section 474 of the IPC, and in default of payment of fine, to undergo further simple imprisonment for a period of nine months.

52. It is noted that at the time of his conviction, the convict was aged forty-one years. He was married and had two minor children. It is also noticed that the appellant has no history of previous conviction or involvement in any criminal case.

53. It is also relevant to mention that although the documents found on the appellant (Ex.PW-2/A1, Ex.PW-2/A2 and Ex.PW-2/A3) are classified documents, they are not highly sensitive documents. In terms of the Circular (Ex. PW 19/A), official documents are divided into five categories of security gradings: Top Secret, Secret, Confidential, Restricted and Unclassified. Restricted documents are the lowest category of classified documents from the stand point of security.

54. Given that the appellant is married and has two minor children; this Court is of the view that further leniency ought to have been afforded to the appellant.

55. This Court is of the view that the sentences awarded to the appellant ought to have been directed to run concurrently and not

sequentially. If the said benefit is not granted, the appellant would be required to serve a period of thirteen years. In the given circumstances, this Court does find that the same is harsh and not commensurate with the mitigating circumstances.

56. In view of the above, it is directed that the sentences awarded to the petitioner for the offence under Section 3 of the Official Secrets Act, 1923 and for the offence under Section 474 of the IPC, shall run concurrently and not sequentially. The impugned order dated 09.11.2016 is modified to the aforesaid extent.

57. The appeal is disposed of in the above terms.

58. The pending application is also disposed of.

VIBHU BAKHRU, J

NOVEMBER 07, 2019/MK