

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPEAL NO. 251/2007

Ku. Omeshwari D/o Tulshiram Dhurvey
(Now Smt. Omeshwari w/o. Dnyaneshwar
Khante),
aged about 32 years, R/o. Pawni,
Tah. & Dist. Bhandara,
now R/o. Plot No. 2, Vidya Vihar Colony,
Pratap Nagar, Nagpur.

.... **APPELLANT**

// VERSUS //

The State of Maharashtra,
through Police Station Officer,
Police Station, Sitabuldi,
Dist. Nagpur.

.... **RESPONDENT**

Shri Amol Mardikar, Advocate for appellant.
Shri S. D. Shirpurkar, A.P.P. for State/Respondent.

CORAM : VINAY JOSHI, J.

CLOSED FOR JUDGMENT ON : 03.12.2020
JUDGMENT PRONOUNCED ON : 16.12.2020

JUDGMENT

Heard.

2. This is an appeal challenging the impugned judgment of conviction passed in RCC No. 332/2002 by which the accused was convicted for the offence punishable under Sections 420, 468 and 471 of the Indian Penal Code. The Trial Court has imposed maximum sentence to undergo rigorous imprisonment of four years and total fine of Rs. 50,000/- has been imposed.

3. It is the prosecution case in nutshell that, accused has tampered her B.A. final mark-sheet for securing admission in B.Ed course for the academic session of the year 1999 - 2000 at Nagpur University. The accused had secured 56 marks in Marathi language which she altered as 66 marks. She has secured 56 marks in History subject which were altered as 66 marks, and marks in Marathi literature were altered as 61 instead of 51 marks. She has also altered the total marks for B.A. final examination as 280 marks instead of 250 marks. On the basis of forged mark-sheet, she applied and secured admission in B.Ed. course. However, at the time of scrutiny, it was noticed that marks were altered in the original mark-sheet. In consequence, her admission was cancelled and the matter was reported to the Police.

4. On the basis of report, Crime No. 194/1999 was registered at Sitabuldi Police Station Nagpur and investigation was carried out. During the course of investigation, forged mark-sheet, selection list, consolidated mark-sheet and other relevant documents were seized. On completion of investigation, accused was charge-sheeted for trial. The prosecution has examined in all six witnesses and banked upon certain documents to establish the guilt. The Trial Court by relying on prosecution evidence, convicted accused and passed aforementioned sentence.

5. The learned counsel for appellant/accused has seriously challenged the finding of guilt recorded by the Trial Court. It is canvassed that though original admission form was not tendered, the Trial Court erred in recording the finding of guilt. According to the defence, the prosecution evidence fails short to establish that the accused herself has tampered the mark-sheet. It is the submission that merely because the accused was beneficiary, she has been roped into the case. Per-contra, learned Additional Public Prosecutor would submit that this is a clear case of forgery. Bare perusal of mark-sheet discloses that the marks obtained in three subjects were tampered with. It is submitted that not only the accused has forged the mark-

sheet, but it has been used as a genuine to secure admission for B.Ed. course.

6. With the assistance of both learned counsel, the entire evidence and necessary documents were gone into. The prosecution has examined PW-1, Ranjendra Dagar who was at relevant time chairman of the Central Admission Committee (CAC) for B.Ed. course. It has come in his evidence that the accused had applied for the admission to B.Ed. course on the basis of Bachelors degree in Arts obtained from Nagpur University in the year 1996. At the time of applying for admission, the accused has attached photocopy of marks sheet. When she was called for spot admission, she tendered the forged original mark-sheet. The Scrutiny Committee on verifying marks sheet, found that the marks were tampered as referred above. It has come in his evidence that on the basis of altered marks, accused secured admission to B.Ed. course which was reflected in selection list (Exh. 13). It is his evidence that after realizing forgery, her admission was cancelled. The prosecution has tendered forged mark-sheet of accused at Exh. 14. On bare perusal, the alteration of marks in three subjects along with total marks is clear and apparent. It has come in the evidence that when forgery was noted, PW-1, Dagar wrote to Vice-

chancellor and brought the matter to the notice. The relevant correspondence letters were produced on record.

7. The prosecution led evidence of PW-2 Deorao Kumbhare who was Deputy Registrar, Examination of Nagpur University. The extract of consolidated marks (Exh.26) has been produced on record. The related correspondence letters were produced to show that action was proposed since forgery was apparent. Besides that the prosecution has examined PW-3 Umashankar Zade who was a clerk attached to the admission process. His evidence is about tendering of forged of mark-sheet, necessary correspondence and related documents. Not only that the prosecution has examined PW-4 Parashar who was Chairman of CAC for B.Ed. course likewise, evidence of Superintendent of Nagpur University i.e. PW-5 Thakare, has been led to prove remaining documents. The evidence of all these witnesses withstood to the cross-examination, meaning thereby, nothing adverse has come out. Pertinent to note that when the Trial Court has put incriminating material to the accused in her statement under Section 313 of the Code of Criminal Procedure, she gave vital admissions. While answering question Nos. 1 and 2, accused admitted that she had applied for B.Ed. admission at relevant time. She admits that she has passed B.A.

examination in the year 1996 and the concerned marks list (Exh.14) is of she herself. Moreover, she admits that in the column of total marks obtained, there appears to be alteration in the figure '280' as the figure '8' seems to be tampered. Certainly, these admissions of accused can be taken into aid while assessing the evidence.

8. It emerges that the accused has applied for B.Ed. course on the basis of forged mark-sheet. Obviously, the very intention of accused was dishonest as she was intending to secure admission in B.Ed. course on the basis of forged document. The original mark-sheet visibly shows the tampering of marks as well as on the basis of consolidated mark-sheet, it is evident that the marks have been altered.. The question remains that as to who has forged the marks. Obviously, it was mark-sheet of accused as well as produced by her for securing admission in B.Ed. course therefore, no one else than accused could be the author of forgery. Though admission form was not produced, it does not matters much since the forged document is very much on record. There is no challenge to the original record about real marks obtained by accused in the B.A. final examination. There is overwhelming evidence against the accused about forging a document i.e. mark-sheet (Exh.14). The intention of accused was apparently

dishonest since on the basis of forged marks, she induced University to give admission which otherwise they would not have. The document was forged obviously for the purpose of cheating and it was used as genuine with dishonest intention to secure the admission in B.Ed. Course.

9. The prosecution has proved the essential ingredients to constitute the offence punishable under Sections 420, 468 and 471 beyond shadow of doubt. The Trial Court has very rightly appreciated the evidence and recorded the finding of guilt therefore, no interference is called.

10. Coming to the aspect of award of sentence, the Trial Court has imposed maximum sentence of rigorous imprisonment for four years with consolidated fine of Rs. 50,000/-. Learned counsel for appellant vehemently urged that the sentence awarded by the Trial Court is totally disproportionate. He would submit that the appellant was a young girl at the relevant time. By the time, she has been married and settled in her life. It is his submission that the alleged act of forgery was committed prior to 20 years which has to be taken into account. Lastly, it is submitted that admission given to the accused for B.Ed. course was immediately cancelled. Having regard to all these

facts, he prayed for taking lenient view. By placing reliance on the decision in case of *Ku. Vaishali d/o Kishor Urade Vs. The State of Maharashtra, 2014 ALL MR (Cri) 1806* he would submit that in past under similar circumstances, this Court has taken extremely lenient view.

11. Imposition of adequate sentence always remains to be a delicate task for the Criminal Courts. Justice demands that Court should impose punishment befitting the crime. It is the duty of every Court to award proper sentence, having regard to the nature of the offence, manner in which it was executed, impact of crime and so on. The sentencing Court is expected to consider all relevant facts and circumstances bearing on the question of sentence and proceed to impose sentence commensurate with the gravity of the offence. Undisputedly, there are no criminal antecedents nor chances of repetition of crime in future. Perusal of impugned judgment discloses that, at the time of conviction in the year 2007, the accused lady was having two daughters aged 10 and 5 years respectively. By the time, they must have grown up and accused has been deeply settled in her matrimonial life. It is to be noted that though accused tried to secure admission in B.Ed. course by deceitful means, however her admission

was instantly cancelled meaning thereby, she had not derived any benefit.

12. Offence under Sections 420, 468 of the Indian Penal Code attracts maximum punishment of imprisonment of either discretion for term which may extend to seven years, whilst the offence punishable under Section 471 of the Indian Penal Code attracts punishment which may extend to two years of imprisonment. Neither of the penal provision bears a rider of imposing minimum sentence. In other words, the legislatures have intentionally left judicial discretion with the Courts enabling it to impose appropriate sentence in accordance with the facts and circumstances of the case.

13. The alleged act of forgery was committed prior to two decades while accused was a young girl. Now, much water has flown as she has settled in the life and having two grown up daughters. At this stage in her midst of marital life, it is improper to incarcerate her in jail. It may have adverse effect on her marital life as well as would have bad impact on the mind of her two daughters. Perhaps, her daughters may face difficulty in settling their marriages. Housing of accused in jail amounts to one kind of punishment to her entire family. The accused has shouldered hanging sword of prosecution for last 20

years. Considering peculiar facts of this case, it is in the interest of justice to reduce corporal punishment to the best possible extent and to increase fine so as to pinch for alleged offence. In view of that impugned judgment calls interference only to the extent of modification of sentence. Accordingly, appeal deserves to be partly allowed with following order:-

(I) The conviction of accused for the offence punishable under Sections 420, 468 and 471 of the Indian Penal Code is hereby maintained.

(II) Instead of punishment imposed by the Trial Court for the aforesaid offences, the accused is punished for sentence till rising of Court alongwith additional fine of Rs. 25,000/-, in default of payment of fine, to suffer simple imprisonment for six months.

(III) Appeal stands partly allowed and disposed of accordingly.

JUDGE