

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

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**CRR No.540 of 2013 (O&M)
Date of Reserve: 15.11.2019.
Date of Pronouncement: 31.01.2020.**

Surinder Kumar

....Petitioner.

Versus

State of Punjab

....Respondent.

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Argued by: Mr. S.S. Narula, Advocate for
Mr. Gurinder Singh, Advocate for the petitioner.

Mr. K.S. Aulakh, Deputy Advocate General, Punjab.

Suvir Sehgal, J.

Present revision petition has been filed challenging the judgment dated 06.02.2013 whereby learned Additional Sessions Judge, Fast Track Court, Jalandhar, upheld the conviction of the petitioner under Section 471 IPC and acquitted him of the charges under Sections 465 and 468 IPC. The sentence of imprisonment of one year and fine of Rs.500/- imposed upon him by learned Additional Chief Judicial Magistrate, Jalandhar was also upheld by learned Sessions Court.

Facts, in brief, relating to filing of present petition are that as per prosecution, a Senior Executive Engineer of the Punjab State Electricity Board, Jalandhar submitted an application for registration of a case against

the petitioner-accused in the month of May, 2005. The allegations were that the accused was recruited vide appointment letter dated 17.06.2005. At the time of his employment, accused produced a matriculation certificate bearing Roll No.421429 from Government Senior Secondary School, Tanda, District Hoshiarpur. However, on verification from the Punjab School Education Board, it was found to be bogus. The complaint was enquired into and an F.I.R. under Sections 420, 466, 467, 468 and 471 IPC was registered on 06.02.2007. After investigation, challan was presented before the Court and the petitioner was charge-sheeted for offences punishable under Sections 465, 468 and 471 IPC.

In order to establish the case, the prosecution produced six witnesses. The material witness was PW6, who produced the original record from the Punjab School Education Board and deposed before the Court that Roll No.421429 was not issued to any person and the certificate, which has been produced by the petitioner-accused, is forged. When the statement of the petitioner-accused under Section 313 Cr.P.C. was recorded, he denied the charges against him. After considering the evidence produced before it, the learned Judicial Magistrate vide judgment dated 06.01.2011 came to the conclusion that the petitioner-accused was guilty of offence under Sections 465, 468 and 471 IPC and convicted him thereunder. The petitioner was sentenced to undergo rigorous imprisonment for one year and to pay a fine and in default of deposit of fine, he was to further undergo rigorous imprisonment. In appeal, the learned Sessions Judge acquitted the petitioner of the charges under Sections 465 and 468 IPC, but under Section 471 IPC, the learned Sessions Judge found that the petitioner was guilty. By upholding his conviction under Section 471 IPC, the learned Sessions Judge

held that the petitioner did not deserve any leniency nor was he was entitled to the benefit of probation. The sentence of rigorous imprisonment of one year and fine of Rs.500/- was maintained by the learned Sessions Judge.

Learned counsel appearing for the petitioner has submitted that the offence under Section 471 IPC was not made out. He has further submitted that in any case, since the prosecution had failed to establish that as to who forged the document, the finding of guilt under Section 471 IPC could not have been given. Alternatively, he submitted that keeping in view the antecedents of the petitioner, he was entitled to be released on probation.

On the other hand, learned State counsel has contended that the guilt of the petitioner stood established on the basis of the evidence produced on record. The petitioner had not only committed an offence against the society but also against the government. The State counsel further submitted that the petitioner could not be given the benefit of the Probation of Offenders Act, 1958 and the orders of the Courts below were justified and did not call for any interference.

Learned counsel for the parties have been heard and record has been examined with their able assistance. Section 471 IPC relates to using a forged document as genuine. In order to punish a person under this provision, it is not necessary that he himself makes or creates the forged document. It is sufficient to establish that the accused not only used the forged document as genuine but he also used it fraudulently and dishonestly. The essential ingredients of Section 471 IPC are as under:-

- (i) knowledge or a reasonable belief on the part of the person using the document that the document is a forged one;

and

(ii) fraudulent or dishonest use of a document as genuine.

Burden of proof of the offence was on the prosecution which it has fully discharged. From a perusal of the evidence led by the prosecution, particularly statement of Rashpal Chand, Teacher PW1 and Sant Ram PW6, it stands established that since the Roll Number in question was not issued to any person, the certificate, on which the petitioner had relied upon, was forged. Satwinder Singh Josan, PW2, complainant, in his statement had specifically stated that the petitioner had produced the matriculation certificate at the time of joining the department, which upon verification was found to be bogus. Accordingly, the prosecution has affirmatively proved the knowledge on the part of the petitioner that the matriculation certificate was forged and that the petitioner had used it dishonestly as genuine with a view to gain employment and thus clearly committed an offence punishable under Section 471 IPC.

This Court cannot accept the argument that the petitioner had no knowledge that the document was forged, when he used the said document to procure employment. Once the prosecution had been successful in proving that the petitioner did not appear in the matriculation examination, the onus shifted on the accused to establish that he had appeared in this examination. This Court does not find any infirmity in the finding that the petitioner has committed an offence punishable under Section 471 IPC.

Mr. Narula has contended that conviction under Section 471 IPC cannot be maintained in the absence of proof as to who forged the document. This is my view is not the correct interpretation of the provision.

prove as to who forged the document. Under Section 471 IPC, whosoever fraudulently uses as genuine any document, which he knows or having reason to believe to be forged document, is to be punished in the manner as if he has forged such document. Since the petitioner knowing fully well that he is using the document, which is forged one, for getting a job, therefore, the offence under Section 471 IPC stands established. Reliance is placed upon a judgment of a Co-ordinate Bench of this Court in ***Criminal Revision No.2021 of 2011*** titled as “***Jagjit Singh Vs. State of Punjab***” decided on 05.09.2011.

Coming to the alternate prayer made by Mr. Narula, it deserves to be noticed that the petitioner by now is more than 60 years of age and is in the evening of life. Reference on behalf of the petitioner has also been made to the statement of the petitioner before the learned Chief Judicial Magistrate on 06.01.2011 wherein he had submitted that he was a first offender and had two children who were students and a wife and further that his entire family is dependent upon him as he was only bread winner of the family. Mr. Narula has further submitted that the petitioner has maintained good conduct throughout and has not been involved in any criminal offence even during the period his sentence remained suspended from 13.03.2013 till date.

In the facts and circumstances of this case, it is useful to refer to the decision of the Hon'ble Supreme Court in ***Arvind Mohan Sinha Vs. Amulya Kumar Biswas and others, AIR 1974 SC 1818*** wherein it was held as under:-

“The Probation of Offenders Act is a reformative measure and its object is to reclaim amateur offenders who, if

spared the indignity of incarceration, can be usefully rehabilitated in society. A jail term should normally be enough to wipe out the stain of guilt but the sentence which the society passes on convicts is relentless. The ignominy commonly associated with a jail term and the social stigma which attaches to convicts often render the remedy worse than the disease and the very purpose of punishment stands in the danger of being frustrated. In recalcitrant cases, punishment has to be deterrent so that others similarly minded may warn themselves of the hazards of taking to a career of crime.”

In **Commandant 20 B.N.I.T.B. Police Vs. Sunita Binjoa, 2001(5) SCC 317**, the Hon'ble Supreme Court held thus

“The Probation of Offenders Act, 1958 has been enacted in view of increasing emphasis on the reformation and rehabilitation of the offenders as useful and as relying members of society, without subjecting them to deleterious effects of the jail life.”

Keeping in view of the above judgments and the fact that the petitioner has undergone some period of incarceration, and suffered the agony of trial for the last more than 12 years, I am of the view that he deserves the benefit of probation under Section 4(1) of the Probation of Offenders Act, 1958. Moreover, he is not a previous convict nor is there any material on the record that he did not maintain good conduct during the pendency of this litigation.

In these circumstances, while maintaining the conviction of the petitioner, the sentence of imprisonment and fine is set aside. Having regard to the circumstances of the case and the nature of offence, it is considered

expedient to release him on probation. It is, therefore, directed that the petitioner be released on probation under Section 4(1) of the Probation of Offenders Act, 1958 for a period of one year on his entering into a personal bond for a sum of Rs.25,000/- with one surety of the like amount to the satisfaction of the trial Court. The petitioner shall file an undertaking before the trial Court that he shall keep peace, lead of life of a disciplined citizen and maintain good behaviour during the period of one year. The fine, if already paid, is directed to be treated as litigation expenses of the State.

With this modification, the revision petition is disposed of.

(SUVIR SEHGAL)
JUDGE

31.01.2020

komal

Whether speaking/ reasoned : Yes/ No

Whether Reportable : Yes/ No