

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.36081 of 2019(O&M)
Date of Decision:07.02.2020

Raza Hussain

.....Petitioner

Versus

State of U.T. Chandigarh

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Ms. Badrus Sahar, Advocate
Ms. Satinder Kaur, Advocate and
Mr. Shakti Vikram, Advocate
for the petitioner.

Mr. Rajiv Sharma, Addl.PP. U.T. Chandigarh.

RAJ MOHAN SINGH, J.

[1]. Petitioner has preferred this petition under Section 482 Cr.P.C for quashing of order dated 02.07.2019 passed by Special Judge, Chandigarh, vide which the application filed by the petitioner under Section 227 Cr.P.C was dismissed and it was held that *prima facie* charge under Sections 420, 467, 468, 471 read with Section 120-B IPC and Sections 13(1)(d) and 13(2) of the Prevention of Corruption Act is made out against all the accused.

[2]. Petitioner was working as a Head Clerk in Shia College,

faculty of law, Lucknow, U.P. He stood retired on 31.07.2016. A complaint was filed against one Ashok Kumar, Advocate. It was alleged that the said Advocate had purchased his LLB degree from Lucknow University. An inquiry was initiated by the police. Verification of certificates of LLB 1st 2nd and 3rd year of Ashok Kumar son of R. Chandra was done from Lucknow University. The controller of examination of University of Lucknow intimated vide letter dated 03.05.2011 that as per record of University, Roll No.FBP/63240 of 1st, 2nd and 3rd year were not allotted to Ashok Kumar son of R. Chandra for the relevant years 1996, 1997 and 1998 respectively. Ashok Kumar had obtained forged certificate as per record of University.

[3]. FIR was registered against Ashok Kumar. Relevant record from the office of Bar Council, Punjab and Haryana was also obtained. Records of Lucknow University and Shia PG College, Lucknow were also seized. The connivance of the officials of the University was alleged with Ashok Kumar. Head of the Department of Law in Shia PG College, Lucknow also reported that as per record, Ashok Kumar son of Ram Chandra was not admitted in LLB course in the year 1996, 1997 and 1998 against Roll No.63240, rather this roll number was issued to one Ashok Kumar son of Mool Chand in the year 1996 and he had got admission in the college for LLB course. Verification of

manual certificates and computerized certificates was also done from the Department of University. From that record as well, it was found that Ashok Kumar son of R. Chandra had not done LLB, rather he had forged the LLB degree from Lucknow University and on the basis of that, he got himself enrolled as an Advocate with the Bar Council of Punjab and Haryana after presenting the said certificate along with his application form. He was issued licence to practice vide enrollment No.P/309/2065 and was practising on the basis of said licence. It was alleged that the aforesaid Ashok Kumar obtained LLB degree and certificates in connivance with the officials of Lucknow University namely Sanjay Kumar, the then Deputy Registrar, Dinesh Kumar Dwivedi, Clerk, Sanjay Nigam, Clerk and Ram Chander, Senior Assistant. FIR No.5 was registered on 09.11.2011 under Sections 420, 467, 468, 471, 120-B IPC read with Sections 13(1)(d) and 13(2) of Prevention of Corruption Act at Police Station Vigilance, U.T., Chandigarh. Name of the petitioner was not mentioned in the FIR.

[4]. Investigating Officer sent a notice to the petitioner on 27.01.2016 as well as to Dr. Mustafa Kamal Sherwani who was posted as Associate Professor/Principal/Incharge of Shia College of Law to appear as witnesses. Both of them participated in the process of investigation. The police recorded

statement of Dr. Mustafa Kamal Sherwani under Section 161 Cr.P.C to the effect that the police had shown him photocopy of character certificate dated 01.04.2013 in the name of Ashok Kumar son of R. Chandra, on which a certification was done to the following effect:-

“Certified that this document has been issued from our office”

The aforesaid endorsement was signed by Raza Hussain (petitioner). A stamp of Principal/Incharge of Shia College of Law was also affixed in original. Dr. Mustafa Kamal Sherwani admitted that on 01.04.2013, he was posted as an associated Professor in Shia College of Law, Lucknow and he had put his signature for Principal/Incharge Shia College of Law, Lucknow on the character certificate of Ashok Kumar son of R. Chandra. The certificate was put up before him by the petitioner Raza Hussain, Head Clerk of the College who had signed the same. Dr. Mustafa Kamal Sherwani identified the signatures of the petitioner on the ground that he had worked with the petitioner and had seen him writing and signing. The witness has alleged that it was the duty of the petitioner to check the record of the College.

[5]. A committee comprising of Professor J.V. Vaisampayan, Department of Economics, Professor Pawan Aggarwal, Proctor,

and Professor A.K. Sharma, Head of Department of Zoology has gone through the mark-sheet issued in the name of Ashok Kumar son of R. Chandra who claimed to have passed LLB 3rd year in the year 1998 from the Shia College. The detailed inquiry has been conducted by the aforesaid committee. Before issuing any such certificate, it was the mandatory requirement to check the office record and the petitioner should have verified the office record and put the same before Principal after proper verification of the particulars. Petitioner certified the character certificate, the original of which was seen by the petitioner which was without any date. On the basis of statement of Dr. Mustafa Kamal Sherwani under Section 161 Cr.P.C, the petitioner was arrested on 27.01.2016 and was released on 20.02.2016.

[6]. During investigation, the police took possession of the record from Principal of Shia College of Law, Lucknow. As per seizure memo dated 21.09.2015, no such character certificate was issued by the petitioner to Ashok Kumar son of R. Chandra on 01.04.2013 against the Roll No.63240. Specimen signatures/handwriting of the petitioner were obtained on 28.01.2016 at serial Nos.501 to 504 and the same were sent to Central Forensic Science Laboratory. According to the report of CFSL dated 29.03.2017, it has been found that the writing and signature marked at Q-500 in the character certificate alleged to

be signed by the petitioner. On comparison with the supplied writing and signatures marked S-501 to S-504, the same gave in-different characteristics for the manifest reasons that the writing characteristic as occurring in the question writing and signatures are not accounted from the supplied specimen writing and signatures. According to the CFSL report, the petitioner's signature had not been found genuine in the alleged character certificate. According to the CFSL report, marked Q-500/1 is required for further investigation. Till date, no further examination has been conducted in the context of signature marked Q-500/1.

[7]. The complicity of the petitioner is totally dependent upon his alleged verification on a photostat copy under his full signature which was subjected to Central Forensic Science Laboratory and the same has been found to be negative with a further opinion that further investigation is required. The Principal has admitted his signature on the photostat copy of the character certificate, but has not been arrayed as accused in the present case, rather his statement under Section 161 Cr.P.C was recorded. A supplementary charge-sheet has been filed against the petitioner on 08.05.2018.

[8]. On the basis of aforesaid facts, Investigating Agency also sought a request for taking the specimen

signature/handwriting of Sanjay Kumar, Deputy Registrar, Lucknow University. His signature was also subjected to Central Forensic Science Laboratory. Sanjay Kumar, Deputy Registrar had issued provisional certificate and signed the same on behalf of the Controller of Examination, University of Lucknow in favour of Ashok Kumar son of R. Chandra. In the supplementary chargesheet dated 08.05.2018, the Investigating Agency found that the Sanjay Kumar, Deputy Registrar of the University had denied his signature on the questioned document and Central Forensic Science Laboratory could not give any opinion, therefore, no evidence came on record against Sanjay Kumar and no charge-sheet was filed against him. Petitioner has also denied his signature on the questioned document i.e. photocopy of the character certificate. The report of Central Forensic Science Laboratory dated 29.03.2017 does not implicate the petitioner in any manner, but the Investigating Agency filed supplementary charge-sheet against the petitioner. Petitioner was an employee of Shia Degree College, Lucknow. Sanction to prosecute the petitioner was refused by the Managing Committee of the College on 03.04.2017. Investigating Agency again sought sanction after re-consideration of earlier order dated 03.04.2017. The sanction was again refused by the management of the College on 20.12.2017. The discharge

application of the petitioner has been declined.

[9]. Learned counsel for the petitioner submitted that there is no material on record against the petitioner to proceed with the case. The reports of the CFSL against the petitioner as well as Sanjay Kumar have been in-differently appreciated by the Court. Both the reports do not advance the case of the prosecution. Sanjay Kumar has been favourably left, whereas on the same allegations and report of CFSL, the petitioner has been charge-sheeted by way of supplementary charge-sheet.

[10]. Per contra, learned State counsel by referring to the letter dated 03.04.2017 submitted that while denying the sanction, the Managing Committee has observed that the petitioner is innocent and he did not commit any crime. The act is merely a human error which is done in good faith without any personal benefit. During inquiry, it came to the knowledge of the Managing Committee that mark-sheet of LLB-3rd year of Ashok Kumar son of R. Chandra was produced by Ashok Kumar himself with a request to issue character certificate. On seeing the mark-sheet of LLB 3rd year, the petitioner prepared the character certificate of Ashok Kumar with the permission of Principal in good faith. On the basis of aforesaid recital in the letter dated 03.04.2017, the prosecuting agency proceeded against the petitioner that the Managing Committee has found

some incriminating material against the petitioner. In the supplementary challan, no witness has been cited in order to prove the aforesaid fact i.e. proceedings of the Managing Committee who had recorded the aforesaid incriminating facts in the letter while declining the sanction for prosecution of the petitioner. Afterwards, the sanction was accorded by the Managing Committee of the College.

[11]. After issuance of notice of motion on 29.08.2019, the case remained pending in this Court. In the meanwhile, the prosecution has examined 15 prosecution witnesses. Dr. Mushtfa Kamal Sherwani has been examined as PW-10. The said witness is the material witness in the alleged complicity of the petitioner. The witness has admitted his signature on the character certificate Ex.P9. The witness has denied attestation/certification on the said certificate. The witness has denied to say anything about the signature/certification/attestation made by the petitioner on Ex.P9. The witness was declared hostile and was cross-examined by the prosecution. The prosecution could not extract anything incriminatory so far as complicity of the petitioner is concerned. The accusation of the petitioner started only on the basis of certification done on a photocopy of character certificate Ex.P9. His signatures and writing have not been

authenticated by the CFSL viz-a-viz his alleged original signatures. The certificate in question was never taken in possession by the police in seizure memo dated 21.09.2015, rather the same was produced by the accused Ashok Kumar. Seizure memo dated 21.09.2015, report of CFSL qua the writing and signature appearing on Ex.P9 and want of authentication in respect of report of Managing Committee in the letter dated 03.04.2017, would land the prosecution case qua the petitioner in vacuum.

[12]. The statement of Rias Ahmed under Section 161 Cr.P.C does not advance the case of the prosecution so far as alleged complicity of the petitioner is concerned. His statement cannot be a substitute against the report of CFSL which could not show any similarity between the questioned signature/writing with that of specimen writing/signature taken in the Court. The statement of Rias Ahmed under Section 161 Cr.P.C at par with Dr. Mushtfa Kamal Sherwani under Section 161 Cr.P.C will not give any help to the prosecution in the light of status of Dr. Mushtfa Kamal Sherwani, Principal having been declared hostile and he did not support the case of the prosecution.

[13]. The cumulative effect of the aforesaid facts and circumstances of the case would show that the complicity of the petitioner even as per supplementary challan cannot spell out

anything worth framing of charge against the petitioner.

[14]. For the reasons recorded hereinabove, impugned order is quashed and the petitioner is discharged.

07.02.2020

Prince

(RAJ MOHAN SINGH)
JUDGE

Whether reasoned/speaking Yes/No

Whether reportable Yes/No