

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

CRL.REV.P.773/2018& CRL.M.A. 4102/2019

Reserved on: 03.02.2020

Date of Decision: 19.02.2020

IN THE MATTER OF:

SH. JITENDER KUMAR

..... Petitioner

Through: Mr. Sajan K. Singh and Ms. Neha
Sharma, Advs.

Versus

STATE (GOVT. OF NCT OF DELHI)

..... Respondent

Through: Ms. Radhika Kolluru, APP for State.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

J U D G M E N T

1. The present revision petition is directed against the impugned judgment dated 29.08.2018 passed by Addl. Sessions Judge in CRL.A. 263/2017 arising out of FIR No. 388/2008 registered under Sections 419/420/468/471/120B IPC, P.S. Defence Colony wherein the petitioner's conviction under Section 420 IPC was modified and altered to one S. 420/511 IPC. The petitioner's sentence for the offence punishable under Sections 420/511 IPC was also modified and altered to

RI for two years and fine of Rs.5,000/- and in default to whereof to undergo SI for six months. The petitioner's conviction under Sections 468/471 IPC and sentence was maintained.

2. Earlier the Metropolitan Magistrate vide judgment dated 24.05.2017 had convicted the petitioner under Sections 420/468/471 IPC and sentenced the petitioner to RI for two years for the offence under Section 420 IPC and fine of Rs. 5,000/- in default whereof to undergo SI for six months. The petitioner was sentenced to RI for two years for the offence under Section 468 IPC and fine of Rs. 5,000/- in default whereof to undergo SI for six months. The petitioner was also sentenced to undergo RI for two years for the offence under Section 471 IPC. The sentences were directed to run concurrently and the petitioner was granted benefit of Section 428 Cr.P.C.

3. The brief facts as noted by the Appellate Court are as under:-

“Appellant Jitender Kumar applied for fresh arms licence on 18.06.2008 with Licencing Unit. In his application Ex. PW2/A, appellant stated that he was working as Security Guard with Sun Rise Security Force. Appellant also submitted certificate Ex. PW2/C purportedly to be issued by Security Agency signed by one Hardev Singh in support of his employment. Application of appellant was processed and inquiry was conducted through SI Shiv Singh (PW2). During inquiry it was revealed that certificate annexed with the application of appellant was forged. Inquiry further disclosed that one Mintu Kumar is proprietor of Sun Rise Security Force who informed SI Shiv Singh (PW-2) that letter pad belongs to his office but no person with the name Hardev Singh is working as General Manager in his security agency. Mintu Kumar

further informed that one Pinku, working as Security Guard, has taken plain letter head sheet from his on the pretext of preparing his ration card. Thereafter, SI Shiv Singh made complaint to SHO PS Defence Colony, Investigation was conducted. Appellant was arrested and was interrogated who disclosed that he got letter head of Sun Rise Security Force through one Pinku who is the friend of his brother Santosh. Santosh is working as Security Guard with Group 4 Security. The said letters pad was used to show Jitender Kumar was an employee of Sun Rise Security Force. The stamp used on the letter head was forged and procured by appellant Jitender Kumar and he himself put his signatures as General Manager of M/s. Sun Rise Security Force showing name of General Manger as Hardev Singh. Appellant Jitender Kumar during custody got the stamp recovered from his house. Pursuant to the disclosure statement of appellant, Santosh was also arrested for procuring letter paid for the purpose of preparing false claim of Jitender Kumar showing his employment with Sun Rise Security Force. Pinku and Mintu were also arrested for being involved in the conspiracy knowing that letter head of Sun Rise Security Force was to be used for illegal purposes. During investigation, specimen signatures of all aforesaid persons were obtained. Specimen of letter head of Sun Rise Security Force and sample stamp impression of stamp recover from appellant were also sent to FSL for examination. After completion of investigation, appellant Jitender Kumar alongwith Santosh, Mintu and Pinku were charge sheeted under Section 419/420/468/471/120-B IPC. All of them were charged accordingly. After conclusion of trial, the trial court did not find any evidence against Santosh, Mintu and Pinku and accordingly they were acquitted. However, appellant Jitender Kumar was convicted as mentioned above.”

4. Learned counsel for the petitioner submits that the co-accused were acquitted by the trial court and despite insufficient evidence, the petitioner was illegally convicted. It was further contended that the recovery of 'stamp' from the house of the petitioner was effected in absence of any independent witness.

5. As noted above, the petitioner in order to obtain an arms licence submitted a certificate (Ex.PW2/C) alongwith his application (Ex.PW2/A) purportedly issued by Sun Rise Security Force and signed by one Hardev Singh.

6. SI Shiv Singh (PW2) deposed that to determine the genuineness of petitioner's application, an enquiry was conducted on the direction of Addl Commissioner of police (Licensing). He went to the office of Sun Rise Security Force at Rithala where the proprietor *Mintu Singh* disclosed that *Hardev Singh* was not employed in his office and the petitioner also never worked with them.

7. The prosecution had examined Alok Kumar Mehta, Senior Scientific Officer (Documents), FSL Delhi to prove the FSL report (PW7/A) as per which, the petitioner's signatures were proved on the application form (Ex.PW2/A) as well as on the affidavit (Ex.PW2/B). As per the FSL report, it also stood proved that the impression of stamp of Sun Rise Security Force on the certificate (Ex.PW2/C) tallied with the impression of the stamp which was recovered from the house of the petitioner.

8. The Appellate Court held that the certificate (Ex.PW2/C) bears an impression of fake stamp of Sun Rise Security Force. It was further held that the petitioner made only an attempt to cheat the licencing authority as the licence was not granted and the conviction of the petitioner was altered from Section 420 IPC to Section 420/511 IPC.

9. For the reasons stated above, I find no illegality, infirmity or perversity in the judgment passed by the Appellate Court. The petitioner's conviction under Section 468/471 and 420/511 IPC is upheld.

10. An application was filed on behalf of the petitioner seeking release on probation. It was submitted that the petitioner has not been involved in any other case and is the sole bread earner of his family. The petitioner never misused the concession of suspension of sentence granted to him. A report was called from the concerned probation officer.

11. The Probation of Offenders Act, 1958 is a milestone in the progress of the modern liberal trend of reform in the field of penology. It is the result of the recognition of the doctrine that the object of criminal law is more to reform the individual offender than to punish him. It was enacted with a view to provide for the release of offenders of certain categories on probation or after due admonition. The object of the Act is to prevent the conversion of youthful offenders into obdurate criminals as a result of their association with hardened criminals of mature age in case the youthful offenders are sentenced to undergo imprisonment in jail. The above object is in consonance with the present trend in the field

of penology, according to which effort should be made to bring about correction and reformation of the individual offenders and not to resort to retributive justice. Modern criminal jurisprudence recognizes that no one is a born criminal and that a good many crimes are the product of socio-economic milieu. (Refer: Rattan Lal v. State of Punjab reported as **AIR 1965 SC 444**; Jugal Kishore Prasad v. State of Bihar reported as **(1973) SCC (Cri) 48**).

12. In Sushil Sharma v. State (NCT of Delhi) reported as **(2014) 4 SCC 317**, it was held as follows:-

“103. ...The core of a criminal case is its facts and, the facts differ from case to case. Therefore, the various factors like the age of the criminal, his social status, his background, whether he is a confirmed criminal or not, whether he had any antecedents, whether there is any possibility of his reformation and rehabilitation or whether it is a case where the reformation is impossible and the Accused is likely to revert to such crimes in future and become a threat to the society are factors which the criminal court will have to examine independently in each case. Decision whether to impose death penalty or not must be taken in the light of guiding principles laid down in several authoritative pronouncements of this Court in the facts and attendant circumstances of each case.”

The aforesaid view was reaffirmed in Rajendra Pralhadrao Wasnik v. State of Maharashtra reported as **(2019) 12 SCC 460**.

13. In Yakub Abdul Razak Memon v. State of Maharashtra reported as **(2013) 13 SCC 1**, the Supreme Court discussed the scope of Section 4 of the Probation of Offenders Act and held as follows:

“2934. The scope of Section 4 of the Probation of Offenders Act is much wider. It applies to any person found guilty of having committed an offence not punishable with death or imprisonment for life...

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2937. *Section 4 of the Probation of Offenders Act contains the words “notwithstanding anything contained in any other law for the time being in force”. The above non obstante clause points to the conclusion that the provisions of Section 4 of the Probation of Offenders Act would have an overriding effect and shall prevail if the other conditions prescribed therein are fulfilled. Those conditions are:*

2937.1. *The accused is found guilty of having committed an offence not punishable with death or imprisonment for life;*

2937.2. *The Court finding him guilty is of the opinion that having regard to the circumstances of the case, including the nature of the offence and the character of the offender, it is expedient to release him on probation;*

2937.3. *The accused in such an event enters into a bond with or without sureties to appear and receive sentence when called upon during such period not exceeding three years as the court may direct and, in the meantime, to keep the peace and be of good behaviour.*

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2939. *Section 4 of the Probation of Offenders Act applies to all kinds of offenders, whether under or above the age of 21 years. This section is intended to attempt possible reformation of an offender instead of inflicting upon him*

the normal punishment of his crime. It is submitted that it is settled law that while extending benefit of the said provision, this Court has to exercise its discretion having regard to the circumstances in which the crime was committed viz. the age, character and antecedents of the offender. It is also settled law that such exercise of discretion needs a sense of responsibility. The section itself is clear that before applying the same, this Court should carefully take into consideration the attendant circumstances.”

14. A ‘Social Investigation Report’ dated 09.10.2019 from the concerned probation officer has been received in respect of the petitioner. It has been reported that the petitioner is presently 32 years of age and his parents live in their home town in Bihar. The petitioner is presently living with his brother in Delhi and belongs to a poor and low educated family background. Further, as per the report, the petitioner bears positive and normal mental condition and has reflected ‘non-toxicant habits’ and normal social behaviour. The family relationships are normal and both parents as well as the relatives have proper love and affection towards him. The report from the neighbours is also favourable. During home visit, the petitioner had shown remorse and a scope of improvement in his behaviour and social life. The petitioner’s jail conduct report is also satisfactory where he had worked as ‘control room sahayak’.

15. A Status Report has also been placed on record as per which, the petitioner is not found involved in any other case.

16. As per the nominal roll dated 29.04.2009, the petitioner has undergone sentence of 10 months and 11 days including remission.

17. For the reasons stated above, the application seeking release on probation is allowed and the petitioner is directed to be released on probation on furnishing personal bonds in the sum of Rs. 10000/- 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, and good behaviour for a period of one year. During the period of probation, in case the petitioner does not maintain good conduct, he shall be liable to undergo substantive sentence as awarded by the trial court and modified by the appellate court.

18. With the above modification, the revision petition along with the application is disposed of.

19. A copy of this judgment be communicated to the concerned trial court.

(MANOJ KUMAR OHRI)
JUDGE

FEBRUARY 19, 2020

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