

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 310 OF 2002

Mohan Rajaram Gaikwad	}	
Age : 27 years, Occ. : Service,	}	
R/o At Post Varap, Tal. Kalyan,	}	
District. Thane.	}	... Applicant.
	}	(Orig. Accused)

Versus

The State of Maharashtra	}	... Respondent.
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Mr. V. S. Mhaispurkar, Advocate for Applicant.
Mr. S. S. Hulke, A.P.P. for Respondent-State.

CORAM : A.S. GADKARI, J.
DATE : 2ND FEBRUARY 2021.

ORAL JUDGMENT :

The present Revision under Section 397 read with Section 401 of Criminal Procedure Code has been filed by the applicant, impugning the Judgment and Order dated 6th March 1999 passed by the learned Metropolitan Magistrate, 20th Court, Mazgaon, Mumbai in Criminal Case No. 36/P/96, thereby convicting him under Section 465, 468, 471 and 420 read with 34 of the Indian Penal Code (for short, “I.P.C.”) and sentenced to suffer rigorous imprisonment for six months and to pay a fine of Rs.500/- on each count, in default of payment of fine to further suffer rigorous imprisonment for one month on each count and the Judgment and Order dated 17th June

2002 passed by the learned Additional Sessions Judge, Greater Mumbai in Criminal Appeal No.83 of 1999, dismissing the said Appeal and confirming the Judgment and Order dated 6th March 1999 passed by the Trial Court.

2. Heard Mr. Mhaispurkar, learned counsel for applicant and Mr. Hulke, learned A.P.P. for respondent-State. Perused entire record.

3. The prosecution case in brief is that, the applicant (original accused No.1) and Siddiqui Dastagir (original accused No.2) in connivance with absconding accused No.3 prepared forged marksheets of their 12th Std., Higher Secondary examination showing higher grade of marks and submitted it to the J.J. Grant Government Medical College for securing admission in MBBS course.

4. The record indicates that, during the pendency of trial Siddiqui Dastagir (original accused No.2) expired and the trial stood abated against him. The said fact of alleged forgery committed by the applicant came to the knowledge of Dr. Ravindra S. Inamdar (PW-3), Vice-Dean of J. J. Group of Hospitals Mumbai when the said marksheets were sent for verification to the Higher Secondary School Board, Mumbai Division. The Higher Secondary School Board interalia had informed the Vice Dean of J. J. Group of Hospitals, Mumbai, that the marksheets submitted by those two persons i.e. applicant and accused No.2 did not tally with the record maintained by the Board.

5. In support of its case, the prosecution has examined in all six

witnesses, namely, Dr. Ravindra S. Inamdar (PW-1), Vice-Dean of J. J. Group of Hospitals; Shri Sidaram B. Shinde (PW-2), Office Superintendent from the Grant Medical College; Shri Vijay M. Kharat (PW-3), Junior Clerk serving with Grant Medical College; Shri Hindurao G. Kamble (PW-4), an employee from Higher Secondary School Board; Mr. Siraj M. Shaikh (PW-5), A.P.I., the Investigating Officer and Shri Ramchandra J. Thorawat (PW-6), Police Sub-Inspector then attached to Tilak Nagar Police Station, Mumbai, who recorded the F.I.R. and carried out initial investigation of the present crime.

The learned Metropolitan Magistrate, 20th Court, Mazgaon, Mumbai after recording evidence of the said witnesses and hearing the learned Advocates for the respective parties has convicted the applicant for the offence punishable under Section 465, 468, 471 and 420 read with 34 of the I.P.C., as noted hereinabove. The Criminal Appeal No. 83 of 1999 preferred by the applicant has been turned down by the learned Additional Sessions Judge, Greater Mumbai by its impugned Judgment and Order dated 17th June 2002.

6. Mr. Mhaispurkar, learned counsel appearing for the applicant submitted that, the testimony of material witnesses would reveal that, there is no evidence at all on record, even to remotely suggest that the applicant has in fact committed forgery of the said marksheet. He submitted that, it is the specific defence of the applicant that, he received the said marksheet (Exh.-8)

from his college and he has no role to play in forging it. He further submitted that, the Trial Court has proceeded on surmises and hypothesis, and recorded conviction of the applicant as the applicant herein did not examine any defence witness in his support. He submitted that, both the Courts below have committed serious error in not appreciating the evidence available on record in its proper perspective while recording conviction of the applicant. He submitted that, both the impugned Judgments and Orders suffer from illegality leading to perversity and therefore needs to be quashed and set aside and prayed that, the present Revision Application may be allowed.

7. Per contra, Mr. Hulke, learned A.P.P. vehemently opposed the Revision and submitted that, there is sufficient material available on record to infer that, the applicant committed forgery of the marksheets as he is the only person who was interested in getting admission to MBBS course. He submitted that, the evidence of PW-1 and PW-4 reveals that, the applicant in fact had secured very less marks in Subject Code Nos. 54, 55 and 56, i.e. in the subject of 'Physics', 'Chemistry' and 'Biology'. He further submitted that, both the Courts below have not committed any error while passing impugned Judgments and Orders and therefore the present Revision may be dismissed.

8. Though, the prosecution has examined six witnesses in support of its case, the evidence of PW-1, PW-4 and PW-5 is material and relevant for deciding the present Revision.

PW-1 has admitted that, the Dean of the said college received letter from Higher Secondary Education Board that, the marksheet submitted by the applicant did not tally with the marksheet of the Board. In his testimony he has stated that, the said marksheet according to him was a forged document. Mr. Hindurao Kamble (PW-4) in his testimony has admitted that, he verified the marksheet of the applicant from the register maintained by the Board and found that, the applicant has secured 40 marks in Physics, 44 marks in Chemistry and 43 marks in Biology, though, his marksheet depicts 86, 84 and 82 marks respectively for the said subjects. That, the marksheet submitted by the applicant did not tally with the record maintained by the Board. A.P.I. Mr. Shaikh (PW-5) in his cross-examination has admitted that, he did not investigate from where marksheets were prepared (Exh.8-Colly). He also did not enquire from the college of the applicant from where he passed his 12th Std. exams about the original marksheets. This is the only relevant and material evidence available on record, on the basis of which Trial Court has sentenced the applicant for the aforestated offences allegedly committed by him. A minute perusal of evidence of PW Nos. 1, 4 and 5 would clearly indicate that, there is no material at all on record, to even remotely infer that, the applicant has in fact forged his marksheet.

9. It is thus clear that, the prosecution has not put-forth cogent and

convincing evidence to safely infer that, it is the applicant only who in connivance with absconding accused No.3 forged his marksheet to secure admission for MBBS course in J. J. Grant Government Medical College.

10. It is to be noted here that, the Trial Court in para 11 of the impugned Judgment has observed that, though it gave sufficient opportunity to the applicant to examine defence witness, he did not do so as the applicant felt that, he has committed mistake and his self conscious did not permit him to do so. That, if the applicant would not have been at fault, he would have fought with the college Authority, but he did not do so and has raised a defence that, he received the said marksheets from his college. That, the conduct of applicant speaks about his guilty mind. The trial Court therefore inferred that, the applicant has forged the said marksheet.

This observation of the Trial Court is contrary to the settled cannons of law, as the principle of criminal jurisprudence requires the prosecution to prove guilt of the accused beyond reasonable doubt by adducing cogent evidence in that behalf. Our Constitution gives right to accused person even to keep silence and it is always for the prosecution to prove its case by leading evidence in that behalf.

11. As noted earlier, it is the categorical defence of the applicant that, he received the said marksheet from his college. The Investigating Officer did not thought it fit and necessary to make enquiry with the college of the

applicant and to verify the genuineness of the said fact. The prosecution has miserably failed to established the fact that, the applicant has forged the said marksheet.

In view of the aforesaid discussion, the applicant is entitled for benefit of doubt which is accordingly given.

12. Revision Application is accordingly allowed and the impugned Judgment and Order dated 6th March, 1999, passed by the learned Metropolitan Magistrate, 20th Court, Mazgaon, Mumbai in Criminal Case No. 36/P/96 and the Judgment and Order dated 17th June 2002 passed by the learned Additional Sessions Judge, Greater Mumbai in Criminal Appeal No.83 of 1999, are hereby quashed and set aside and the appellant is acquitted from all the charges framed against him.

(A.S. GADKARI, J.)