

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRREV No. 378 of 2000

An application under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973.

AFR Jagannath Parida Petitioner

-Versus-

State of Odisha **Opp. Party**

Advocate(s) appeared in this case:-

For Petitioner : M/s. S.K. Mund, D.P. Das, J.K. Parida, S.K. Joshi & S. Mohapatra, Advocates

For Opp. Party : Mr. S.K. Mishra,
Addl. Standing Counsel

CORAM:

JUSTICE SASHIKANTA MISHRA

JUDGMENT

14th July, 2022

SASHIKANTA MISHRA, J.

The petitioner was convicted for the offence under Sections 420/468/471 of IPC by learned J.M.F.C., G. Udayagiri in G.R. Case No. 19 of 1994 and was sentenced to undergo Rigorous Imprisonment (R.I.) for 3 years for the offence under Section 468 IPC, R.I. for a

period of 3 years under Section 420 IPC and to pay a fine of Rs. 500, in default, to undergo R.I. for one month more and for a period of 6 months under Section 471 of IPC with all the sentences directed to run concurrently vide judgment dated 16.11.1998. The said judgment of conviction and sentence was confirmed by learned Sessions Judge in C.R.A. No. 39 of 1998 as per judgment passed on 24.06.2000.

Being further aggrieved, the petitioner has preferred the instant revision.

2. The prosecution case, briefly stated, is that a complaint was received by the Director, Elementary Education, Odisha, Bhubaneswar from some persons that the petitioner had utilized forged H.S.C. Board Certificate and Secondary Teachers Training Pass Certificate to get employment as a teacher. The matter being enquired, it was found that neither the H.S.C. Board Certificate nor the Secondary Teachers Training Certificate had been issued by the respective Board/Institutes. Accordingly, an FIR was lodged before Raikia Police Station by the District Inspector of Schools, Phulbani on 22.01.1994. Upon

completion of investigation, charge-sheet was submitted against the accused for the aforementioned offences and he was put to trial.

The accused took the plea of denial.

3. Prosecution, in order to prove its case examined 20 witnesses and exhibited 27 documents. The defence did not adduce any evidence, either oral or documentary. After scanning the evidence in detail, the trial court held that the alleged offences were clearly proved inasmuch as it was reflected in the service book of the petitioner that he had entered into service stating that he had passed the HSC and CT examinations. It was also found that the petitioner had used the certificates in question knowing the same to be forged and had thus used the same dishonestly and cheated his appointing authorities by inducing them to believe the said certificates to be true and genuine thereby inducing them to appoint him as a teacher. In appeal, learned lower appellate court also independently scanned the oral and documentary evidence on record but found no reason to interfere with the impugned order of conviction and

sentence. The contentions raised on behalf of the petitioner were considered and negated as the lower appellate court also found that the petitioner had used the forged certificates for getting appointment as Assistant Teacher in 1980.

Challenging both the judgments as above, the petitioner has approached this Court in the instant revision.

4. Heard Mr. S.K. Mund, learned counsel for the petitioner and Mr. S.K. Mishra, learned Addl. Standing Counsel for the State.

5. Assailing the impugned judgments, Mr. Mund contends that the basic ingredients of the alleged offences were not proved and therefore, the finding of guilt is liable to be interfered with. Elaborating his argument, Mr. Mund contends that there is no evidence on record to show that the certificates, which were marked as Exhibits-15 and 16, were produced by the petitioner. It is further contended that there is no evidence that the said documents were forged documents. According to Mr. Mund, unless the prosecution is able to clearly prove that

the petitioner had forged the documents in question and had produced them before the appointing authority at the relevant time and thereby utilized the same to get appointment, he cannot be held guilty of the alleged offences. It is further contended that both the courts below have ignored this vital aspect, i.e., absence of proof that Exhibits-15 and 16 were produced by the petitioner before the appointing authority at the relevant time. Moreover the manner of proof of certain documents like the Tabulation Register, which was utilized against the petitioner, is contrary to the law of evidence and therefore, should not have been considered by the court below.

6. Per contra, Mr. S.K. Mishra has contended that there is clear evidence that the petitioner had declared himself to have passed H.S.C. as also C.T. examination which is duly reflected in his service book. It has also been proved that the certificates in question namely, Exhibits- 15 and 16 are forged documents inasmuch as they do not belong to the petitioner but to some other students.

7. In view of the contentions put forth on behalf of the petitioner, it becomes necessary to examine whether the prosecution was successful in proving the essential ingredients of the alleged offences. As already stated, the petitioner was charged for the offence under sections 420/468/471 IPC. The said offences are as follows:

“420. Cheating and dishonestly inducing delivery of property.—Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

468. Forgery for purpose of cheating.—Whoever commits forgery, intending that the document or electronic record forged shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

471. Using as genuine a forged document or electronic record.—Whoever fraudulently or dishonestly uses as genuine any document or electronic record which he knows or has reason to believe to be a forged document or electronic record, shall be punished in the same manner as if he had forged such 5 [document or electronic record.”

So, to bring home a charge under Section 420 IPC, prosecution is required to prove that the petitioner delivered/produced two certificates at the time of his

joining (Exhibits -15 and 16) which were acted upon by the appointing authority in giving him appointment as Assistant Teacher. It is well settled that the deception referred to in Section 420 of IPC may be by conduct or implied in the nature of the transaction itself. Reference in this regard may be had to the decision of the apex court in the case of **Ram Narayan Popli v. CBI**, reported in **(2003) 3 SCC 641**.

As regards the offence under section 464, punishable under Section 468 of IPC, as already discussed hereinbefore, to bring the offence within the four corners of the Section, the false document must be proved to have been created with a view to making it appear that it was made by some person other than the person who, the accused knows, did not make it. In other words, the first essential is that the accused should have made a false document and with the intent to cause damage or injury to the public or to any class of public or to any community. Reference may be had to the case of **Ram Narayan** (supra). According to the prosecution, the accused forged the documents marked Exhibits 15 and 16

to make them appear as if they had been issued by the Board of Secondary Education and Secondary Teachers Training Institute.

Section 471 requires that the person concerned must have 'knowledge' or have 'reason to believe' that the document in question was forged or not genuine before using it for his own benefit. According to the prosecution, the accused had not passed H.S.C. or C.T. examinations and yet, produced two forged certificates at the time of his appointment to show as if he had passed the said examinations.

8. The facts of the case now need to be examined in light of the above legal propositions. However, one aspect needs to be clarified at the outset. It is well settled that the onus of proof that the accused brought forth a forged document with a view to cheating, would rest with the prosecution and highly suspicious conduct cannot replace the need of positive proof. Further, the onus of proof of the existence of every ingredient of the charge always rests with the prosecution which never shifts.

9. The prosecution case is that the accused utilized H.S.C. and C.T. certificates and obtained appointment as Assistant Teacher though he had neither passed the H.S.C. examination nor the C.T. examination. To prove this, prosecution examined several witnesses and proved several documents. It is brought out in the evidence that the documents in question, namely, Exhibits-15 and 16, which are certificates purportedly issued by the Board of Secondary Education and Secondary Teachers Training Institute respectively, do not actually belong to the petitioner as the certificates of the same number were issued in respect of some other persons. Prosecution has proved the Tabulation Register through an official of the Board of Secondary Education, namely, P.W.- 19, which shows that the certificate marked Exhibit-15 was issued in favour of one Lalatendu Sarangi. Similarly there is evidence on record to show that Exhibit-16 was issued in favour of one Sanjukta Pattnaik. Prosecution has proved the service book of the petitioner, wherein it is mentioned that he has passed the H.S.C. and C.T. examination. Therefore according to prosecution, the

certificates marked Exhibits 15 and 16 were produced by the accused at the time of his appointment for which necessary entries were made in the service book.

There is no direct evidence on record to show that the petitioner accused had produced the certificates in question at the time of his appointment. As already stated, prosecution has heavily relied upon the particulars mentioned in the service book to contend that the accused had produced the said certificates at the relevant time. Obviously, a mere entry in the service book with regard to educational qualifications cannot be treated as conclusive proof of physical production of the certificates in question by the person concerned. Neither any person employed in the school in question at the relevant time was examined nor was any other documentary evidence showing as to what documents were submitted by the accused at the time of his appointment produced during trial. How and on what basis the service book entries were made has not been shown. The trial court has relied upon the evidence of P.W.- 1, P.W.- 3, P.W.- 11 and P.W.- 20 in this regard. P.W.-1 is the D.I. of Schools but he has expressed

ignorance regarding submission of certificates by the accused before the appointing authority. P.W.-3 is the S.I. of Schools. He testified that the B.D.O. asked the accused to produce his original certificates under a letter marked Exhibit-8, copy of which was also marked to him. Surprisingly, he further states to have received the certificates in original as also the service book from the B.D.O. and of sending the same to the D.I. of Schools. The B.D.O. was examined as P.W.-11. He proved the letter issued by him vide Exhibit-8 asking the accused to produce the original certificates but has stopped short of stating as to from which source he received the certificates. In fact, he has stated nothing at all in this regard and significantly, he does not say that he had received the certificates from the accused. The original certificates marked Exhibits-15 and 16 were seized by the I.O. who was examined as P.W.- 20. Thus, who produced the certificates in question before the B.D.O. remains shrouded in mystery. It is not stated by either P.W.-3 or P.W.- 11 that the accused had submitted the certificates pursuant to the letter issued under Exhibit- 8. This is the

most vital link in the chain of circumstances that was required to be proved conclusively to hold the accused guilty. The trial court appears to have overlooked this vital aspect and has gone on to hold that the accused used Exhibits- 15 and 16 as genuine knowing the same to be forged ones. As already stated, unless it is conclusively shown that the accused had in fact produced the certificates in question at the relevant time, then regardless of the fact that the certificates have been otherwise proved to be forged ones, if at all, cannot attract the liability contemplated under section 471 of CPC. In other words, even if it is proved that the certificates were forged does not necessarily mean that they were utilized by the accused knowing the same or having reason to believe that the same were forged in order to acquire a benefit for him.

10. In so far as the allegation of forgery is concerned, prosecution has relied upon the Tabulation Register of the Board of Secondary Education proved through P.W.- 19 to show that the certificates in question had been a issued in favour of some other students and

not the petitioner. As has already been discussed herein before, unless it is shown that the petitioner had utilized the said certificates to get appointment, mere proof of the same being forged, particularly in the absence of any evidence to show that the petitioner had any role to play in the alleged forgery of the documents, the offence under Section 464 of IPC punishable under Section 468 of IPC cannot be said to be made out. For the same reason the offence under Section 420 of IPC is also not made out. A reading of the impugned judgments reveals that not only the trial court but also the lower appellate court has fallen into error in overlooking the fact that the vital link in the chain of circumstances against the accused was missing. In the absence of this vital link, the chain of circumstances becomes incomplete for which the finding of guilt basing thereon becomes vulnerable.

11. For the foregoing reasons therefore, this Court has no hesitation in holding that the impugned judgment of conviction and sentence passed by the trial Court and that of the lower appellate court in confirming the same cannot be sustained in the eye of law and are,

therefore, set aside. The accused petitioner is held not guilty of the charge under Sections 420/468/471 IPC and hence, acquitted therefrom. His bail bonds be discharged.

12. The CRREV is disposed of accordingly.

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Sashikanta Mishra,
Judge

Orissa High Court, Cuttack,
The 14th July, 2022/ A.K. Rana

