

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLREV NO.998 OF 2013

(From the judgment dated 30th September, 2013 passed by learned Addl. Sessions Judge, Nabarangpur in Crl. Appeal No.46/2013 so also the order of the trial court passed by the learned Civil Judge (Sr. Division)-cum-J.M.F.C., Nabarangpur in G.R. Case No.226/1999)

Sujata Sadangi

... Petitioner

-versus-

State of Odisha

... Opposite Party

Advocates appeared in the case through hybrid mode:

For Petitioner

: Mr. B.K.Mohanty,

-versus-

For Opposite Party

**: Mr.P.K.Maharaj
Addl. Standing Counsel**

CORAM:

JUSTICE SASHIKANTA MISHRA

**JUDGMENT
20.06.2022.**

Sashikanta Mishra,J. The present Revision has been filed questioning the correctness of the judgment dated 30th September, 2013 passed by

learned Addl. Sessions Judge, Nabarangpur in Criminal Appeal No.46/2013 whereby the judgment of conviction and sentence passed by learned J.M.F.C., Nabarangpur on 16th February, 2012 was confirmed. By the said judgment, learned J.M.F.C. had convicted the Petitioner for the offence under Sections 468/471/420/34 of I.P.C. and sentenced her to undergo R.I. for two years and to pay fine Rs.1,000/-, in default, to undergo further R.I. for one month on each count for the aforementioned offences with all the sentences to run concurrently.

2. The prosecution case, in brief, is that the District Inspector of Schools (for short the “ D.I. of Schools”), Nabarangpur received a letter bearing No.825 dated 13th August, 1995 issued by the Comptroller of Examinations, Board of Secondary Education, Odisha (for short ‘BSE, Odisha’) intimating that the Petitioner and two other persons namely, Susil Kumar Mohanty and Shaik Ismail had failed in the C.T. Examination 1994, and, therefore, he was requested not to issue S.L.C. or mark sheet to the said candidates. Accordingly, the D.I. of Schools issued instructions to the Headmaster of Government Secondary Training School, Nabarangpur. The said Headmaster informed that he had received the C.T. pass certificates from the BSE, Odisha by registered post

and had handed them over to the candidates after obtaining their signatures. The D.I. of Schools, therefore, requested the BSE, Odisha to confirm the genuineness of the pass certificates of the candidates pursuant to which, by a confidential letter No.50 dated 13th January, 1999, the BSE, Odisha informed that all the three candidates had failed in the C.T. Examination held for the year 1994. It was thus apparent that the said candidates had managed to secure employment by producing fake C.T. Pass certificates and also received other service benefits. Thereafter, on the instructions received from the Director of Elementary Education, Odisha, the D.I. of Schools, Nabarangpur lodged F.I.R. before Nabarangpur Police Station leading to registration of Nabarangpur P.S. Case No.68/1999 under Sections 468/471/420/34 of I.P.C.

Upon completion of investigation, charge sheet was submitted against the Petitioner and one Sunil Kumar Mohanty under the aforementioned Sections.

The accused persons took the plea of denial and false implication.

3. In course of trial, the prosecution examined eleven witnesses and proved the documents marked Exhibits 1 to 20. No evidence was adduced from the side of defence. The trial court considered the evidence on record to hold that the accused persons had failed in the C.T. Examination held during the year 1994, but using such certificates showing them to have passed the said examination, they had secured employment. It was also held that the accused persons had collaborated with some unseen elements under mysterious circumstances and have managed to dispatch the fake certificates which were supplied to them by the Headmaster and, therefore, according to the trial court, their intention and purpose being to secure employment, they must be held to have committed the charged offences. Accordingly, the accused persons were convicted and sentenced as aforesaid.

4. The Petitioner preferred appeal against the judgment of conviction and sentence passed by the trial court as above. Learned appellate court also re-appreciated the evidence, but found no reasons to interfere. It was held that when it is clearly proved that the accused persons had failed in the C.T. examination, 1994 they could not have been issued with pass certificates. It was also held that had the marks been actually revised by the Board, the same

could have been proved by the defence by furnishing the cash receipts showing application for recalculation/revision of their marks. Since the same was not done, the Notification declaring them to have passed the examination cannot be accepted. Learned appellate court also held that the intention and purpose of the accused persons was to secure employment as C.T. Teachers and, therefore, their conduct in producing the certificates, which are not genuine, during their selection makes it manifestly clear about their intention to cheat the Education Department. The impugned order of conviction and sentence was therefore confirmed.

Being further aggrieved, the Petitioner has approached this Court in the present revision.

5. Heard Mr. B.K.Mohanty, learned counsel for the Petitioner and Mr. P.K.Maharaj, learned Addl. Standing Counsel for the State.

6. Assailing the impugned judgments Mr. Mohanty contends that none of the witnesses examined by the prosecution has even whispered a word to the effect that the accused-petitioner had forged the certificate in question. It is further contended that both the courts below have failed to appreciate the fact that the

petitioner had no role to play in issuance of the Notification No.7625 dated 13th November, 1995 of BSE, Odisha whereby she was declared as passed along with other candidates. Further, the courts below have not appreciated the fact that the Headmaster of the concerned school had clearly stated that he had received the original certificate from BSE, Odisha vide Registered Letter No.18721 dated 24th September, 1997. Therefore, according to Mr. Mohanty even if it is proved that the Petitioner had failed in the examination, the same does not automatically prove that she had forged the notification and pass certificate with the intention of securing employment.

7. Per contra, Mr. P.K.Maharaj, learned Addl. Standing Counsel for the State, argues that firstly, the Petitioner having failed in the C.T. examination is not entitled to be appointed as a Teacher which she managed to secure by producing fake certificate and secondly, even if it is accepted that the Petitioner had not created the documents in question still, being the direct beneficiary of the same, she must be held to be equally liable.

8. A reading of the entire case record along with the oral and documentary evidence would reveal that the genesis of the case

appears to be the letter dated 13th August, 1998 issued by the Comptroller of Examination, BSE, Odisha addressed to the Headmaster, Secondary Training School, Nabarangpur with copy to the D.I. of Schools, Nabarangpur. The said letter has been marked Ext.5 during trial. In the said letter, reference has been made to Notification No.7625(19) ITTC (13.11.1995) and it is stated that the same was not issued from his office and that all four candidates have failed in the aforesaid examination. The Notification dated 13th November, 1995 referred to above was not produced or proved during trial. As it appears, the same was purportedly issued revising the result of four candidates including the present Petitioner relating to C.T. Examination, 1994. In response to such letter, the Headmaster of Government S.T. School, Nabarangpur vide letter No.445 dated 30.11.1997 (marked as Ext.7) informed that the pass C.T. certificates in favour of three ex-pupil teachers including the Petitioner were issued by the BSE vide registered Letter No.18721 dated 24th September, 1997 and accordingly the certificates were issued to them. The aforementioned registered letter has neither been produced nor proved by the prosecution. The certificate was seized by the I.O. during investigation vide seizure list marked Ext.16. The copy of

the certificate, which is available on record, shows that the Petitioner was issued with a certificate dated 31st July, 1996 showing her to have passed the Secondary Teachers Training Certificate Examination. Ext.9 is the copy of letter dated 13th January, 1999 of the BSE, Odisha to the D.I. of Schools, Nabarangpur, inter alia, stating that the Petitioner had appeared in the C.T. Examination compartmentally and secured 9 marks in English and failed. Thus, there is no dispute that the Petitioner had failed in the C.T. Examination held for the year 1994. In fact, the defence also does not seriously dispute this. Now, the question that arises for consideration is, can the Petitioner be held guilty of the offences under Sections 468/471/420 of I.P.C.

9. Section 468 of the I.P.C. reads as follows:-

“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 a term which may extend to seven year, and shall also be liable to fine.”

From a bare reading of the provision as quoted above, it is clear that the essential ingredients thereof are as follows:-

- (i) There should be a forgery in respect of the document.
- (ii) The intention of the forgery should be that the forged document is to be used for the purpose of cheating.
- (iii) There should be forgery with particular intent.

Thus, forgery and the intention to cheat are sine-qua-non to prove the offence.

Coming to Section 471 of I.P.C, the same reads as follows:-

“471. Using as genuine a forged[document or electronic record]-Whoever fraudulently or dishonestly uses as genuine any document or electronic 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 document or electronic record.”

The basic ingredients of the offence are as under:-

- (i) The accused fraudulently or dishonestly used a document as genuine and
- (ii) The accused knew or had a reason to believe that the document was a forged one.

Thus, to record a conviction under Section 471 of the I.P.C., it is essentially required to be proved that the accused knew

or had reason to believe that the document in question was a forged one.

In so far as Section 420 of I.P.C. is concerned, the same reads as follows:-

“420. Cheating and dishonestly inducing delivery of property:-Whoever cheats and thereby dishonestly induces that 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 or their description for a terms which may extend to seven years, and shall also be liable to fine.”

The essential ingredients of the offence are as follows:-

- (i) Cheating.
- (ii) Dishonest inducement to deliver property or to make, alter or destroy any valuable security or anything which is sealed or signed or is capable of being converted into a valuable security; and
- (iii) Mens rea of the accused at the time of making inducement.

10. The facts of the case, as proved, now need to be tested in the back drop of the requirement of law for proving the aforementioned offences. In so far as Section 468 of the I.P.C. is concerned, as

already stated, the essential ingredients are forgery of the document concerned and the intention of the accused to use the said forged document for the purpose of cheating. In the present case, the prosecution would like the court to believe that the accused is guilty because she had used the document, that is, forged pass certificate with the intention of securing public employment. Significantly, the prosecution stops short of proving that it was the Petitioner and none else who had forged the said pass certificate. Be it noted here that except for the evidence that BSE had not issued the Notification dated 13th November, 1995, nothing has been brought on record or proved as to who had issued the same, much less the Petitioner. Same is also the case with the Registered Letter dated 30th November, 1997. So, the basic ingredient, that is, forgery by the Petitioner remains unproved.

11. Coming to the offence under Section 471 of I.P.C., it is for the prosecution to show that the accused knew or had reason to believe that the document in question was a forged one. Both the courts below appear to have cast the burden on the defence to disprove the allegation in this regard by holding that the defence ought to have proved that the Notification dated 13th November, 1995 revising the result was issued at the instance of the candidates, but then it is

settled law that the onus of proof of the existence of every ingredient of the charge under Section 471 of I.P.C. always rests with the prosecution which never shifts. Reference in this regard may be had to the decision of the Supreme Court in the case of ***Abdulla Mohammed Pagarkar v. State (Union Territory of Goa, Daman and Diu)*** reported in AIR 1980 SC 499. It is also well settled that when there is no evidence at all to show that the accused knew or had reason to believe that the document in question was a forged one and with such knowledge he had used it, he cannot be convicted under Section 471 of I.P.C. Reference, in this regard may be had to the decision of the Supreme Court in the case of ***Abdul Karim Madan Sahab v. State of Mysore***; reported in 1979 SC 1506. As to the meaning of ‘knowledge’ or ‘reason to believe’ the Supreme Court in the case of ***A.S. Krishnan and another v. State of Kerala***; reported in AIR 2004 SC 3229 held as follows:-

“Under the IPC, guilt in respect of almost all the offences is fastened either on the ground of “intention” or “knowledge” or “reason to believe”. We are now concerned with the expressions “knowledge” and “reason to believe”. “Knowledge” is an awareness on the part of the person concerned indicating his state of mind. “Reason to believe” is another fact of the state of mind. “Reason to believe” is not the same thing as

“suspicion” or “doubt” and mere seeing also cannot be equated to believing. “Reason to believe” is a higher level of state of mind. Likewise “knowledge” will be slightly on higher place than “reason to believe”. A person can be supposed to know where there is a direct appeal to his senses and a person is presumed to have a reason to believe if he has sufficient cause to believe the same. Section 26, IPC explains the meaning of the words “reason to believe” thus,

26. “Reason to believe”. A person is said to have ‘reason to believe’ a thing, if he has sufficient cause to believe that thing but not otherwise.”

In substance what it means is that a person must have reason to believe if the circumstances are such that a reasonable man would, by probable reasoning conclude or infer regarding the nature of the thing concerned. Such circumstances need not necessarily be capable of absolute conviction or inference: but it is sufficient if the circumstances are such creating a cause to believe by chain of probable reasoning leading to the conclusion or inference about the nature of the thing. These two requirements i.e. “knowledge” and “reason to believe” have to be deducted from various circumstances in the case (See Joti Parshad v. State of Haryana, AIR 1993 SC 1167)”.

12. Coming back to the facts of the case again, it is stated at the cost of repetition that the Notification dated 13th November, 1995 was never proved to have been issued by or at the instance of the Petitioner and so also the registered Letter No.18721 dated 24th September 1997. Now, who issued the said Notification and the

registered letter which contained the pass certificates in question remains shrouded in mystery. As already discussed, in a charge under Section 471 of I.P.C. the onus of proof always lies on the prosecution, but most surprisingly the trial court has assumed that the Petitioner (and other similarly placed candidates) had collaborated with “some unseen elements under mysterious circumstances” and have managed to dispatch the fake certificates, which were supplied to them by the Headmaster. Such finding is preposterous to say in the least. Evidently, the glaring gaps and lacunae in investigation have been glossed over/over looked by attempting to shift the burden of proof to the defence. Such a course cannot be countenanced in law being entirely contrary to the salutary principles underlying criminal jurisprudence. True, there is evidence to show that the accused had failed in the C.T. examination, but on the face of the admission of P.W.6 that the certificates and mark sheets of the candidates are sent to the concerned schools by the BSE, Odisha either in person or by registered post and thereafter the documents are issued to the concerned students by obtaining their signatures on the relevant registers, it cannot be said that any irregularity in procedure was adopted in the case. It is also significant to note that P.W.6 has

admitted that the Headmaster of S.T. School, Nabarangpur had intimated him that he had received the certificate by registered post. Thus, the source of issuance of the Notification dated 13th November, 1995 containing the revised results as also the registered Letter No.18721 dated 24th September, 1997 not having been established by the prosecution, it cannot be said that the accused persons had collaborated or caused the same to be issued and sent to the Headmaster concerned. It was for the prosecution to adduce positive evidence in this regard. Both the courts below, however, appear to have shut their eyes to this glaring gap in the prosecution case and have simply assumed that the accused persons having benefitted from the certificates in question were the creators thereof. There cannot be fastening of criminal liability on mere assumption or presumption. Criminal law demands hard and positive evidence to bring home the charge. Thus, though there is no proof of issuance of the aforementioned notification or the registered letter from the office of BSE, Odisha, the same, ipso facto, cannot imply that the accused persons had manufactured the same for the purpose of utilizing it for their own benefit in the absence of even a semblance of evidence being adduced in this regard. This is a vital link in the chain of circumstances which

remains missing, for which the charge under Section 471 of IPC cannot be said to have been established beyond reasonable doubts. True, the Petitioner and other candidates may not be entitled to employment as it has already been proved that they had not passed the required examination, yet they cannot be saddled with criminal liability in the absence of acceptable evidence to show that they had “knowledge” or had “reason to believe” that the certificates given to them by the Headmaster of the S.T. School were forged. Further, in view of the above discussion, the charge under Section 420 I.P.C. must also be held to be not proved.

13. From the foregoing discussion it is evident that both the courts below fell into error in holding the accused-Petitioner guilty of the charges more on assumption than on hard evidence adduced by the prosecution. Secondly, both the courts below have also committed manifest error in insisting proof of innocence from the defence thereby acting contrary to the basic principles of criminal jurisprudence. The impugned orders, therefore, cannot be sustained in the eye of law and hence, deserve to be interfered with.

14. In the result, this Court holds that the prosecution has not been able to prove the charges against the accused-Petitioner beyond

reasonable doubt for which she is entitled to be acquitted there from. This Court orders accordingly. The impugned orders are hereby set aside. The accused-Petitioner be discharged from her bail bonds.

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(*Sashikanta Mishra*)
Judge

Ashok Kumar Behera





