

(110) IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-2058-2022
Date of Decision: 09.12.2022

ANIL KUMAR

... Petitioner

Versus

STATE OF U.T., CHANDIGARH

...Respondent

CRR-2135-2022

HARPREET SINGH

... Petitioner

Versus

STATE OF U.T., CHANDIGARH

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr.Vishal Garg Narwana, Advocate
for the petitioner in CRR-2058-2022.

Mr. Vibhor Bansal, Advocate
for the petitioner in CRR-2135-2022.

Mr. Yashwant Singh Rathore, Addl. P.P., U.T., Chandigarh
with Ms. Sudha Singh, Advocate and
Mr. Yuvraj Singh Rathore, Advocate for respondent.

JASJIT SINGH BEDI, J.

By virtue of this common order, this Court proposes to dispose of two petitions i.e. bearing CRR-2058-2022 titled as Anil Kumar Versus State of U.T., Chandigarh and CRR-2135-2022 titled as Harpreet Singh Versus State of U.T., Chandigarh.

2. The present revision petitions have been preferred against the judgment dated 13.09.2022 passed by the Additional Sessions Judge,

Chandigarh vide which the appeals preferred by the petitioners against the judgment of conviction and order of sentence dated 25.10.2016 passed by the Judicial Magistrate, 1st Class, Chandigarh has been dismissed.

3. The brief facts of the prosecution case are that the complainant Shri Yogesh Kumar, Clerk, CRA, Punjab and Haryana High Court, Chandigarh gave a complaint to the effect that he was deputed for duty on 16.09.2012 at GGSDS College, Sector 32-C, Chandigarh regarding the test for the post of Clerk. During the checking of the identity of the candidates from the admit cards in Room No.25, it was found that the appearance of a person sitting at Roll No.18544 did not match with the photograph. On suspicion, he was asked about the details regarding his date of birth and address. He could not give a satisfactory reply and then admitted that he had appeared in the examination in place of Anil Kumar son of Shri Balwant Singh (petitioner in CRR-2058-2022) and according to him, his real name was Harpreet Singh son of Narender Pal Singh (petitioner CRR-2135-2022) and he belonged to Delhi. Thus, Harpreet Singh who was apprehended at the spot, impersonated and appeared as Anil Kumar son of Shri Balwant Singh. During investigation, accused Anil Kumar was arrested. Statements of witnesses under Section 161 of Code of Criminal Procedure, 1973 were recorded. After completion of investigation, the challan against the accused was prepared and presented in the Court for trial.

4. On finding a *prima facie* case for the commission of offences by both the accused, which was punishable under Sections 120-B, 419 read with Section 120-B and 420 read with Section 120-B Indian Penal Code, 1860,

they were charge-sheeted on 19.02.2015, to which they pleaded not guilty and claimed trial.

5. In order to prove its case, the prosecution examined the following witnesses:-

PW-1 Yogesh Kumar Prashar is the complainant of the present case and deposed in terms of his complaint Ex.P-1. He identified his signatures on complaint Ex.P-1. He proved documents i.e. admit card of Anil Kumar Ex.P-2. OMR answer sheet bearing Serial No.108544 Ex.P-3; question paper booklet bearing Serial No.13858 Ex.P-4; answer sheet No.24185 Ex.P-5; letter Ex.P-6 seeking copy of duty roster, attendance sheet and order of examination center regarding its booking; duty roster sheet Ex.P-7; relevant entry Ex.P-7/A, photocopy of attendance sheet of Centre No.11, GGSDS, Sector 32 Ex.P-8 and letter regarding booking of GGSDS College for holding the examination Ex.P-9. He fully supported the prosecution case and identified the accused-petitioners in the Court.

PW-2 MMHC Tejinder Singh produced the summoned record of entry No.1248 dated 06.09.2012 vide which ASI Balwinder Singh deposited a mobile phone make Samsung Colour Red and report to this effect is Ex.PW-2/A.

PW-3 Anil Kumar, Clerk produced the summoned record with regard to DL No.BWN/CDL/47472006. As per record, the said DL was registered in the name of Anil Kumar son of Shri Balwant Singh, resident of V.P.O. Nimri, Tehsil and Bhiwani and was valid up to 22.08.2026 and the

bearer was authorised to drive a motorcycle with gear/scooter and report to this effect was given to the I.O. and was on the Court file as Ex.PW3/A.

PW-4 SI Balwinder Singh is the Investigating Officer of the present case and deposed regarding the steps taken by him during investigation of the present case. He tendered various documents i.e. endorsement on the complaint Ex.PW-4/A; FIR Ex.PW-4/B; memo regarding taken into possession Ex.P-2 to P-5 as Ex.PW-4/C; personal search memo of accused Harpeet Singh Ex.PW-4/D; disclosure statement of Harpreet Singh Ex.PW-4/E; arrest memo of accused Anil Kumar Ex.PW-4/F; report of driving licence of accused Anil Kumar PW-4/G and specimen signatures of accused Anil Kumar Ex.PW-4/1 to Ex.PW-4/5. He identified both the accused in the Court and fully supported the prosecution case.

PW-5 Rajesh Kumar stated that on 28.01.2013, he was posted at Police Station 34, Chandigarh. On that day, he along with ASI Balwinder Singh went to the resident at Indira Colony House No.75 Bhiwani, from where accused Anil Kumar was arrested.

6. The statement of both the accused/petitioners was recorded under Section 313 of the Code of Criminal Procedure, 1973, wherein all the incriminating evidence was put to them which they denied and pleaded their false implication.

7. Based on the evidence led, the petitioners/accused came to be convicted and sentenced by the Court of Judicial Magistrate, 1st Class, Chandigarh as under:-

Sections	Sentence
420 IPC, 1860	Convicts are sentenced to undergo rigorous imprisonment for three years and are sentenced to pay fine of Rs.5,000/- each. In default of payment of fine, they shall further undergo rigorous imprisonment for one month.
419 IPC, 1860	Convicts are sentenced to undergo rigorous imprisonment for three years and are sentenced to pay fine of Rs.5,000/- each. In default of payment of fine, they shall further undergo rigorous imprisonment for one month.
120-B IPC, 1860	Convicts are sentenced to undergo rigorous imprisonment for three years and are sentenced to pay fine of Rs.2500/- each. In default of payment of fine, they shall further undergo rigorous imprisonment for one month.

8. Aggrieved by the judgment and order of sentence dated 25.10.2016 passed by the Trial Court, an appeal was preferred by the petitioners which came to be dismissed by the Court of Additional Sessions Judge, Chandigarh. While the appeal of the petitioner Harpeet Singh (petitioner in CRR-2135-2022) was dismissed and the judgment of conviction and order of sentence passed by the Trial Court against him was upheld, the appeal filed by the petitioner (Anil Kumar in CRR-2058-2022) was dismissed with a modification. The judgment of conviction and order of sentence passed by the Trial Court against him was modified to the extent that the petitioner (Anil Kumar in CRR-2058-2022) was acquitted of the charge framed against him under Section 419 IPC while the judgment of conviction and order of sentence under Sections 120-B and 420 IPC were kept intact.

9. The learned counsel for the petitioner (Anil Kumar in CRR-2058-2022) contends that the Trial Court and the Lower Appellate Court have not opined as to how the petitioner could be charged for having committed an offence under Section 420 IPC. The alleged meeting of minds between the petitioners is not proved. In fact, the petitioners were linked with each other through a person named Ashish who was never arrayed an accused or as a prosecution witness. To prove the charge of conspiracy under Section 120-B IPC, it was necessary to establish an agreement between the parties for doing an unlawful act which has not been established in the present case. Merely because Harpreet Singh (petitioner in CRR-2135-2022) was in possession of some documents did not mean that the petitioner (Anil Kumar in CRR-2058-2022) had handed over the same to him. The prosecution had also failed to prove that the alleged admit card and driving licence belong to the petitioner (Anil Kumar in CRR-2058-2022). In fact, the Courts have ignored the fact that the driving licence, which had been allegedly recovered from Harpreet Singh, co-petitioner of Anil Kumar (petitioner in CRR-2058-2022) is not valid and original. The handwriting samples/signatures of the petitioners were taken by the Investigating Officer but the same were not got compared with the signatures on the admit card nor was any report of an expert placed on the file by the Investigating Officer to show that the petitioner (Anil Kumar in CRR-2058-2022) had ever filled in any form for the post of Clerk. He, thus, contends that on account of several contradictions in the statements of the prosecution witnesses, a reasonable doubt had been created about the prosecution version against the petitioners and, therefore, the impugned judgments were liable to be set aside and the petitioners ought

to be acquitted of the charges framed against them.

10. The learned counsel for the petitioner-Harpreet Singh (in CRR-2135-2022) on the other hand has more or less reiterated the contentions raised by the counsel for the petitioner-Anil Kumar (in CRR-2058-2022). In addition, he contends that the complaint (Ex. P-1) has not been addressed to any person by the complainant nor did it bear any date. There was no evidence to suggest that either of the petitioners were in contact with each other and the identity of Ashish Kumar has not been established during the course of investigation. The person, who had allegedly apprehended Harpreet Singh-petitioner was neither arrayed as a prosecution witness nor was his version ever recorded. He, thus, contends that the judgments of conviction were liable to be set aside.

11. On the other hand, the learned State counsel contends that the arguments raised by the petitioners are similar to those raised not only during the course of trial but also during the course of hearing of the appeal. The Trial Court and the Lower Appellate Court have conclusively dealt with each of the arguments raised by the petitioners herein. He contends that the case against the petitioners is well established beyond any reasonable doubt and the present petitions were liable to be dismissed.

12. I have heard the learned counsel for the parties at length.

13. As per the prosecution case, Harpreet Singh-petitioner (in CRR-2135-2022) was found impersonating the actual candidate, petitioner-Anil Kumar (in CRR-2058-2022) in Room No.25 of the examination centre. Harpreet Singh appeared at Roll No.18544, which was issued to the petitioner-Anil Kumar. The admit card of the petitioner-Anil Kumar is

Ex. P-2. Harpreet Singh-petitioner, filled the details of the OMR Sheet and question booklet. The answer sheet No.24185 (Ex. P-5), was also given to the candidate and Harpreet Singh had filled the details in the answer sheet by mentioning himself as Anil Kumar. Harpreet Singh was also found in possession of the driving licence of Anil Kumar-petitioner, which was used by him to establish his identity as Anil Kumar at the time of the examination. Thus, quite apparently, the petitioner-Harpreet Singh was present in the examination centre, impersonating as petitioner Anil Kumar and was arrested from the hall. The OMR Sheet and question paper booklet, which were confiscated from Harpreet Singh in the examination hall are Ex. P-3 and Ex. P-4 respectively. The answer sheet filled by the petitioner-Harpreet Singh is placed on record as Ex. P-5.

As per the Investigating Officer, Balwinder Singh, PW-4, Harpreet Singh-petitioner was arrested on 16.09.2012 i.e. the date of the examination and he i.e. Harpreet Singh signed the arrest memo. From his personal search, the driving licence in the name of petitioner-Anil Kumar was recovered, which was taken into possession. Thereafter, on the disclosure statement of the petitioner-Harpreet Singh, Anil Kumar-petitioner was arrested. Therefore, the argument that Harpreet Singh-petitioner was not present at the spot is fallacious and is to be rejected.

The admit card issued to the petitioner-Anil Kumar and the driving licence of Anil Kumar were found in possession of Harpreet Singh-petitioner. The OMR Sheet, question booklet and answer sheet allegedly filled by the petitioner-Anil Kumar were also taken into

police possession and part of the challan. There is absolutely no explanation by the petitioner-Harpreet Singh as to how he came into possession of the admit card and driving licence of the petitioner-Anil Kumar.

Even otherwise, the argument that the driving licence of the petitioner-Anil Kumar recovered from the petitioner-Harpreet Singh did in fact not belong to the petitioner-Anil Kumar is also without any merit. As per the record, licence No.OLA-HR-16/Licence No.HR-162015008299 dated 28.01.2015 was issued in the name of the Anil Kumar son of Balwant Singh (petitioner) and was valid upto 22.08.2026 (Ex. PW3/A). However, Anil Kumar-petitioner produced a driving licence No.OLA-HR-16/Licence No.HR-162015008299 dated 28.01.2015 to show that the earlier licence had not in fact been issued to him. A perusal of the new licence would show that it was issued on 28.01.2015 i.e. after the date of the FIR, which clearly creates a doubt in the defence version. Therefore, it is clear that the petitioner-Anil Kumar had handed over his admit card and driving licence to the petitioner-Harpreet Singh on the basis of which Harpreet Singh-petitioner reached the examination hall and appeared in the examination on behalf of Anil Kumar-petitioner.

The defence version that the identity of a person named Ashish, who was stated to be a link between the petitioners, was not established thereby creating a doubt in the prosecution case is also fallacious. The name of the said Ashish Kumar is mentioned in the disclosure statement of the petitioner-Harpreet Singh. It is not clear as to whether the said Ashish Kumar was an actual person in existence or has been set up as a red-herring on the

part of the petitioner-Harpreet Singh. Even otherwise, the prosecution has established its case against the petitioners beyond any reasonable doubt.

14. In view of the aforementioned discussion, I find no reason to interfere with the well-reasoned judgments of the Trial Court and the Lower Appellate Court. Hence this revision petition is hereby dismissed.

15. With regard to the imposition of sentence, it may be mentioned that the petitioners are first-time offenders and the occurrence pertains to the year 2012. As many as 10 years have elapsed since then. The petitioner-Anil Kumar (CRR-2058-2022) has since qualified as a MCA and is working as such. The petitioner-Harpreet Singh (CRR-2135-2022) has since graduated and is now working as a professional. During the last 10 years, they have maintained good conduct and have not committed any offence.

16. Therefore, keeping in view the above-said facts, I deem it appropriate to modify the sentence and reduce it to a period of 1 ½ years. The quantum of fine and sentence in default shall however remain intact.

(JASJIT SINGH BEDI)
JUDGE

09.12.2022
JITESH

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No