



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

% **Pronounced on: 26th April, 2022**

+ CRL.M.C. 2157/2020 & CRL M.A. 15386/2020
DR GAURAV MALIK Petitioner

Through: Mr. Ashesh Lal with Ms. Rachna
Lal and Mr. Raghav Parwatiyar,
Advocates with petitioner in
person.

versus

ANTI CORRUPTION BRANCH, CENTRAL BUREAU OF
INVESTIGATION Respondent

Through: Mr. Nikhil Goel, Special PP with
Mr. Kartik Kaushal, Advocate.

CORAM:
HON'BLE MS. JUSTICE ASHA MENON

J U D G M E N T

1. This petition has been filed under Article 227 of the Constitution of India read with Section 482 Cr.P.C. praying that the order dated 7th October, 2020, passed by learned Principal District & Sessions Judge-cum-Special Judge (P.C. Act) (CBI) ('Special Judge', for short), Rouse Avenue District Courts, New Delhi, dismissing the revision petition filed by the petitioner against the order dated 25th January, 2020, passed by the learned ACMM-2-cum-ACJ ('ACMM' for short), Rouse Avenue Courts, New Delhi, be set aside.

2. The petitioner was arraigned as an accused in Case No.CBI/430/2019, under Sections 420/471/467/468 read with Section 201 IPC. The allegations against him are that he submitted a forged



experience certificate allegedly obtained from M/s Krishna Engineering Company, to the UPSC and was offered the position of Training Officer in the Directorate of General Employment and Training (DGE&T). Subsequently, when the certificate was verified, it was found to be forged. Without the requisite certificate of experience, the petitioner was not eligible to even apply for the post. Hence, the proceedings were initiated against him.

3. It was considered appropriate by the learned ACMM to frame charge under Section 420/468/471/201 IPC but not under Section 467 IPC. This was upheld by the learned Special Judge vide the impugned order.

4. It is the submission of Mr. Ashesh Lal, learned counsel for the petitioner, that the learned ACMM could not have framed charge under these sections. In fact, it is his submission that since the complaint on the basis of which the entire enquiry has supposedly commenced, was an anonymous one under the Central Vigilance Commission (CVC) circular dated 29th June, 1999 (Annexure P-15 (Colly)), it could not have been entertained. But the complaint was straight away forwarded by the Department without inquiry and without concurrence. It was pointed out that the experience certificate dated 30th June, 1999 (Annexure P-11) had been duly verified by the Department on 24th March, 2004, and it was declared to be “found genuine”, as recorded in the Service Book (Annexure P-12), and a letter dated 24th March, 2004 was also written from the partner of M/s Krishna Engineering Company to the Director, DGE&T, stating that the experience certificate issued to the petitioner



was genuine. Thirdly, no one had the original certificate. According to the learned counsel, the petitioner had handed it over to the office, but two witnesses have stated to the Investigating Officer that the records have been weeded out, or that the file has been misplaced. In the absence of the original document, forgery cannot be proved.

5. Citing the judgment of a Coordinate Bench of this court in **Srichand P. Hinduja v. State through C.B.I.**, 2005 SCC OnLine Del 676, it was argued that the denial of the signatures on the photocopy will lead nowhere, as no evidentiary value attaches to a photocopy. It was submitted that the charge-sheet did not allege that the alleged forgery had been made by the petitioner. Therefore, charge under Section 468/471 IPC and even Section 420 IPC was not made out. Reliance has been placed on the decision of the Supreme Court in **Guru Bipin Singh v. Chongtham Manihar Singh**, (1996) 11 SCC 622 to urge that if there was no forgery, no case for cheating was made out. Reliance has also been placed on the decision of the Supreme Court in **Sheila Sebastian v. R. Jawaharaj**, (2018) 7 SCC 581.

6. The learned counsel finally argued that for appointment, experience of only two years was required and even if the year 1993 was ignored, the petitioner had three years experience in 1999, when the certificate was issued. Thus, learned counsel submitted that the petitioner was entitled to be discharged as no case was disclosed even if all facts were to be admitted.

7. Mr. Nikhil Goel, learned Special Public Prosecutor for the CBI, on the other hand, contended that the certificate was a false one, as the very



first sentence claimed that the petitioner had been employed w.e.f. 10th March, 1993 whereas the firm was constituted only in 1995. Secondly, the person who purportedly issued the certificate, namely, Sh. Rakesh Agrawal, denied his signatures on the experience certificate as well as the letter dated 24th March, 2004. Thirdly, the address mentioned in the certificate, were of those premises that had been allotted to the first allottee only in 1997. Fourthly, despite notice under Section 91 Cr.P.C. being served on the petitioner, he did not produce the original documents, therefore, the decision in ***Srichand P. Hinduja*** (supra) was not applicable. As regards the photocopy, since after verification of documents, the originals are returned to the candidates, it is the petitioner who had to explain its loss/misplacing, which was why he has been charged under Section 201 IPC. Knowledge would be a matter of inference, as the petitioner was the only beneficiary of the fabricated document. Hence it was contended that the charge has been properly framed.

8. It was also submitted that the petition, being a second revision, was not maintainable. Reliance has been placed on the decision in ***Ganesh Narayan Hegde v. S. Bangarappa***, (1995) 4 SCC 41.

DISCUSSION

9. Before proceeding further, the caution expressed by the Supreme Court in ***Ganesh Narayan Hegde***(supra) in the following words may be noted:

“12. While it is true that availing of the remedy of the revision to the Sessions Judge under Section 399 does not



bar a person from invoking the power of the High Court under Section 482, it is equally true that the High Court should not act as a Second Revisional Court under the garb of exercising inherent powers. While exercising its inherent powers in such a matter it must be conscious of the fact that the learned Sessions Judge has declined to exercise his revisory power in the matter. The High Court should interfere only where it is satisfied that if the complaint is allowed to be proceeded with, it would amount to abuse of process of court or that the interests of justice otherwise call for quashing of the charges.....”

10. The learned Special Judge/Sessions Court considered the matter and upheld the view of the learned ACMM. This Court cannot look into the merits of the case in these proceedings. The arguments advanced by the learned counsel on behalf of the petitioner seeks a re-assessment of the material produced by the prosecution, on the basis of which charge has been framed. That is certainly beyond the scope of the powers vested under Section 482 Cr.P.C. It may be seen whether the courts below had erred in reaching their conclusions and whether there is an abuse of the process of court. Interference under Section 482 Cr.P.C. would be in exceptional circumstances.

11. On a consideration of the material on record and the cited authorities, it is clear that no such case has been made out. At the time of framing of charge, as is the settled law, the Trial Court is required to presume the truth in the material produced along with the final report under Section 173 Cr.P.C. Thus, it is irrelevant how the complaint was filed as investigations are commenced on the FIR. The circular placed as Annexure P-15, will have no relevance to the criminal proceedings.



12. It cannot be overlooked that the petitioner alone is the beneficiary of the forged experience certificate. The brother of the petitioner was a partner of M/s Krishna Engineering Company. When Mr. Rakesh Agrawal, the other partner, has denied that the certificates bear his signatures, the CBI could have carried out more effective investigations to determine who had signed the documents but the original certificates are unavailable. But the originals being unavailable cannot enure to the benefit of the petitioner as the consistent procedure at the time of verification of documents, at the time of appointment, is to return all original documents. Despite notice under Section 91 Cr.P.C., the petitioner failed to produce the documents. That is why Section 201 Cr.P.C. has been applied against the petitioner. The witnesses will come to the court to depose on all these aspects and the petitioner will have all the opportunity to cross-examine them.

13. As regards the plea that Section 471 IPC is not attracted, suffice it not note that the petitioner had submitted a document which on the face of it had falsities, to establish that he had the requisite experience. The Special Public Prosecutor has highlighted them before this Court, e.g., the partnership firm, in which the brother of the petitioner was a partner, came into existence only in 1995, so he could not have been employed with it in 1993; the record also establishes that in 1993 & 1994, the petitioner was still completing studies; the premises at Jaideep Complex, M.P. Nagar, Bhopal, was allotted for the first time in 1997. The certificate is dated 30th June, 1999 claiming that the petitioner had three years' experience in 1999; the signatures are disputed. That the petitioner



had requisite experience in 1999 and therefore the documents are not forged is his defence.

14. But as held by the Supreme Court in *State of Orissa v. Debendra Nath Padhi*, (2005) 1 SCC 568, the defence of an accused is not to be considered while framing charge. The facts in *Guru Bipin Singh* (supra) & *Sheila Sebastian* (supra) are vastly different from those in the present case and those decisions cannot be applied here as in both those cases, the offence of forgery was not made out as the accused had not made or executed any false document or part of the document whereas the fact in the present case is that the petitioner is alleged to have furnished a fabricated document to get employment and now is unable to produce the original.

15. Thus, there is no merit in the present petition. The same is dismissed alongwith the pending application.

16. The order be uploaded on the website forthwith.

(ASHA MENON)
JUDGE

APRIL 26, 2022

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