THE HONOURABLE DR. JUSTICE D.NAGARJUN

CRIMINAL PETITION No.10265 of 2014

O R D E R:

This Criminal Petition is filed by the petitioners / accused No.1, 3 to 9 under Section 482 of Criminal Procedure Code, 1973, seeking quashment of proceedings in Crime No.10 of 2014 of Crime Investigation Department Police Station, Hyderabad, registered for the offences under Sections 420, 468, 471 read with Section 34 of the Indian Penal Code.

02. Heard Smt. D. Madhavi, learned counsel for the petitioner as well as Sri T. V. Ramana Rao, learned Additional Public Prosecutor for the State / Respondent. No representation on behalf of the respondent No.2. Perused the record.

03. Brief facts of the case are that:

The petitioners were initially appointed as Secondary Grade Teachers and while working as such, they passed Postgraduation courses from different Universities. On the basis of their qualifications, the petitioners were included in the seniority list of Secondary Grade Teachers fit for promotion as School Assistant. After conducting promotional counselling, petitioners were promoted to the post of School Assistant in the year 2009 through various proceedings. After verification of the certificates submitted by them, it is found that certificates provided by them are fake. The Director of School Education issued proceedings in Rc.No.9/D1-3/2009, dated 23.01.2010 instructing the District Educational Officers in the State to take action against the Teachers who produced fake certificates. On the basis of the said proceedings dated 23.01.2010, show-cause notices were issued to the petitioners herein directing them to submit their explanation regarding the genuinity of the certificates produced by them. Finally, on a complaint given by District Educational Officer a case has been registered in Crime No.10 of 2014 of Crime Investigation Department Police Station, Hyderabad, registered for the offences under Sections 420, 468, 471 read with Section 34 of the Indian Penal Code.

04. Now the point for consideration is:

> Whether the proceedings in Crime No.10 of 2014 of Crime Investigation Department Police Station, Hyderabad, registered for the offences under Sections 420, 468, 471 read with Section 34 of the Indian Penal Code, is liable to be quashed?

P O I N T:

05. The petitioners have questioned the impugned proceedings dated 23.01.2010 before the Andhra Pradesh Administrative Tribunal. By Orders dated 16.08.2013 delivered by the Bench passed a Common Order in O.A.No.6299 of 2009 and batch. In the said Orders, the Bench of Andhra Pradesh Administrative Tribunal framed point No.1 as follows:

> "1.Whether the Certificates produced by the applicants in proof of the qualifications for selection to the respective posts are genuine and whether they were issued by the Universities after completion of courses in the respective Universities?"

06. The said Bench passed Common Order on 16.08.2013. The operative portion of the same reads as follows:

> "147. In the light of the findings of the Tribunal that the Certificates issued by various Universities are genuine and they are valid for the purpose of employment in Andhra Pradesh, the O.As. are disposed of directing the Respondents to announce the results of the applicants and if the applicants come within the zone of selection, the Respondents are directed to include their names in the selection list and issue appointment orders as per Rules. No order as to costs. V.M.As. in all the O.As are dismissed."

07. In view of the above, the Tribunal has found that the certificates produced by the petitioners are genuine, on the basis of the instructions of the officers of the District Educational Officers, as narrated at para No.71 of the Order.

08. Learned Additional Public Prosecutor for the State submits that there are several other issues which have to be investigated in the present case regarding the validity of distance education, whether the Universities which gave certificates were recognized by the University Grants Commission, whether the applications while attending school can simultaneously attend for the examination, whether the certain teachers were promoted as Assistants, without even before receiving degree certificates etc. The Crime Investigation Department (CID) investigation is not concerned with those issues. The only grievance against these

petitioners is that they have produced fake certificates, which ultimately were found to be genuine. The findings of the Tribunal that the certificates produced by the petitioners are genuine was on the basis of the information provided by the District Educational Officer.

09. Section 420 of the Indian Penal Code runs as under:

> 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.

10. In **Vijay Kumar Ghai and others vs. The State of West Bengal and others**[1] the Honourable Supreme Court held at paragraphs 31 to 36 as under:

> "31. Section 415 IPC defines "cheating" which reads as under:
>
> > "**415. *Cheating***.—Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he

[1] (2022) 7 SCC 124

would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat"."

The essential ingredients of the offence of cheating are:

1. Deception of any person

2. (*a*) Fraudulently or dishonestly inducing that person—

(*i*) to deliver any property to any person; or

(*ii*) to consent that any person shall retain any property; or

(*b*) intentionally inducing that person to do or omit to do anything which he would not do or omit if he were no so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property.

32. A fraudulent or dishonest inducement is an essential ingredient of the offence. A person who dishonestly induces another person to deliver any property is liable for the offence of cheating.

33. Section 420 IPC defines "cheating and dishonestly inducing delivery of property" which reads as under:

"**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."

34. Section 420 IPC is a serious form of cheating that includes inducement (to lead or move someone to happen) in terms of delivery of property as well as valuable securities. This section is also applicable to matters where the destruction of the property is caused by the way of cheating or inducement. Punishment for cheating is provided under this section which may extend to 7 years and also makes the person liable to fine.

35. To establish the offence of cheating in inducing the delivery of property, the following ingredients need to be proved:

(*i*) The representation made by the person was false.

(*ii*) The accused had prior knowledge that the representation he made was false.

(*iii*) The accused made false representation with dishonest intention in order to deceive the person to whom it was made.

(*iv*) The act where the accused induced the person to deliver the property or to perform or to abstain from any act which the person would have not done or had otherwise committed.

36. As observed and held by this Court in *R.K. Vijayasarathy* v. *Sudha Seetharam* [*R.K. Vijayasarathy* v. *Sudha Seetharam*, (2019) 16 SCC 739 : (2020) 2 SCC (Cri) 454] , the ingredients to constitute an offence under Section 420 are as follows:

(*i*) a person must commit the offence of cheating under Section 415; and

(*ii*) the person cheated must be dishonestly induced to:

(*a*) deliver property to any person; or

> (*b*) make, alter or destroy valuable security or anything signed or sealed and capable of being converted into valuable security. Thus, cheating is an essential ingredient for an act to constitute an offence under Section 420 IPC."

11. In order to constitute the offence under Section 420 IPC, the de-facto complainant is expected to allege and prove that the acts and omissions of the petitioner constitute the ingredients of the offence under Section 420 IPC.

12. Section 468 of the Indian Penal Code runs as under:

> 468. Forgery for purpose of cheating.—Whoever commits forgery, intending that the 1[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.

13. Section 471 of the Indian Penal Code runs as under:

> 471. Using as genuine a forged 1[document or electronic record].- Whoever fraudulently or dishonestly uses as genuine any 1[document or electronic record] which he knows or has reason to believe to be a forged 1[document or electronic record], shall be punished in the same manner as if he had forged such 1[document or electronic record].

14. The following are the ingredients of Section 471 of Indian Penal Code, 1860:

a. The document or electronic record is a forged one, wherein such forgery is done dishonestly or fraudulently to gain pecuniary or non-pecuniary benefit.
b. The accused made use of the forged document or electronic record as a genuine one.
c. The accused knew or had a reason to believe that such document or electronic record is a forged one.
d. The accused made use of the said document or electronic record in spite of knowing it to be a forged one.

15. Very basis for registering of criminal case is regarding genuinity of the certificates produced by the petitioners. The certificates produced by the petitioners are found to be genuine, as informed by the department itself. Hence, the question of cheating by the petitioners by producing fabricated and false documents does not arise,

thereby, it cannot be said that the department was induced in granting promotions on the basis of fabricated documents.

16. However, if the petitioners have violated any Service Rules, CCA Rules or liable for any action under any Act, Rules, guidelines, conditions, and if the petitioners obtained promotions other than the procedure prescribed, the Department is at liberty to take appropriate action against them.

17. Considering the facts and circumstances of the case, the proceedings in Crime No.10 of 2014 of Crime Investigation Department Police Station, Hyderabad, registered for the offences under Sections 420, 468, 471 read with Section 34 of the Indian Penal Code are liable to be quashed.

18. Accordingly, the Criminal Petition is allowed quashing the proceedings in Crime No.10 of 2014 of Crime Investigation Department Police Station, Hyderabad, registered for the offences under Sections 420, 468, 471 read with Section 34 of the Indian Penal Code.

As a sequel, pending Miscellaneous Applications, if any, shall stand closed.

DR. D.NAGARJUN, J

Date: 04-Jan-2023
KHRM

THE HONOURABLE DR. JUSTICE D.NAGARJUN

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KHRM