IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.R. 2892 of 2011

Swapan Mudi @ Swapan Modi
-Vs-
Central Bureau of Investigation

For the Petitioner	: Mr. Sekhar Kumar Basu Mr. Soubhik Mitter Ms. Anasuya Sinha
For the C.B.I.	: Mr. Anirban Mitra
Heard on	: 07.12.2023, 13.12.2023, 18.01.2024, 08.03.2024, 28.03.2024, 16.04.2024, 19.08.2024
Judgment on	: 04.12.2024

Ananya Bandyopadhyay, J.:-

1. The instant revisional application has been filed by the petitioner against the judgment and order dated 12.08.2011 passed by the Learned Additional District and Sessions Judge, 9th Fast Track Court, Bichar Bhawan, Calcutta in Criminal Appeal No.136 of 2010 arising out of G.R. Case No.610/1996 affirming the judgment and order dated 29.11.2010 passed by the Learned Metropolitan Magistrate, 12th Court, Calcutta, thereby convicting the petitioner under Section 420 of the Indian Penal Code and sentencing him to suffer simple imprisonment for 3 years and to pay a fine of Rs.5000/-, in

default to suffer simple imprisonment for 3 months and further convicting the petitioner under Section 468 of the Indian Penal Code and sentencing him to suffer simple imprisonment for 3 years and to pay a fine of Rs.5000/- in default to suffer simple imprisonment for 3 months and further convicting the petitioner under Section 471 of the Indian Penal Code and sentencing him to suffer simple imprisonment for 3 years and to pay a fine of Rs.5000/- in default to suffer simple imprisonment for 3 months and all the sentences were directed to run concurrently.

2. The opposite party filed the instant case against the petitioner, inter alia, alleging that on the basis of forged educational certificate of class-VIII and birth certificate purported to have been issued by the Headmaster, Sadananda Mission Junior High School, Baltikuri, Howrah, petitioner was appointed as a peon in the office of Indian Airlines.

3. On the basis of source information, one Santanu Kar, Inspector of C.B.I., A.C.B., Calcutta lodged the instant case which was registered as Case No.RC-6/96 dated 19.01.1996 under Sections 120B/420/465/468/471 of the Indian Penal Code against the petitioner.

4. On conclusion of investigation charge sheet was submitted on 26.02.1996 under Sections 420/468/471 of the Indian Penal Code against the present petitioner. Charges were framed to which the petitioner pleaded not guilty and claimed to be tried.

5. Six witnesses and two witnesses were examined on behalf of the prosecution and the petitioner respectively.

6. On conclusion of trial the Learned Metropolitan Magistrate, 12th Court, Calcutta by judgment and order dated 29.11.2010 convicted the petitioner under Section 420 of the Indian Penal Code and sentenced him.

7. Being aggrieved by the aforesaid judgment and order passed by the Learned Magistrate the petitioner preferred an appeal being Criminal Appeal No. 136 of 2010 before the Learned Additional District and Sessions Judge, 9th Fast Track Court, Bichar Bhawan, Calcutta who was pleased to affirm the judgment and order dated 29.11.2010 passed by Learned Metropolitan Magistrate, 12th Court, Calcutta.

8. Learned Advocate for the petitioner submitted as follows:-

    i. It was elicited from the evidence of PW-1 that after being duly satisfied with the original documents submitted by the petitioner, he was appointed as the peon.

    ii. Although it has been alleged that the petitioner was not a student of Sadananda Mission Junior High School, the same has not been proved beyond reasonable doubt inasmuch as the admission register of the school between the periods 1977-1978 has neither been seized nor produced before the Learned court at the time of trial.

    iii. The Learned Courts below ought to have discarded the evidence of PW-2 in view of the fact that he failed to hand over any documents to the investigating agency regarding the administrative details of the school during the years 1977-1978.

    iv. Mere denial of PW-2 regarding the signature on the purported document handed over by the petitioner cannot be relied upon at all, more so when the specimen signature of PW 2 was neither collected by the investigating agency nor any expert opinion regarding his handwriting was sought for.

v. Furthermore the most vital piece of evidence which has been relied upon by the prosecution was the evidence of PW-2 who stated that the certificate produced by the petitioner was not issued by him and was a forged one.

vi. Incriminating evidence when not put to the petitioner has to be eschewed from consideration.

vii. The very fact that the certificate was a forged one has not at all been proved especially when PW-2 himself deposed to the effect that one Banshi Dhar Dutta who was the administrator of the school at the relevant time could have issued the certificate in favour of the petitioner.

viii. In the instant case the very basis of the prosecution case has not been substantiated. The allegation levelled against the petitioner has not been proved by any convincing and legally admissible evidence.

ix. The impugned judgment and order should be quashed in the interest of justice so as not to permit the harassive prosecution to continue and to prevent the process of the criminal court from being utilized for an oblique purpose.

9. Learned Advocate for the C.B.I. submitted as follows:–

i. PW-2 Dilip Kumar Charan being the Head master of the Sadananda Mission Junior High School since 1978 stated in his evidence that the certificate dated 05.04.78 was not issued by him and did not bear his signature. He further states he can't say whether some body use that kind of letter head on not and further signifies the facts it was not the official letter head of the school and he further states that the school was not recognized from the year 1976 to 1985.

ii. The witness i.e., Dilip Kumar Charan being PW-3 Dharam Chand being the manager of the communication of Indian Airlines stated in his evidence that "*a search has been conducted at the house of the accused and the accused co-operated fully with us and one certificate was found from the wooden Almira which is marked as Exbit- 3. This fact was also corroborated by PW-4 i.e. Surya Kant.*"

iii. From the evidence of PW-5 Shantanu Kar being the D.S.P. of the C.B.I. and at the point of time he was working as inspection of police states in his evidence that during search an original qualification certificate of Swapan Mudi was found which was marked as Exbit-4/6. It was further stated the evidence of PW-5 that during investigation it was found that the accused was not the student of the said institution and the said certificate was not issued by the school.

iv. With regard to the question put under Section 313 of the Cr.P.C. in question No.5 it was put to accused whether he know Dilip Kumar Charan being the Headmaster of the school Since 1978, His answer was negative from further question No.6 were put to him that PW-2 also stated that in 1986 the school got recognition for Class V, VI, & VII and in 1987 if got recognition for Class VIII, were the answer was also negative.

It also established from the evidence of DW-2 Ahir Koley that in cross examination he could not state which school Swapan Mudi used to study.

v. In the judgment of Supreme Court of India in *Chairman and Manager Director VS Jagadish Balaro* on 6th July, 2017, it was observed in where the Hon'ble Supreme Court deprecated the forged certificate to obtain on employment and observed "*once it was found that the candidate had obtained upon a false representation to belong to reserved category, the appointment would be vitiated by fraud and would be void at initio*".

vi. Similar reference inferred by a judgment of Punjab and Haryana High Court in *Desh Raj Vs State of Haryana & Ors*. on 22nd April, 2016 in which it was held that after verification the petitioner's matriculated certificate was found that board of Higher Secondary Education, Delhi, from where the petitioner had claimed to have passed his matriculation examination, was not recognized. On that basis, a show cause notice was issued to him as to why, as per the terms of his appointment, his services may not be dispensed with, to which he filed a reply, after consideration of which the impugned orders, terminating the services of the petitioner, was passed.

10. PW-1 deposed the formalities maintained when a new employee joined the office with the initiation of a personal file in his name by the personal

department. The personal file of the petitioner Swapan Mundi bore the employee no.408703 which had been maintained during his course of employment which was marked as Exhibit-1. The personal file was the repository of all the documents concerning the employment of the petitioner since his inception into the employment till date. He further testified that a Xerox copy of the certificate in the said file issued by Sadananda Mission Junior High School, Baltikuri, Howrah, issued in favour of the petitioner was checked and verified with the original by K.V. Ganeshan 12.09.1989. PW-1 identified the signature of Mr. K.V. Ganeshan which was marked as Exhibit-1. The basic qualification required for the post of peon was “Class VIII passed” on the basis of the said Class-VIII pass certificate the petitioner was appointed for the post of peon. Pursuant to the written application in respect of the said post followed by his appointment the petitioner submitted an attestation form on 11.09.1989 which was preserved in the file in Mat Exbt.-1. PW-1 during his cross-examination deposed that the documents filed by the petitioner were verified before issuance of the appointment and being satisfied with the original documents appointment was accorded to the petitioner.

11. PW-2 the Head Master of Sadananda Mission Junior High School deposed to have been attached with the said school since 1978 which was recognized on 01.01.1986. It was further submitted that in the year 1986 the school received its recognition for Class V, VI and VII and in the year 1987 it was recognized for Class VIII. The CBI had seized the admission register from the school for the year 1969 to 1976 under a seizure list bearing his signature

marked Exhibit-2/1 and 2/2. PW-2 further deposed that a certificate dated 05.04.1978 was not issued by him and it did not bear his signature. He further stated that the Letter Head in which the certificate was issued was never used by him. The certificate did not reflect the official letter head of his school. He further declined to recall whether in the year 1978 he issued any Transfer Certificate in favour of any student. He further deposed from the year 1976 to 1985. It was an unrecognized school. During the un-recognition stage any student could have been admitted in any class after conducting suitable and proper test. When PW-2 had joined the school in the year 1978 one Banchibabu was the person who provided books, pencils and pens to the poor students and got them admitted in the school. Certain documents and certain other document were in his custody. The admission register was kept in the almirah of the school and the key of the same was handed over to him which was operated by the said Banchibabu. He further submitted that separate letter head of the school might be lying with Banchibabu. He further could not state whether the seal was used in the certificate. If a student's name was not mentioned in the admission register then the certificate could not have been issued in favour of the student. PW-2 worked in the school in the year 1978 on a part time basis. During his cross-examination, PW-2 stated that the over-all administration of the school was controlled by Banchidhar Dutta who appointed him in the year 1978. He further could not state as to whether Banchibabu issued the certificate or not. He admitted that the signature and body writings of the said certificate was similar with the signature and some letters of Banchibabu. The admission register for the year 1977 and 1978 was not produced before the Court. The said Banchibabu expired before 13 to 14 years.

12. PW-3 deposed to have accompanied the CBI Officer named Shantanu Kaur to the residence of the petitioner on 31.01.1996 to conduct a search which was aptly co-operated by the petitioner and from his wooden almirah and certificate was recovered marked as Exhibit-3.

13. PW-4 deposed to have accompanied the aforesaid CBI Officer to conduct the search at the house of the petitioner and considered to the evidence of PW-3.

14. PW-5 the DSP of CBI (AHD) deposed to have registered the Case No.06/96 against the petitioner on the basis of a source information report which alleged that the petitioner obtained the job at the Indian Airlines on the basis of a forged educational qualification and one certificate. On completion of the investigation, he filed a charge-sheet on 26.02.1996 against the petitioner under Sections 420/468/471 of the Indian Penal Code. It was further contended that the accused was not the student of the said institution and the educational certificate was not issued by the school. During his cross-examination PW-5 deposed to have filed to locate the secretary-cum-administrator of the aforesaid school and upon enquiry the Head Master filed to furnish the name of the secretary-cum-administrator of the school which was a private one. He did not enquire the date on which the school was recognized for Standard-V. Thereafter, he recounted since 1987 the school was recognized for Class VII and VIII. He further did not examine any other teacher apart from the Head Master who had been the sole teacher. PW-2 D. Charan stated to PW-5 to have been a part time teacher since 1978 and

achieved the status of a full-fledged teacher from 1980. He further failed to state the name of the Head Master officiating prior to him. PW-5 further testified that on search for the admission register for the year 1977-78 and thereafter he received information that those registers were not maintained on a regular basis. He could not locate any teacher of the SMJHS who served prior to 1977-78.

15. PW-6 deposed it was his duty to look after pre-employment formalities and to maintain SC and ST roster. As duty was to check all the testimonials he was acquainted with the petitioner who worked as a staff of the Indian Airlines at Communication Department. PW-6 had verified the documents and appended his seal and signature on the document marked 'X' for identification. PW-6 further acknowledged that the petitioner had produced all the relevant documents for verification that were required for granting appointment. The attestation form, application for employment, personal service record, the character certificate, etc. were marked as Exhibit-1/2 collectively. PW-6 further stated that there was no provision for verifying the authenticity of the documents. During his cross-examination he narrated the names of the persons concerned that the specific departments and their job profile. He further could not recollect how many appointments to the post of peon in 1989 was registered. During his cross-examination he further stated that he could not say how the department checked the documents who were not alive on the relevant date of his deposition. He compared the documents with the original for the purpose of verification. He did not enquire from the person of establishment department whether they checked the documents

from the issuing authority. He could not state whether in case of all Government appointments documents were checked from concurring authority or not. PW-6 was not questioned by the CBI.

16. DW-1 and DW-2 who were cited by the petitioner as defence witnesses succinctly admitted and conformed to the fact of the petitioner being a student of the aforesaid school up to Class-VIII.

17. Section 420 of the Indian Penal Code states 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."*

18. Section 468 of the Indian Penal Code states as follows:-

> *"**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."*

19. Section 471 of the Indian Penal Code states as follows:-

> *"**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 document or electronic record."*

20. The following was held by the Hon'ble Supreme Court in ***C. Chenga Reddy v. State of A.P***[1]

> ***52.*** *....The courts below appear to have drawn inferences by placing the burden of proving innocence on the appellant which is an impermissible course. In our opinion none of the circumstances relied upon by the prosecution against the appellant can be said to have been proved satisfactorily and all those circumstances, which are not of any clinching nature, even if held to be proved do not complete the chain of evidence so complete as to lead to an irresistible conclusion consistent only with the hypothesis of the guilt of the appellant and wholly inconsistent with his innocence. The prosecution has not established the case against the appellant beyond a reasonable doubt....."*

21. The Hon'ble Supreme Court held the following in ***Mariam Fasihuddin v. State***[2]

> ***"The offence of forgery under Sections 468 and 471 IPC:***
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> ***33.*** *The offence of 'forgery' under Section 468 IPC postulates that whoever commits forgery, intending that the document or electronic document 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. Whereas Section 471 IPC states that whoever fraudulently or dishonestly uses as genuine any documents which he knows or has reason to believe it to be a forged document, shall be punished in the same manner as if he had forged such document.*
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> ***34.*** *There are two primary components that need to be fulfilled in order to establish the offence of 'forgery', namely : (i) that the*

[1](1996) 10 SCC 193
[2]2024 SCC OnLine SC 58

accused has fabricated an instrument; and (ii) it was done with the intention that the forged document would be used for the purpose of cheating. Simply put, the offence of forgery requires the preparation of a false document with the dishonest intention of causing damage or injury.[3]

35. *The offences of 'forgery' and 'cheating' intersect and converge, as the act of forgery is committed with the intent to deceive or cheat an individual. Having extensively addressed the aspect of dishonest intent in the context of 'cheating' under Section 420 IPC, it stands established that no dishonest intent can be made out against the Appellants. Our focus therefore will now be confined, for the sake of brevity, to the first element, i.e., the preparation of a false document. The determination of whether the Appellants prepared a false document, by forging Respondent No. 2's signature, however, cannot be even prima facie ascertained at this juncture. Considering the primary ingredient of dishonest intention itself could not be established against the Appellants, the offence of forgery too, has no legs to stand. It is also significant to highlight that the proceedings as against the concerned Passport Officer, who was implicated as Accused No. 4, already stand quashed. In such like situation and coupled with the nature of allegations, we are unable to appreciate as to why the Appellants be subjected to the ordeal of trial."*

22. In the case of **Sukhbir Singh Badal v. Balwant Singh Khera[3],** the Hon'ble Supreme Court held the following:-

"44. *Therefore, as per Section 463, "whoever makes any false documents, with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to*

[3] 2023 SCC OnLine SC 522

part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed", he is said to have committed the offence of forgery. Making a false document is defined under Section 464 IPC. Therefore, for the offence of forgery, there must be making of a false document with intent to cause damage or injury to the public or to any person. Therefore, making the false documents is sine qua non. Identical question came to be considered by this Court in the case of Mohammed Ibrahim (supra). While interpreting Sections 464 and 471 IPC and other relevant provisions of IPC, in paragraphs 13 and 14, it is observed and held as under:—

*"**13.** The condition precedent for an offence under Sections 467 and 471 is forgery. The condition precedent for forgery is making a false document (or false electronic record or part thereof). This case does not relate to any false electronic record. Therefore, the question is whether the first accused, in executing and registering the two sale deeds purporting to sell a property (even if it is assumed that it did not belong to him), can be said to have made and executed false documents, in collusion with the other accused.*

14. An analysis of Section 464 of the Penal Code shows that it divides false documents into three categories:

1. The first is where a person dishonestly or fraudulently makes or executes a document with the intention of causing it to be believed that such document was made or executed by some other person, or by the authority of some other person, by whom or by whose authority he knows it was not made or executed.

2. The second is where a person dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part, without lawful authority, after it has been made or executed by either himself or any other person.

3. The third is where a person dishonestly or fraudulently causes any person to sign, execute or alter a document knowing that such person could not by reason of (a) unsoundness of mind; or (b) intoxication; or (c) deception practised upon him, know the contents of the document or the nature of the alteration.

In short, a person is said to have made a "false document", if (i) he made or executed a document claiming to be someone else or authorised by someone else; or (ii) he altered or tampered a document; or (iii) he obtained a document by practising deception, or from a person not in control of his senses."

23. The following was held by the Hon'ble Supreme Court in ***Deepak Gaba v. State of U.P***[4]**:-**

"21. *Section 471 IPC is also not attracted. This Section is applicable when a person fraudulently or dishonestly uses as genuine any document or electronic record, which he knows or has reasons to believe to be a forged document or electronic record. This Court in Mohd. Ibrahim [Mohd. Ibrahim v. State of Bihar, (2009) 8 SCC 751 : (2009) 3 SCC (Cri) 929. This Court, in this case, has cautioned that the ratio should not be misunderstood, to record the clarification, which in the present case, in our opinion, is not of any avail and help to Respondent 2 complainant. We respectfully concur with the clarification as well as the ratio explaining Sections 415, 464, etc. IPC.] , has elucidated that the condition precedent of an offence under Section 471IPC is forgery by making a false document or false electronic record or part thereof. Further, to constitute the offence under Section 471IPC, it has to be proven that the document was "forged" in terms of Section 470, and "false" in terms of Section 464 IPC*

[4](2023) 3 SCC 423

> ***22.*** *Section 470 lays down that a document is "forged" if there is:*
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> *(i) fraudulent or dishonest use of a document as genuine; and*
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> *(ii) knowledge or reasonable belief on the part of the person using the document that it is a forged one.*
>
> *Section 470 defines a "forged document" as a false document made by forgery.*
>
> ***23.*** *As per Section 464IPC, a person is said to have made a "false document":*
>
> *(i) if he has made or executed a document claiming to be someone else or authorised by someone else;*
>
> *(ii) if he has altered or tampered a document; or*
>
> *(iii) if he has obtained a document by practising deception, or from a person not in control of his senses.*
>
> ***24.*** *Unless the document is false and forged in terms of Sections 464 and 470IPC respectively, the requirement of Section 471IPC would not be met."*

24. DW-1 being a student of the same school identified the petitioner and deposed to the effect that he had studied with the petitioner in Class-VIII in the year 1977 and the petitioner had passed the final examination in 1978.

25. DW-2 was in fact a witness to the fact that such pass certificate was indeed handed over to the petitioner by the school authority.

26. The ingredients of the offence under section 420 of the Indian Penal Code had not been portrayed. In the absence of any materials to indicate that there was any inducement on the part of the petitioner which prompted the

employer to part with any valuable security in his favour, the petitioner cannot be inculpated.

27. It was clear from the evidence of PW-1 was that the petitioner was appointed as peon after being duly satisfied with the original documents submitted by the petitioner.

28. In the instant case, it has been alleged that the petitioner was not a student of Sadananda Mission Junior High School However, the same has not been proved beyond reasonable doubt as the admission register of the school from 1977-1978 has neither been seized nor produced before the Learned Court below at the time of trial.

29. In the instant case, PW-2 denied that the signature on the certificate of the petitioner bears to his signature However, the PW-5 stated that he did not take specimen signature of PW-2 and no expert opinion was taken regarding the same Therefore, mere denial of PW-2 regarding the signature on the certificate cannot be relied upon at all as the specimen signature of PW-2 was neither collected by the investigating agency nor any expert opinion regarding his handwriting was sought for.

30. In the instant case, DW-1, being the student of Sadananda Mission Junior High School, has identified the petitioner and stated that the petitioner studied with him in the same school for one year in 1977 at Class VIII and also passed Class VIII final examination - Therefore, the allegation regarding the certificate of the petitioner is false.

31. In the instant case, PW-3 and PW-4 deposed that the certificate being Exbt.-3 recovered from the wooden almirah of the bedroom of the petitioner's

house by the investigating agency was not prepared and signed in their presence and therefore, the same certificate cannot be considered as the original certificate of the petitioner.

32. DW-2 was in fact a witness to the fact that the certificate was indeed handed over to the petitioner by the school authority.
33. Please consider evidence of PW-1 (he was satisfied with the documents submitted).
34. Admission register of school was not seized.
35. PW-2 merely denied his signature on the certificate - no specimen signature was obtained.
36. PW-4 stated that he could not say who prepared/signed the Seizure List (Exbt.-3) recovery of certificate from the home of the petitioner.
37. PW 6 stated that his job was to look after pre-employment formalities.
38. The evidence of the prosecution witnesses did not reveal as to how the document was forged by the petitioner. PW-1 accepted the documents produced by the petitioner at the time of his application which were verified through the respective department as narrated through the evidence of PW-6. PW-2 either in his examination-in-chief or cross-examination denied the authenticity of the certificate and stated that the Letter Head of the certificate could have been used by the erstwhile secretary-cum-administrator of the school who had appointed as a part time teacher and thereafter absorbed as a full-fledged teacher. PW-2 did not confront the veracity of the certificate in question.

39. There are several instances where a private school functions without recognition of the Government or the Board with different standards. It cannot be improbabilized that devoid of any recognition a school could not have been functioned. The recognition was attained in the year 1987 for Class-VIII which is distinct from the fact of the school not being operational till Class-VIII pursuing its academics of imparting education to the students which had been admitted by the evidence of PW-2. PW-2 further during his cross-examination deposed of a separate letter head which might have been used by Banchibabu who was at the helm of affairs controlling the admission of the students as well as appointment of teachers in school.

40. A rural school in a village ambience imparted education at the basic level without sufficient amenities and funds as evident from the deposition of PW-2 that Banchibabu used to provide books, pencils and pens to the poor students and got them admitted in the school. Strict paraphernalia and procedure might not be expected to be maintained in course of such functionality. Moreover, the admission register could not be produced by the prosecution. During the cross-examination PW-5 further submitted that the signature in the certificate was identical to the signature of Banchibabu who might have issued the certificate in question. After a lapse of nearly 3 decades on a sudden search conducted by the CBI officials, the certificate could be retrieved from the custody of the petitioner who had preserved it in the wooden almirah and did not resist in the search so conducted. A person with ulterior motive and criminal intent would have destroyed the document after the objective of the same to achieve the employment was subserved and

accomplished. Moreover, PW-5 stated that no expert opinion was taken regarding the handwriting or signature on any of the document.

41. To claim a document to be forged it is incumbent upon the prosecution to prove the intent and the manner in which the document was forged. After verification of the document, the petitioner was accorded the job and functioned as a peon for considerable period of time and years.

42. To attribute criminality to the petitioner without proving the elements to constitute the evidence under Sections 420/468/471 of the Indian Penal Code, the CBI cannot indict the petitioner of the offence based on vagueness, assumption and lack of evidence. The respondent CBI failed to prove the initiation, creation and effectivity of the document in question to have been manufactured, manifested and fabricated to testify the concerned authority for wrongful gain of obtaining an appointment in the service of Indian Airlines as a source of inducement at the inception.

43. Mere suspicion and presumption without concrete evidence, a body like CBI should not have devoted such time and endeavoured to indict a person without justification. The certificate which had passed through the test of verification in accordance with the evidence of PW-6 be challenged at a later date without any provocation or illegal motive on the part of the petitioner. At the time of granting appointment to the petitioner the concerned departments of the Indian Airlines did not object to the veracity of the same on verification which was otherwise found to be appropriate and proper to consider the petitioner for an employment. If at all after a lapse of so many years the documents by virtue of which the petitioner obtained the

employment were forged. It was legally incumbent upon the prosecution to prove that the documents were forged. Apart from vague assertions that the certificate produced by the petitioner was forged. There was no effort or endeavour on the part of the prosecution to prove that the documents were forged.

44. The petitioner accordingly could not suffer the sentence under the charges framed against him and, therefore, should be acquitted of the same.

45. In view of the above discussions, the judgment and order dated 12.08.2011 passed by the Learned Additional District and Sessions Judge, 9th Fast Track Court, Bichar Bhawan, Calcutta in Criminal Appeal No.136 of 2010 arising out of G.R. Case No.610/1996 affirming the judgment and order dated 29.11.2010 passed by the Learned Metropolitan Magistrate, 12th Court, Calcutta, is set aside.

46. Under such circumstances, the instant criminal revisional application being CRR 2892 of 2011 is allowed.

47. Accordingly, CRR 2892 of 2011 is disposed of.

48. There is no order as to costs.

49. Let the copy of this judgment be sent to the Learned Trial Court as well as the police station concerned for necessary information and compliance.

50. All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.

(Ananya Bandyopadhyay, J.)