

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Case:- Crl A(S) No. 22/2021

**Sham Lal, Aged 67 years
S/o of Babu Ram
R/o Raja (Thathi) Tehsil Nowshera
District Rajouri
Presently lodged in District Jail
Rajouri**

.....Appellant

Through: Ms. Veenu Gupta, Advocate

Vs

**1. Union Territory of Jammu & Kashmir
Through SHO Police Station
Nowshera, District Rajouri.**

**2. Superintendent
District Jail, Dhangri, Rajouri.**

..... Respondents

Through: Mr. Bhanu Jasrotia, GA

Coram: HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE

**ORDER
25.07.2024**

01. Appellant present in person. Heard learned counsel for both sides.

02. The Prosecution Witness 1- Ashok Kumar came to make a complaint inviting the attention of the Deputy Inspector General of Police (DIG), Crime Branch, Jammu on 29.01.2013 alleging therein that the appellant, who is a Govt. employee serving in

Public Health & Engineering Department ("PHE Department" in short) of Jammu & Kashmir posted in a Mechanical Department Division, Rajouri at the time of regularization in PHE Department produced a false school certificate purportedly issued by the Govt. Middle School Bandi Chechian, tehsil & district Poonch and thereby got permanent job in PHE Department, Govt. of J&K.

03. The Prosecution Witness 1- Ashok Kumar is the complainant in terms of the complaint so made to the Deputy Inspector General of Police (DIG), Crime Branch, Jammu stating therein that he had obtained a certificate from the Headmaster, Govt. High School Bandi Chechian, tehsil & district Poonch to show that the appellant – Sham Lal never joined the school and his name does not exist in the record of the school. A photocopy of the school certificate was enclosed with the complaint and on that basis the Prosecution Witness 1-Ashok Kumar alleged that the appellant had committed offence of fraud and cheating with the Govt. of J&K. This complaint is in the form of Exhibit P.1/1 dated 18.10.2014.

04. Said complaint by the Prosecution Witness 1- Ashok Kumar came to be forwarded by the Crime Branch, Jammu to the Deputy Inspector General (DIG) of Police, Rajouri-Poonch-Range, Rajouri purportedly in terms of a communication No. CHQ/Clt/J-

56/13/1182 dated 11.02.2013 wherefrom the same came to be forward to Superintendent of Police (SP), Rajouri purportedly in terms of a communication No. Clt/13/774 dated 28.02.2013 thereby bearing a direction to Superintendent of Police (SP), Rajouri for taking immediate necessary action under appropriate section of law against the appellant and furnish action taken report.

05. Pursuant to the directions placed upon the Superintendent of Police (SP), Rajouri for an action taken report, the Sub Divisional Police Officer (SDPO), Nowshera came to have a report from SHO Police Station Nowshera in the form of an enquiry report which came to be placed before the Superintendent of Police (SP), Rajouri vide communication No. SDPO/Clt/13/ 7202/SDN dated 08.11.2013 wherein the Sub Divisional Police Officer (SDPO), Nowshera stated on record that as per verification made from the Headmaster, Govt. Middle School Bandi Chechian, tehsil & district Poonch no candidate by name of Sham Lal s/o Babu Ram exists in the record of school under admission No. 358 and counter file No. 12 regarding school leaving certificate does not exist in the record of the said school and, therefore, it was inferred by Sub Divisional Police Officer (SDPO), Nowshera that the appellant had managed the Govt. job

on the basis of a fake and false certificate establishing the allegations of cheating/forgery and using of the forged document for obtaining the Govt. job.

06. In this background, FIR No. 228/2013 dated 02.12.2013 for alleged commission of offences under section 420/467/468/471 Ranbir Penal Code (RPC) came to be registered by Police Station Nowshera, district Rajouri by purportedly showing therein the date of receiving of information to be 02.12.2013 as against the communications above referred which communications relate to January & February, 2013. The investigation into the case came to be carried out resulting in presentation of a Final Police Report/Challan under section 173 of the Jammu & Kashmir Code of Criminal Procedure, Svt. 1989.

07. The investigation in the case led to presentation of the Final Police Report/Challan No. 06/2014 dated 27.01.2014 by the Police Station Nowshera for alleged commission of offences under section 420/467/468/471/201 Ranbir Penal Code. The investigation was done by ASI Sat Paul Khajuria, No. 795904 EXJ. The said Final Police Report/Challan No 06/2014 mentioned the name of the complainant to be the Police Station Nowshera, itself meaning thereby the original complainant Prosecution Witness 1 – Ashok Kumar came to be taken out to be

the first informant in the case bearing accusation of cheating and fraud as made by him against the appellant.

08. Eleven (11) prosecution witnesses came to be cited in the said Final Police Report/Challan and the complainant – Ashok Kumar figured to be the Prosecution Witness (PW)-1.

09. The prosecution came to examine nine(9) witnesses, namely, PW 1 – Ashok Kumar, PW 2-Balbir Singh, PW 3 – Mohd. Azam, PW 4 – Salinder Kumar, PW 5 – Vikram Singh, SPO, PW 6 – Darshal Pal, PW 7 – Pawan Kumar, PW 8 – Talib Hussain & PW 9 – Sat Pal Khajuria.

10. On the basis of the prosecution evidence led, the trial court of Principal Sessions Judge, Rajouri examined the appellant under section 342 of the Code of Criminal Procedure, Svt. 1989 reckoning that there was an adverse evidentiary circumstances obtaining in the case against the appellant.

11. The trial court of learned Principal Sessions Judge, Rajouri came to hold the appellant guilty of commission of offences under section 420 & 471 Ranbir Penal Code holding the appellant getting Govt. job on the basis of a fake certificate causing huge loss to the State exchequer and the judgment of conviction came to be pronounced on 21.12.2021, followed by an

order of sentence dated 22.12.2021 thereby sentencing the appellant to suffer imprisonment of three years and fine of Rs. 20,000/- for offence under section 420 Ranbir Penal Code and sentence of one year with fine of Rs.1000/- for offence under section 471 Ranbir Penal Code with both sentences ordered to run concurrently. It is against the said conviction and sentence that the appellant came forward with the present appeal before this Court.

12. Upon perusal of the record of the trial court file in its entirety, this Court has no iota of doubt that the judgment of conviction returned by the Principal Sessions Judge, Rajouri is through and through perverse rendered by a singular fact and that is in the service record of the appellant which is surely not maintained by the appellant himself to be said to be author thereof, the Executive Engineer, PHE Division Rajouri of the time has entered the following:-

“2.2.1955 (2nd February 1955) as verified from the School Leaving Certificate, Govt. Middle School Bandi Chechian, Poonch under admission register No. 358, file No. 12 dated 02.05.1969 passed the middle standard examination.”

13. The very import of this entry in the service record of the appellant is that the employer i.e. the Executive Engineer, PHE Division, Rajouri had got the fact verified with respect to school

leaving certificate of the appellant and there was no question of date of birth certificate coming into picture for the sake of employment seeking by the appellant or employment giving by the PHE Division, Rajouri. The Investigating Officer least bothered to deal with said vital factual aspect of the case obtaining from the service record of the appellant and just by oral statements led his investigation without corresponding check and confirmation of the record. No witness from the PHE Department, Rajouri was bothered to be examined to know and confirm on what basis and requirements the appellant was given the appointment as an orderly and further how the document verification concerning the appellant in his Service Book came to be referred by the concerned Executive Engineer of the time.

14. In addition, another infirmity of fundamental nature eroding the very prosecution case against the appellant is that firstly the fact was not got confirmed from the competent authority of the Public Health Engineering (PHE) Department, Govt. of J&K as to whether the appellant had sought employment or was given employment as an Orderly in the PHE Department, Rajouri on the basis of his educational qualification being a requisite or not. At no point of time the competent authority of PHE Department, Govt. of J&K came to be notified by the enquiry

authorities who, antecedent to the registration of an FIR, had got themselves engaged in so to say action taking report enquiry to confirm from the competent official of the PHE Department as to whether the alleged date of birth certificate of the appellant allegedly produced by prosecution Witness 1 – Ashok Kumar and complained to by him had any role to play in the matter of original appointment of the appellant in the service or not.

15. A criminal case in the context of a genuineness of service record is not be left to be solely left to a call and question of a stray complainant, who may be an envying co-employee, unless and until the employer himself/itself comes up with a call/complaint that a particular employee has been able to manipulate his/her appointment/engagement by use of a fraudulent document being essential for seeking public employment. In the present case, the singular fact is altogether missing as horns are missing from a donkey head.

16. The judgment of the conviction against the appellant is nothing else but the perversity in exhibition by the court of Principal Sessions Judge, Rajouri and the judgment, thus, fails itself. In fact, the case put up by the Prosecution ought to have suffered rejection at the charge framing stage itself on the basis of apparent anomalies staring at the face for booking the

appellant for commission of offences under section 420/467/468/471 Ranbir Penal Code came to be registered by Police Station Nowshera, district Rajouri.

17. Accordingly, appeal is ***allowed***. Judgment dated 21.12.2021 read with the sentencing order dated 22.12.2021 by the Court of Principal Sessions Judge, Rajouri is hereby quashed. The appellant is acquitted of the charge.

18. *Disposed of.*

JAMMU
25.07.2024
Muneesh

(RAHUL BHARTI)
JUDGE

Whether the order is speaking : **Yes**

Whether the order is reportable : **Yes**