

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

201

CRR 139 of 2005
Date of Decision: 07.05.2024

Ashok Kumar

Versus

...Petitioner

State of Punjab

... Respondent

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. K.S. Dadwal, Advocate, for the petitioner.

Mr. I.P.S. Sabharwal, DAG, Punjab.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the present revision petition against the judgment 18.12.2004 passed by the Additional Sessions Judge (Adhoc) Fast Track Court, Hoshiarpur and the judgment of conviction and order of sentence dated 22.02.2000 passed by the Sub Divisional Judicial Magistrate, Dasuya, whereby, the petitioner was convicted for the offences punishable under Sections 420, 467, 468 and 471 IPC and was sentenced as under:-

420 IPC	To undergo rigorous imprisonment for a period of one year and to pay a fine of Rs. 500/- (Rs. Five hundred only). In default of payment of fine to further undergo rigorous imprisonment for a period of one month.
467 IPC	To undergo rigorous imprisonment for a period of two years and to pay a fine of Rs. 500/- (Rs. Five hundred only). In default of payment of fine to further undergo rigorous imprisonment for a period of one month.
468 IPC	To undergo rigorous imprisonment for a period of

	six months and to pay a fine of Rs. 500/- (Rs. Five hundred only). In default of payment of fine to further undergo rigorous imprisonment for a period of one month.
Section 471 IPC	To undergo rigorous imprisonment for a period of two years and to pay a fine of Rs. 500/- (Rs. Five hundred only). In default of payment of fine to further undergo rigorous imprisonment for a period of one month.

2. As per the story projected by the prosecution, the FIR in the present case was registered on the basis of the complaint filed by Kuldip Singh, Executive Engineer, P.S.E.B., Talwara. He had addressed a letter dated 06.06.1994 to the Senior Superintendent of Police, Hoshiarpur and on the basis of the said letter, the FIR was registered in the present case. It was alleged that Ashok Kumar, petitioner, had produced a fake middle class certificate to a selection committee for his promotion as Assistant Machine Attendant. The qualification for the promotion to the post of AMA was middle class. Had this official not produced fake middle class certificate, other deserving candidates might have been promoted. An inquiry was conducted by the Inspector (V&S), P.S.E.B., Patiala and the Inspector General of Police (V&S), P.S.E.B., Patiala had agreed with the inquiry report and the case was recommended to be registered against the present petitioner. The petitioner was initially working on daily wages and after getting his promotion, he was working at Power House-II under Police Station Hajipur and, ultimately, the FIR was

ordered to be registered against him. The petitioner was arrested and was later on released on bail.

3. After completion of the investigation in the present case, the challan was presented before the Court and the petitioner was charge sheeted for the offences punishable under Sections 420, 468, 467 and 471 IPC.

4. To prove the charge, the prosecution examined Kuldeep Singh as PW1, Ajit Singh as PW2, Baldev Krishan as PW3, Bimal Chander as PW4, Rajiv Pal as PW5, Buta Singh as PW6, Surinder Krishan as PW7, Lakhbir Singh as PW8 and Inspector Tasbir Singh as PW9.

5. After closure of prosecution evidence, the statement of the accused was recorded under Section 313 Cr.P.C. and he had pleaded his false implication in the present case due to a union dispute between him and his opponents. In defence, the petitioner examined DW1 Raghbir Singh, DW2 B.R. Kaplish and himself stepped into the witness box as DW3 and closed the evidence.

6. Learned counsel for the petitioner submitted that the petitioner was falsely involved in the present case by PW6 Buta Singh and the complainant made a complaint against him to the officials of P.S.E.B. which is marked for inquiry. Still further, Buta Singh PW6 had admitted that he had knowledge of the fake certificate in the year 1983 and nothing prevented him from reporting the matter to the

police. Learned counsel further contended that in the present case, it has been falsely alleged that the petitioner had produced the fake certificates Ex.PG, Ex.PH and Ex. PK, whereby, it had been shown that the petitioner had passed the 8th Class examination from 11.11.1974 to 31.03.1975. Still further, the petitioner had never made an option for promotion as Assistant Machine Attendant from the post of fitter. Learned counsel further contended that the petitioner had not furnished in writing any option for his promotion to the post of AMA and all the prosecution witnesses had admitted the same. Thus, it cannot be said that the petitioner had filled his option form at the time of regularization of his service. Still further, the application Ex.PB moved by Buta Singh complainant was a photocopy and in absence of the original, this could not have been exhibited. He further contended that the petitioner has been unnecessarily victimized due to union dispute with him.

7. On the other hand, learned State counsel submitted that in the present case, the lower Courts had examined the matter in detail and the findings have been recorded by both the Courts after due appreciation of evidence and law. Learned State counsel extensively referred the findings recorded by the appellate Court in paragraphs numbers 12 to 15 and contended that the impugned judgments are liable to be upheld by this Court.

8. I have heard learned counsel for the parties and have perused the records of the case carefully with their able assistance.

9. In the present case, the petitioner had initially joined as fitter in P.S.E.B. and no formal qualification was required, while joining as a fitter. Further, for promotion from the post of fitter to AMA, the minimum educational qualification prescribed under the Rule was middle class certificate. The petitioner had stated that he had been falsely involved in the present case at the instance of Buta Singh, who was having enmity with him. However, the sole ground of enmity with a co-employee can never be a basis for rejection of the prosecution case, if the prosecution case is otherwise supported by documentary evidence. No doubt, the enmity with a witness is one of the main consideration at the time of disposal of the appeal, but it can never be the sole basis for acquittal of an accused. The appellate Court had correctly observed that even though, the petitioner and Buta Singh did not share cordial relations but the said fact would not *ipso-facto* lead to rejection of the complaint submitted by Executive Engineer. Even otherwise, the complainant was a superior officer and it cannot be said that he had reported the matter to the police at the instance of a very junior officer of the department, i.e., Buta Singh.

10. Still further, this Court will also refer to certain undisputed facts in the present case. The petitioner had joined as a fitter initially in the P.S.E.B and no formal educational qualification

was required at the time of joining in the board. However, while seeking promotion as AMA, the minimum qualification of middle class was required and it is also undisputed that the petitioner was not having the basic qualification of middle class and was promoted as AMA. In such a situation, the only plea raised on behalf of the petitioner is that the petitioner did not know about the existence of the certificates Ex.PG, Ex.PH and Ex.PK and he was not aware as to who got these prepared and produced before the authorities. It was further contended when the petitioner had not produced the forged certificates and had not applied for promotion, he could not have been made liable for prosecution in the instant case. This Court has considered the said submissions carefully and found no substance in the said argument. In the present case, the petitioner had availed the benefit of promotion on the post of AMA on the strength of the certificates Ex.PG, Ex.PH and Ex.PK. Even, for several years, the petitioner never raised a plea before his higher officers that he was wrongly promoted by the department, even though, he did not hold the required qualification. Apart from that, the Appellate Court was justified in observing that the accused had appeared as a defence witness, but he had not uttered even a single word that he had been promoted as AMA by the department wrongly. Even, prior to the registration of the FIR, the facts were verified by the department at its own level and the charge against the petitioner stood proved.

11. Even otherwise, I have carefully perused the impugned judgments passed by the passed by the Additional Sessions Judge (Adhoc) Fast Track Court, Hoshiarpur and the Sub Divisional Judicial Magistrate, Dasuya and the judgments do not suffer from any material irregularity, illegality or perversity. It can never be held that both the Courts had either misappreciated the facts or had ignored the exhibits of both the sides. Rather both the Courts have recorded detailed reasons, while convicting the present petitioner in the present case. Thus, finding no substance in the impugned judgments of conviction, the conviction of the petitioner under Sections 420, 467, 468 and 471 IPC is ordered to be upheld.

12. Now advertng to the sentence imposed on the present petitioner, this Court is conscious of the fact that at the time of his conviction by the Court of S.D.J.M. on 22.02.2000, the petitioner was aged about 41 years. The present case is coming up for hearing before this Court for disposal after several years as it was pending before this Court. At present, the petitioner aged about 65 years and is senior citizen. Apart from that, the petitioner has also undergone the agony of trial/revision for the last about 30 years. Further, the petitioner was sentenced to undergo rigorous imprisonment for a period of 02 years and the petitioner has already undergone about 03 months of sentence in the present case as per the custody certificate tendered by the learned State counsel in the Court. Thus, keeping in view the age of

the petitioner and the inordinate delay in disposal of the present appeal before this Court, the sentence imposed on the petitioner is reduced to the period already undergone by him. However, the amount of fine would remain the same in the present case.

13. Disposed off in above terms.

14. All pending applications, if any, are disposed of, accordingly.

07.05.2024
amit rana

(N.S.SHEKHAWAT)
JUDGE

Whether reasoned/speaking : Yes/No
Whether reportable : Yes/No