

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1487 of 2019

Arising Out of PS. Case No.-89 Year-2010 Thana- AIRPORT District- Patna

RISHAV RAJ @ RISHABH RAJ Son of Sri Shailendra Kumar Singh
Resident of Village- Sathopur, P.S.- Deepnagar, District- Nalanda.

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Anil Chandra, Advocate Mr. Amit Kumar, Advocate
For the State	:	Mr. Chandra Sen Prasad Singh, APP

CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL ORDER

8 27-01-2025 Documents comprising certified copies of FIR, exhibits and depositions of the witnesses are filed by learned counsel for the petitioner across the Board and the same are taken on record.

2. The present Criminal Revision petition has been preferred by the petitioner against the impugned judgment dated 02.08.2019, passed by learned Additional Sessions Judge-VI, Patna in Criminal Appeal No. 169 of 2018, whereby learned Sessions Court had upheld the judgment of conviction and order of sentence dated 03.07.2018, passed by learned Trial Court of A.C.J.M., Patna in G.R. Case No. 3395 of 2010.

3. The prosecution case, as per the written report of Information Officer, is that during the course of interview, the accused-petitioner was directed to write declaration in OMR



Sheet of second stage of B.C.E.C.E., 2010 examination in his own handwriting and it was found that the handwriting of the petitioner was different from that of the declaration handwritten on OMR Sheet of second stage of B.C.E.C.E., 2010 examination. The petitioner was apprehended and the FIR was lodged under Sections 419, 420 and 468 of the Indian Penal Code against him.

4. During trial, the petitioner was acquitted of charge under Section 420 IPC, but was convicted under Sections 419 and 468 of the Indian Penal Code and he was sentenced to R.I. for three years each and to pay a fine of Rs. 1,000/- under Sections 419 and 468 of IPC each.

5. However, in appeal preferred by the accused-petitioner before Sessions Court, learned Sessions Court dismissed the appeal and upheld the judgment of conviction and order of sentence, passed by learned Trial Court. Hence, the present petition has been preferred by the petitioner invoking revisional jurisdiction of this Court.

6. I heard learned counsel for the petitioner and learned APP for the State.

7. Learned counsel for the petitioner submits that the learned Trial Court as well as Appellate Court have not



appreciated the evidence on record and law properly and hence, erroneous judgment of conviction and order of sentence have been passed.

8. To substantiate his submission, learned counsel for the petitioner submits that the petitioner has been acquitted of charge under Section 420 IPC and hence, there is no question of application of Section 419 IPC which provides for punishment for cheating by impersonation. As per allegation, the offence of cheating was not complete. During the process of examination itself, impersonation was detected and he could not be appointed or draw any salary. Hence, there is error of law committed by learned Trial Court as well as learned Appellate Court by convicting the petitioner under Section 419 IPC.

9. He further submits that even Section 468 IPC does not apply. Section 468 IPC provides for punishment for forgery for the purpose of cheating. But there is no allegation of any forgery. On direction of the concerned official, the petitioner had written the declaration on the OMR Sheet in his own handwriting. Hence, such handwriting is genuine. This handwriting may be different from the handwriting found in the OMR Sheet of second stage of examination. But even that handwriting is genuine. It only shows that a different person has



appeared in the written examination because both the hand-writings are different. But both are genuine. As per Section 463 IPC, forgery is committed when someone makes any false document. Making false document has been defined by Section 464 IPC in the following words.

“464. Making a false document. — A person is said to make a false document or false electronic record

First — Who dishonestly or fraudulently—

(a) makes, signs, seals or executes a document or part of a document;

(b) makes or transmits any electronic record or part of any electronic record;

(c) affixes any electronic signature on any electronic record;

(d) makes any mark denoting the execution of a document or the authenticity of the electronic signature, with the intention of causing it to be believed that such document or part of document, electronic record or electronic signature was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or

Secondly — Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with electronic signature either by himself or by any other person, whether such person be living or dead at the time of such alteration; or

Thirdly — Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his electronic signature on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or electronic record or the nature of the alteration.”

(Emphasis supplied)

10. Hence, as per the prosecution case, offence of



forgery is not made out.

11. He further submits that during interview, the accused-petitioner had appeared carrying his Admit Card with photo thereon and no mismatch between the face of the petitioner and the photo has been alleged. Hence, there was no impersonation during interview. Only thing which emerges is that someone had impersonated the petitioner and appeared on his behalf in the written examination previously hold. As such, that person has committed impersonation for the benefit of the petitioner. Hence, the petitioner may be guilty of resorting to unfair means in the written examination.

12. As such, learned counsel for the petitioner submits that neither Section 419 IPC, nor Section 468 IPC are attracted in the alleged facts and circumstances. At most, attempt to commit cheating punishable under Section 419 IPC read with Section 511 IPC is made out for which maximum punishment is one and half year and the petitioner has already spent more than about three months in custody. The petitioner was also young man of 23 years at the time of commission of the offence. Hence, lenient view may be taken and he may be sentenced to the imprisonment for the period already undergone in custody.

13. However, learned APP for the State supports the



impugned order of conviction and order of sentence submitting that there is no illegality or infirmity in it and hence, the present petition is liable to be dismissed.

14. I considered the submissions advanced by both the parties and perused the materials on record.

15. I find that learned Trial Court and learned Appellate Court have acquitted the petitioner of the charge under Section 420 IPC. However, they have erroneously found the petitioner guilty under Section 419 IPC which may apply only when the petitioner could have been found guilty of cheating. But the petitioner has already acquitted of the charge under Section 420 IPC. At most, the petitioner is guilty of attempt to cheat by impersonation. Hence, he is held guilty under Section 419 IPC read with Section 511 IPC for which maximum punishment is one and half years.

16. I further find that in the whole prosecution case, there is no allegation of any forgery. The handwriting of the declaration before the interview Board given by the petitioner is genuine. Even the handwriting of the declaration in the OMR Sheet during written examination is also genuine. Hence, there is no forgery anywhere. Hence, there is no question of application of Section 468 IPC.



17. Now coming to the quantum of sentence, I find that in the alleged facts and circumstance and the age of the petitioner at the time of commission of the offence, sentencing the petitioner to imprisonment for the period undergone in custody would meet the ends of justice.

18. The judgment of conviction and order of sentence are modified accordingly, allowing the revision petition in part.

19. The petitioner is in custody. Hence, he is directed to be released forthwith, if not required in any other case. Office is directed to send a copy of the order to the superintendent of the concerned jail

(Jitendra Kumar, J)

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