

**IN THE HIGH COURT OF JAMMU & KASHMIR AND
LADAKH AT SRINAGAR**

Reserved on: 28.05.2024

Pronounced on: 12.07.2024

CrlA(S) No.05/2020

ABDUL RASHID BHAT

...APPELLANT(S)

Through: - Mr. R. A. Jan, Sr. Advocate, with
Mr. M. Syed Bhat, Advocate.

Vs.

STATE OF J&K

...RESPONDENT(S)

Through: - Mr. Mohsin Qadiri, Sr. AAG, with
M/S Nadiya Abdullah & Maha Majeed, Advocates.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) Instant appeal is directed against judgment dated 03.07.2020 passed by learned 2nd Additional Sessions Judge, Srinagar, whereby the appellant has been convicted of offences under Section 468, 471 and 201 of RPC. Challenge has also been thrown to order 06.07.2020, whereby the appellant has been sentenced to undergo simple imprisonment for a period of two years with a fine of Rs.2000/ in proof of offence under Section 468 RPC, simple imprisonment for a period of two years with a fine of Rs.2000/ for offence under Section 471 RPC and in proof of offence under Section 201 RPC, he has been sentenced to undergo simple imprisonment of one year and to pay a fine of Rs.1000/. In default of payment of fine, the appellant has been directed to undergo simple imprisonment for a further period of six months in terms of the impugned order dated 06.07.2020.

2) As per case of the prosecution, on 24.04.2011, SDPO, Shaheed Gunj Srinagar, received a communication dated 29.03.2011 from Inspector General of Police, Crime Branch, Srinagar, for verification and necessary action. Along with the said communication, a copy of communication dated 24.02.2011 from State Vigilance Organization was also received in which it was alleged that the appellant has been promoted from the post of Mulberry Guard (Class IV) to the post of Bush Technician on the basis of a fake matriculation certificate. Police Station, Shaheed Gunj, Srinagar, registered FIR No.33/2011 for offences under Section 420, 467, 468, 471 and 201 RPC and started investigation of the case.

3) During investigation of the case, a photocopy of the matriculation certificate pertaining to the appellant was seized from the office of the Additional Director, Sericulture Department and statements of the witnesses were recorded. It was found during investigation that original matriculation certificate had been delivered back to the appellant against a receipt. Accordingly, specimen signatures of the appellant were obtained and the same were sent to the FSL along with his questioned signatures. The appellant intentionally did not produce the original certificate before the Investigating Agency, as such, offence under Section 201 RPC was added. The Investigating Agency got the photocopy of the matriculation certificate of the appellant verified from the Jammu and Kashmir State Board of School Education and it was reported that the same is fake and fabricated. It was also reported that the verification report in respect of the certificate that was seized from the

Department is also fake. After completion of investigation of the case, offences under Section 420, 467, 468, 471 and 201 RPC were found established against the appellant and the challan was laid before the trial court.

4) On 25.05.2012, the learned trial court framed charges for offences under Section 420, 467, 468, 471 and 201 RPC against the appellant and his plea was recorded. The appellant denied the charges and claimed to be tried. Accordingly, the prosecution, in order to prove its case, examined PWs Mukhtar Ahmad Jalu, Joint Secretary State Board of School Education, Malik Farooq, Director Sericulture Department, Muzaffar Ahmad Khan, Additional Director, Sericulture Department, Raja Aijaz Ahmad Khan, IGP Crime Branch, Mushtaq Ahmad, Head Constable, Rafiq Ahmad Bhat, Orderly Sericulture Department and Mohammad Amin Mir, official of Sericulture Department. No other witness cited in the challan, including the Investigating Officer of the case and Handwriting Expert, has been examined by the prosecution in this case.

5) After completion of the prosecution evidence, the statement of the appellant/accused under Section 342 of J&K Cr. P. C was recorded and he was called upon to tender his explanation to the incriminating circumstances appearing in the prosecution evidence. In his statement the appellant/accused denied the allegations levelled against him. Regarding seizure of photocopy of his matriculation certificate, the appellant/accused claimed that he has no knowledge about the same as

the said document has been seized behind his back. He further claimed that he was working in the field and behind his back, some employee may have conspired to implicate him in a false case. The appellant/accused, however, did not enter his defence and did not produce any evidence in defence.

6) The learned trial court, after hearing the parties and after appreciating the evidence on record, came to the conclusion that charges for offences under Section 468, 471 and 201 RPC are established against the appellant/accused beyond reasonable doubt. Accordingly, the appellant/accused in terms of the impugned judgment has been convicted of aforesaid offences.

7) The appellant has challenged the impugned judgment of conviction on the grounds that the prosecution in the instant case has miserably failed to prove essential ingredients of the offences for which the appellant has been convicted. It has been contended that there is no evidence on record to show that the appellant had produced any certificate for securing promotion and that qualification of matriculation was required for his promotion. It has been further contended that the photocopy of the alleged fake matriculation certificate has been made basis of conviction of the appellant and it has not been proved that the appellant had received the original matriculation certificate from the Department or that he had destroyed the same. It has been further contended that there is absolutely no evidence on record to show that the appellant had used the alleged fake document by producing the same

before the Department. Thus, the conviction as per the appellant is based on no evidence.

8) I have heard learned counsel for the parties and perused the grounds of appeal, the impugned judgment and the trial court record.

9) As already noted, the charge against the appellant is that he had forged his matriculation certificate and produced the same before the Sericulture Department for the purpose of getting promotion to a higher post and after receiving the original fake certificate from the Department he destroyed the same.

10) In the instant case, the original matriculation certificate has not been seized by the Investigating Agency as, according to it, the same upon its receipt by the appellant has been destroyed and because of this, they could only get hold of photocopy of the original certificate from the records of the Department.

11) Section 61 of the Evidence Act provides that the contents of documents can be proved either by primary or by secondary evidence. Section 62 of the Evidence Act defines the primary evidence as the production of document itself for inspection of the Court. In the instant case, the prosecution claims that the matriculation certificate produced by the appellant before his department upon verification has been found to be fake. To prove the contents of the alleged matriculation certificate produced by the appellant, it was incumbent upon the prosecution to produce the document in original. However, the prosecution claims that the same, upon its receipt by the appellant, has been destroyed by him.

Therefore, the prosecution seeks to prove the contents of the fake matriculation certificate by secondary evidence.

12) Section 63 of the Evidence Act defines the secondary evidence. According to it, the secondary evidence would, *inter alia*, mean copies made from the original by mechanical process, copies made from or compared with the original.

13) Section 65 of the Evidence Act enumerates the cases in which secondary evidence relating to the documents can be given. It reads as under:

65. Cases in which secondary evidence relating to documents may be given.—Secondary evidence may be given of the existence, condition, or contents of a document in the following cases: —

(a) when the original is shown or appears to be in the possession or power —

of the person against whom the document is sought to be proved, or

of any person out of reach of, or not subject to, the process of the Court, or

of any person legally bound to produce it,

and when, after the notice mentioned in section 66, such person does not produce it;

(b) when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest;

(c) when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time;

(d) when the original is of such a nature as not to be easily movable;

(e) when the original is a public document within the meaning of section 74;

(f) when the original is a document of which a certified copy is permitted by this Act, or by any other law in force in India] to be given in evidence;

(g) when the originals consist of numerous accounts or other documents which cannot conveniently be examined in Court, and the fact to be proved is the general result of the whole collection.

In cases (a), (c) and (d), any secondary evidence of the contents of the document is admissible.

In case (b), the written admission is admissible.

In case (e) or (f), a certified copy of the document, but no other kind of secondary evidence, is admissible.

In case (g), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such documents.

14) From a perusal of the aforesaid provision, it is clear that secondary evidence may be given regarding existence or contents of a document when it is shown that the original is in possession or power of the person against whom the document is sought to be proved. In the instant case, the prosecution, as already stated, is claiming that the original matriculation certificate was in possession of the appellant who executed a receipt at the time of receiving it from the Department. In this regard, during investigation of the case, the specimen signatures of the appellant have been obtained and his questioned signatures appearing on the receipt have been sent to the FSL for comparison. The report of the Handwriting Expert is on record. However, the prosecution has not examined the Handwriting Expert to prove report dated 15.07.2011. Without examining the author of the report, the same cannot be taken into consideration because its contents have not been proved by the Handwriting Expert. Thus, the prosecution has miserably failed to prove that the original matriculation certificate allegedly produced by the

appellant before the Department was received back by him. Thus, the pre-condition for admitting the secondary evidence in relation to the contents of the alleged fake matriculation certificate is not satisfied in the instant case as the prosecution has failed to prove that the original certificate was in possession of the appellant.

15) Another lacuna in the prosecution case is that there is absolutely no evidence on record to show that the photocopy of the matriculation certificate that has been made basis of the instant case has been actually made from the original certificate that was allegedly produced by the appellant. In the absence of proof of these two essential ingredients, the requirements of Section 65 of the Evidence Act, which enumerates the cases in which the secondary evidence relating to the documents can be given, are not satisfied. Therefore, the very basis of the prosecution case gets knocked down.

16) Apart from the above, if we have a look at the evidence on record, there is absolutely nothing on record to show that the appellant has produced before his employer the certificate which has become the basis of the present case. None of the prosecution witnesses has stated that the appellant had produced the said certificate before the Department. In the instant case what comes to the fore from the evidence on record is that upon receipt of the complaint from Inspector General of Police, Crime Branch, the Investigating Agency seized photocopy of the matriculation certificate allegedly pertaining to the appellant. None of the departmental witnesses of the Sericulture Department, namely, PWs Malik Farooq,

Muzaffar Ahmad Khan, Rafiq Ahmad Bhat and Mohammad Amin Mir have anywhere stated that this certificate was produced by the appellant before the Department.

17) According to PW Malik Farooq, his predecessor had written a letter to the Joint Secretary, Board of School Education, for verification of the matriculation certificate of the appellant and a photocopy thereof was sent to the Joint Secretary. He further stated that upon receiving direction from the Director, he cancelled the promotion of the appellant. PW Muzaffar Ahmad Khan stated that police approached his office and demanded documents from the concerned clerk. He further stated that police asked for photocopy of the matriculation certificate of the appellant and the same was produced before the police which was seized. PW Rafiq Ahmad Bhat stated that the police was demanding a document from Mr. Ayoub but he is not aware as to what was the nature of the document. He further stated that the concerned clerk handed over the document to the police and he signed as a witness. PW Mohammad Amin Mir stated that police came to the office of Additional Director and demanded certain documents from him. The Additional Director asked him to provide photocopies of the requisite documents to the police and, accordingly, he provided these documents to Additional Director whereafter the documents were seized by the police.

18) From the aforesaid statements of the departmental witnesses, it is clear that none of them have stated that the documents in question were produced by the appellant. What is established from their statements is

that the police seized certain documents including a copy of fake matriculation certificate from the records of the Department. The question as to who produced the photocopy of the document has remained un-answered as none of the witnesses has stated that this fake photocopy of matriculation certificate was produced by the appellant or that it was made from the original matriculation certificate that had been produced by the appellant. Thus, even the production of the photocopy of the fake matriculation certificate by the appellant has not been established from the prosecution evidence.

19) In the instant case, the learned trial court has convicted the appellant of three offences, namely, Section 468 RPC, Section 471 RPC and Section 201 of RPC. Section 468 of RPC provides for punishment for committing forgery for the purpose of cheating. Forgery has been defined under Section 463 of RPC as making of any false document, *inter-alia*, with intent to support any claim or title. Section 464 of RPC defines making a false document to include making, signing or executing a document with the intent of causing it to be believed that such document was made, signed, executed etc. by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, executed etc. Making of false document also includes alteration of a document in any material part after it has been made.

20) In the instant case, the prosecution does not even claim that the forgery of the photocopy of the matriculation certificate of the appellant has been undertaken by the appellant himself. It only claims that the

document in question is forged but who has forged the said document, there is absolutely no evidence on record to this effect. A person can be convicted of offence under Section 468 of RPC only if it is established that he has committed the forgery for the purpose of cheating. Since there is no evidence on record to show that it is the appellant who has committed the forgery of the photocopy of the matriculation certificate or the original of the matriculation certificate pertaining to the appellant, therefore, his conviction under Section 468 of RPC is based upon no evidence at all and, as such, the same is not sustainable.

21) Section 471 of the RPC provides for punishment for fraudulently or dishonestly using as genuine any document which a person knows or has reason to believe to be a forged document. The essential ingredients of Section 471 of RPC are:

- (1) Fraudulent or dishonest use of document as genuine;
- (2) Knowledge or reasonable belief on the part of person using the document that it is forged one;

22) Section 471 RPC is intended to apply to persons other than the forger himself but the forger himself is not excluded from the operation of the Section. It is not necessary that the person held guilty under Section 471 of RPC must have forged the document himself. As long as it is shown that a forged document has been used as genuine knowing it to be forged or having reason to believe that the document is forged, its fraudulent use becomes punishable under Section 471 of the RPC.

23) In the instant case, as already stated, it has not been established that the appellant had himself forged the document in question, but he

can be convicted of offence under Section 471 of RPC if it is shown that he used the said document fraudulently or dishonestly knowing that the document in question is forged. As already stated, in the instant case, there is no evidence on record to show that the forged document (photocopy of the matriculation certificate) was produced by the appellant before his department. Therefore, even if the said document is forged and it was seized from the records of the department, still then it cannot be stated that the said document was actually produced by the appellant.

24) It is not a case where employer of the appellant had made any complaint with the police stating therein that the appellant had produced a fake matriculation certificate, but it is a case where the police on the basis of some complaint proceeded to seize the document in question from the records of the Department without undertaking any investigation to ascertain as to who had produced the said forged document before the Department. The Investigating Officer unfortunately has not been examined by the prosecution during trial of the case. His statement would have been of some help to the prosecution to clarify this aspect of the matter. Since the Investigating Officer has not stepped into the witness box, a serious lacuna has crept in the prosecution case, the benefit of which has to go in favour of the appellant. Thus, even the charge for offence under Section 471 of RPC is not proved against the appellant.

25) Regarding charge for offence under Section 201 of RPC, it has already been stated that the prosecution has failed to prove that the original matriculation certificate was received back by the appellant from the Department. The receipt of the certificate has not been proved to be in the handwriting of the appellant, as the prosecution has failed to prove the report of the Handwriting Expert to nail the appellant in this regard. Once it is not established that the original certificate was received back by the appellant, he cannot be stated to have destroyed the same.

26) The learned trial court while passing the impugned judgment has based its findings on surmises and conjectures and not on the basis of legally admissible evidence. The learned trial court has presumed that the alleged forged document has been made from the original certificate produced by the appellant without there being any evidence on record to this effect. The findings of the learned trial court are, therefore, perverse and deserve to be interfered with in exercise of appellate jurisdiction of this Court

27) Accordingly, the appeal filed by the appellant is allowed and the impugned judgment of conviction and the impugned order of sentence passed by the learned trial court are set aside. The bail bonds and surety bonds of the appellant are discharged.

(Sanjay Dhar)
Judge

Srinagar

12.07.2024

"Bhat Altaf-Secy"

Whether the order is reportable:

Yes/No