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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% DATE OF DECISION: APRIL 30 , 2012

+ **CRL.REV.P. 190/2012**

RITU PRAN Petitioner
Through:Mr.B.K.Sharma, Advocate

versus

CENTRAL BUREAU OF INVESTIGATION Respondent
Through:Mr.Narender Mann, Spl.P.P.
for CBI.

CORAM:
HON'BLE MS. JUSTICE PRATIBHA RANI

PRATIBHA RANI, J (ORAL)

1. This criminal revision petition has been filed by the petitioner impugning the order dated 3rd April, 2012 passed by the Incharge A.S.J., Karkardooma Courts, Delhi in Crl.A.No.3/2011.
2. The facts leading to registration of case FIR No.RC-9(S)/2005/SCB-I under Section 420/471 IPC, P.S. CBI/SCR-1/New Delhi have been incorporated in Para 3 of the impugned judgment and are extracted as under:-

“The facts in brief are that while dealing with CWP No.5976/2003, the Hon’ble High Court directed the CBI to investigate and verify the caste certificates of the persons who have secured employment on the basis of Scheduled Tribe Certificates between the year 1995-2000. In pursuance of the said order, caste certificate of appellant was verified. The appellant was appointed on the post of Darkroom Assistant in Govt. of India Press, Mayapuri on the reserved post of Scheduled Tribe candidate. During investigation, it revealed that at the time of appointment, the appellant submitted the Caste Certificate in which his caste was mentioned as Kharwar and the same was claimed to be

belonging to Scheduled Tribe Category. During investigation, it revealed that the caste certificate submitted by the appellant, was never issued by competent authority. During investigation, it revealed that the caste certificate submitted by the appellant, was never issued by competent authority. During investigation, it also came out that the appellant does not belong to Kharwar caste, but he was belonging to Kamkar caste, which was not Scheduled Tribe in Bihar. The allegations against the accused/appellant are that he obtained the employment on the post of Darkroom Assistant, by using a forged caste certificate and committed cheating with the government department for securing the job.”

3. The petitioner was charged for having committed the offence punishable under Section 420/471 IPC r/w 465 IPC to which he pleaded not guilty.

4. After considering the evidence adduced by the prosecution and the statement made by the accused, learned Trial court convicted him for having committed the offence punishable under Section 420/471 IPC. He was sentenced to undergo R.I. for three years and to pay a fine of Rs.5000/- for having committing the offence punishable under Section 420 IPC and further sentenced to undergo R.I. for three years and to pay fine of Rs.5000/- under Section 471 IPC. Further ordered that both the sentences shall run concurrently.

5. The order passed by learned M.M. was challenged in Crl.A.No.3/2011. During the pendency of the appeal, an application under Section 391 Cr.P.C. was also filed which was also fixed for hearing. Vide impugned order dated 3.4.2012, learned A.S.J. dismissed the Crl.A.No.3/2011 as well application under Section 391 Cr.P.C. Feeling aggrieved, this revision petition has been preferred on following grounds:-

- i) The appeal was partly argued on 21.1.2012 on which date it was adjourned for remaining arguments to 24.2.2012 as part heard;
- ii) Application under Section 391 Cr.P.C. for leading additional evidence in appeal was filed on 24.2.2012 by the revisionist and copy of the same was supplied to counsel for CBI. The matter was adjourned for reply and arguments on the application to 5.3.2012;
- iii) Shri B.K.Sharma, counsel for the petitioner was not available on 5.3.2012 being unwell. CBI filed the reply, copy of which was received by the petitioner who appeared in person and matter was adjourned for arguments on the application;
- iv) On 20.3.2012, counsel for the petitioner placed on record a booklet compilation of Bihar Govt. tracing the history of 'Kharwar' caste and this booklet was required to be proved by leading additional evidence. The arguments were heard on the application and matter was adjourned for orders on 3.4.2012 on the application only;
- v) On 3.4.2012, the court dismissed the appeal as well as application under Section 391 Cr.P.C. The arguments on appeal were not advanced and it was only the application on which arguments were advanced and was fixed for orders. The appeal has been dismissed without hearing the arguments which has caused serious prejudice to the petitioner as the appeal could not have been dismissed without giving an opportunity of being heard to the appellant i.e. the petitioner before this Court.

6. I have heard Shri B.K.Sharma, learned counsel for the petitioner and Shri Narender Mann, Special P.P. for CBI. During the course of hearing, learned counsel for the petitioner referred to the proceedings of the Court dated 25.1.2012, 24.2.2012, 5.3.2012 and 20.3.2012 highlighting that it is nowhere mentioned in these proceedings of the Court that after part arguments on appeal on 25.1.2012, arguments on appeal have been heard

and concluded. After filing of the application under Section 391 Cr.P.C. on 24.2.2012, he had argued only on the application but instead of disposing of the application, his appeal was disposed of. It has been further submitted by learned counsel for the petitioner that unless his application under Section 391Cr.P.C. was disposed of either by granting him an opportunity to lead additional evidence or declining it, there was hardly any opportunity for him to advance arguments on the merits of the appeal. When he brought the same to the notice of the Court that it was the application under Section 391 Cr.P.C. that was to be disposed of, in subsequent paragraphs of the order on appeal, his application was also disposed of. This, in itself, is sufficient to infer that he was rightly under the impression that since arguments have been heard only on application, on 3.4.2012 orders were to be pronounced on the application under Section 391 Cr.P.C. The grievance of the petitioner is only that as the appeal has been disposed of without giving him an opportunity of being heard, he be given an opportunity to advance arguments on the merits of his appeal. The order dismissing the appeal may be set aside and the appeal be remanded back for disposal in accordance with law.

7. Learned counsel for the CBI submitted that arguments on the application as well as on the appeal were advanced and the court has rightly dismissed the appeal as well as the application. Since the appeal has been disposed of after hearing the petitioner, on merits, contention of the petitioner be rejected and the orders passed by learned A.S.J. be maintained.

8. I have carefully gone through the copies of the proceedings referred to by learned counsel for the petitioner, correctness of which is not disputed by CBI, during the course of arguments. I have also gone through the impugned judgment. Learned M.M., while passing order dated 4.1.2011, convicted the petitioner for committing the offence punishable under Section 420/471 IPC and vide order on sentence dated 25.1.2011, awarded the sentence referred to above. Feeling aggrieved, Crl.A.No.3/2011 was preferred by the petitioner and during the pendency of appeal, the application under Section 391 Cr.P.C. was filed. The proceedings 25.1.2012, 24.2.2012, 5.3.2012 and 20.3.2012 clearly show that after the filing of the application under Section 391 Cr.P.C. on 24.2.2012, the reply was filed on 5.3.2012. The proceedings dated 5.3.2012 are as under:-

“05.03.2012

Present: Appellant in person.
Shri Suresh Kumar, Ld. PP for the CBI.

It has been submitted by the appellant that his counsel Shri B.K.Sharma, Advocate is not well today and request for adjournment has been made. Reply to the application u/s 391 Cr.PC of the appellant has been filed. At request, matter is adjourned to 20.03.2012 for arguments.”

9. Proceedings dated 20.3.2012 being relevant for the purpose of disposal of this petition are also extracted hereunder:-

“20.03.2012

Present: Sh.B.K.Sharma, Ld. Counsel for the appellant.
Sh. Suresh Kumar, Ld. PP for the CBI.

Ld. Counsel for the appellant has furnished the booklet issued by the Government of Bihar. Same is taken on record. Arguments heard. Now put up for orders on 03.04.2012.”

10. The proceedings dated 20.3.2012 do not make it clear whether arguments were heard only on the application or on the appeal or on both, thus, rightly creating confusion in the mind of the petitioner, who claims that he argued only on the application and not on appeal. In order to further clarify the situation whether any argument on appeal was advanced by learned counsel for the petitioner, the impugned judgment was perused. I do not find even a single contention noted and dealt with by Appellate Court to make out that the appeal has been heard on merits. Para 6 refers to the grounds on which the appeal has been preferred. Para 7 and 8 of the judgment need to be reproduced to understand if any argument was advanced on appeal by the petitioner or by the CBI, on merits of appeal:-

“7. It is admitted fact that the appellant applied for the post of Dark Room Assistant with Govt. of India Press, Mayapuri. The said post was reserved for the candidates of Scheduled Tribe. It is also admitted fact that the appellant joined the services as Dark Room Assistant claiming himself to be belonging to caste Kharwar. The case of the appellant is that he belongs to Scheduled Tribe and his caste is Kharwar. It is also his case that the certificate submitted by him at the time of his appointment was genuine to the best of his knowledge and the said certificate was got issued by his grand parents from the office of ADM, Saran, Chapra, Bihar.

8. On the other hand, the case of the CBI is that the appellant secured the appointment on the post of Darkroom Assistant by claiming himself to be Scheduled Tribe. He mentioned his caste as Kharwar, but he was belonging to caste Kamkar which is a Backward Class and not Scheduled Tribe.”

11. Para 9 onwards, the judgment refers to the testimony of PW4, PW5, PW1, PW12, PW9 and PW13 and their testimony has been discussed in Para 9 to 14 of the impugned judgment. In para 15 and 16, testimony of PW4 and the caste certificate Ex.PW4/A have been discussed and in para 17 , 18 and 19 finding has been given.

12. Learned counsel for the CBI could not mention as to what were the

submissions made and in which part of judgment the arguments advanced by the parties were referred or dealt with. Learned counsel for the CBI, instead of coming out fairly that arguments were heard only on the application and not on appeal, tried to take shelter under the judgment and preferred to confine his submission to the extent of supporting the impugned judgment.

13. After perusing the proceedings dated 5.3.2012 as well as the discussion in the impugned judgment, this Court finds force in the contention that the petitioner made submissions only on application under Section 391 Cr.P.C. on 20.3.2012 and that the matter was fixed for orders on application for 3.4.2012. He rightly remained under the bona fide belief that it was the application that would be disposed of and irrespective of fate of the application, he would have the opportunity to argue the appeal on merits.

14. During the hearing, learned counsel for the petitioner submitted that since his application under Section 391 Cr.P.C. has been dismissed after hearing him, he may be provided an opportunity to argue his appeal Crl.A.3/2011, on merits. Learned counsel for the petitioner further submits that since the petitioner is in custody because of dismissal of the said appeal, he may also be given an opportunity to seek bail during the pendency of the appeal.

15. So far as the prayer of petitioner to seek bail during the pendency of the appeal, the petitioner is at liberty to seek relief of bail before the learned Appellate Court.

16. Section 397 Cr.P.C. empowers the High Court or any Sessions Judge to call for and examine the records of an inferior Court for the purpose of satisfying as to the legality and regularity of any proceedings or order made therein. When any illegality or irregularity which justifies rectification is found upon examination of record, the machinery for the exercise of the power is provided in Ss. 398-402. The object is to set right patent defect or error.

17. The criminal courts are clothed with inherent power to make such orders as may be necessary for the ends of justice. Such power though unrestricted and undefined should not be capriciously or arbitrarily exercised, but should be exercised in appropriate cases *ex debito justitiae* to do real and substantial justice for the administration of which alone the courts exists. (**Ref:Janta Dal vs. H.S. Chowdhary 1992(4)SCC305**).

18. In view of the above discussion and in the facts and circumstances of the case, the impugned order dated 3.4.2012 to the extent of dismissing the Crl.A.No.3/2011, is set aside. The matter is remanded back with the directions to give the parties an opportunity of being heard in Crl.A.No.3/2011 and dispose of the matter in accordance with law.

19. Crl.Revision Petition No.190/2012 is disposed of in above terms.

PRATIBHA RANI, J

APRIL 30, 2012
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