

HIGH COURT OF ORISSA: CUTTACK.

CRLREV NO. 1407 of 2008

From the order dated 29.4.2008 passed by the learned S.D.J.M.,
Sadar, Cuttack in G.R. Case No. 1126 of 2007.

Sukanti Choudhury

.....

Petitioner

- Versus-

State of Orissa

.....Opposite Party

For Petitioner : Mr. Shyamananda Mohapatra
S.K.Dash, S.P.Dash, P.C.Mohanty,
M/s G.Tripathy, B.Jalli.

For Opp. Party : Mr. Debasis Panda,
(Addl. Government Advocate)

PRESENT:

THE HONOURABLE SHRI JUSTICE B.K. PATEL

Date of Hearing: 13.12.2012 :: Date of Judgment – 8.2.2013

B.K. PATEL, J. Petitioner has assailed, in this revision, legality of order dated 29.4.2008 passed by learned S.D.J.M, Sadar, Cuttack in G.R. Case No. 1126 of 2007 taking cognizance of commission of offences under Sections 420, 468 and 471 of the Indian Penal Code (for short the 'I.P.C.') and issuing process against her for appearance as accused in court.

2. G.R. Case No. 1126 of 2007 arises out of C.I.D. CB, P.S. Case No. 35 of 2007 and Lalbag P.S. Case No. 140 of 2007. Initially, Lalbag P.S. Case No. 140 of 2007 was registered on 20.9.2007 against the petitioner on receipt of First Information Report (for short the 'F.I.R.')

from the Additional District Magistrate, Cuttack alleging commission of offences under Sections 420, 468 and 471 of the I.P.C.

The F.I.R. reads as follows:

“ OFFICE OF THE COLLECTOR:CUTTACK
No. 3606/Esttt. Dt. 14.09.07

To

The Superintendent of Police,
C U T T A C K.

Sub: F.I.R. against Smt. Sukanty Choudhury,
Addl. Tahasildar (LR), Cuttack under Section
417, 468 and 471 IPC.

Sir,

It is to intimate you that, as per communication received from Govt. in Revenue & D.M Department vide their letter No. 2095/R(CS) Dt.4.9.2007, Smt. Sukanty Choudhury, (LR) Addl. Tahasildar, Sadar, Cuttack has entered into Govt. service through a forged matriculation certificate. Smt. Choudhury has changed her surname from Khuntia to Choudhury through an affidavit before the Court of Executive Magistrate, Jagatsinghpur after her marriage to Sri Debiprasad Choudhury. She has not passed Matriculation Examination in 1972 and thereby committed offence under Section 417, 468 and 471 IPC and is liable thereunder. So Govt. in Revenue & D.M. Department has instructed to file F.I.R. against her.

Attaching herewith, (i) Copy of the age certificate No. 2968 issued by B.S.E. Orissa, Cuttack, (ii) Copy of the mark sheet issued by B.S.E. Orissa, Cuttack and (iii) Affidavit of Smt. Choudhury changing her surname from Khuntia to Choudhury, I am to request you to start criminal case immediately against Smt. Sukanty Choudhury, Addl. Tahasildar, (LR), Cuttack treating this as F.I.R. against her.

An early confirmation in this regard is requested.

Yours faithfully,
ADDL. DISTRICT MAGISTRATE,
CUTTACK

Memo No. _____ /Estt.Dt.

Copy forwarded to the Inspector-in-Charge,
Lalbag Police Station, Cuttack for information and immediate
necessary action.

ADDL. DIST.MAGISTRATE:CTC.”

Subsequently, investigation of the case was taken over by the C.I.D., Crime Branch and C.I.D. CB, P.S. Case No. 35 of 2007 on 10.12.2007 was registered. On completion of investigation, charge sheet, on receipt

of which the impugned order was passed, was submitted against the petitioner in which brief facts of the case were narrated as follows:

“The F.I.R. in gist reveals that Sukanti Chowdhury (LR) Addl. Tahasildar, Sadar, Cuttack has entered into Govt. service through a forged matriculation certificate. Being directed by Revenue land Disaster Management, Department, ADM, Cuttack lodged F.I.R. against Sukanti Choudhury by attaching the copy of age certificate, mark sheet and affidavit reg. change of surname of Sukanty Khuntia to Sukanty Choudhury.

The case was investigated by ASI A.K. Pradhan of Lalbag P.S. initially, then consequent upon office order No. 248/CID, dated 10.12.07 and Cuttack district order No. 3090 dated 13.12.07, the investigation of the case was entrusted to me.

During investigation witnesses were examined, the Tabulation Register of BSE, Orissa and Mark Register of Bajrabudhi Girls High School, Gopinathpur Sasan, Patkura, the Admission Register of St. Joseph's Girls High School and Bajrabudhi Girls High School, the HSC certificate, Employment exchange card, Appointment order of accd., the HSC certificates of two other girl students of Bajrabudhi Girls High School, Service Book of accd., Proceeding file containing correspondence with Govt. against accd. were seized, opinion of Govt. examiner in respect of forged HSC certificate of accd. was obtained.

As there is prima facie evidence against accused Sukanty Khuntia @ Sukanti Chowdhury of using as genuine a forged High School Certificate issued by Board of Secondary Education, Orissa which is known to be forged, for appearing I.A. Exam under Utkal University, for getting admission into B.A., S.V.M. College, Jagatsinghpur, for registering her name through Employment Exchange thereby inducing Govt. to provide her a job and finally for entering into a Govt job i.e. Lady Social Organizer on 7.1.80 and continuing in service till date as Addl. Tahasildar (LR) Cuttack Sadar, pretending herself as a genuinely qualified person, thereby cheating her authority by forgery, so placed Lalbag PS Charge Sheet No. 38 dated 28.4.08 (CID, PS Charge Sheet No. 6 dated 28.4.08) u/s 420/468/471 IPC against her to face the trial in the Court of law. ”

3. On receipt of charge-sheet in court cognizance of commission of offences as alleged therein was taken and summons was issued to the petitioner for her appearance in court. As is apparent from

the F.I.R. and charge-sheet, allegations in the case relate to use of forged High School Certificate by the petitioner as genuine. In the said document purported to have been issued by the Board of Secondary Education, Orissa it has been certified that the petitioner who was born on 26th December, 1956 has passed the HSC Examination held in the month of March, 1972 in Second Division from Bajrabudhi Girls' High School, Gopinathpur Sasan.

4. In support of the revision, it was contended by the learned counsel for the petitioner that on a bare perusal neither the F.I.R. nor the charge-sheet contains allegation of commission of any of the alleged offences by the petitioner. It has simply been alleged that the petitioner used a forged High School Certificate for the purpose of securing higher education and employment. In the charge-sheet it has been alleged that said forged High School Certificate was issued by the Board of Secondary Education, Orissa. It has not been alleged that either the petitioner herself committed forgery of the certificate or she had knowledge that the High School Certificate was not genuine. Referring to statutory provisions under the I.P.C. and judicial pronouncements it was submitted that fraudulent or dishonest intention being the most essential ingredient to constitute offences of cheating and forgery, it is incumbent upon the prosecution to place materials before the court to *prima facie* satisfy that it is the petitioner who committed such offences with the requisite intention or *mens rea*. It was strenuously argued that no material has been placed in court by the investigating agency to

remotely suggest that the petitioner used forged High School Certificate as genuine intentionally with the knowledge that the Certificate is not genuine. It was further submitted that it is not disputed that the petitioner was born in the year 1956. Therefore, in the year 1972 when the disputed High School Certificate was issued the petitioner was a minor girl of less than sixteen years. In absence of any material on record that the petitioner had any role in forging the certificate, criminal proceeding against her for alleged commission of offences of cheating, forgery and use of forged document as genuine would amount to acting on the basis of presumptions not available in law. Even if for the sake of argument it is assumed that High School Certificate of the petitioner is a forged document, materials on record do not justify subjecting the petitioner to a criminal proceeding. Even if F.I.R., charge-sheet and entire materials on record are taken on their face value, no case is made out against the petitioner to have committed any of the alleged offences. Therefore, criminal proceeding against the petitioner is liable to be set aside.

5. In reply, learned counsel for the State submitted that it is evident from the statements of the witnesses including the teachers of the school from which the petitioner is stated in the certificate to have appeared the High School Certificate Examination, persons who appeared in the Annual High School Certificate Examination in the year 1972 in which examination the petitioner has been certified to have been passed and the employees of Board of Secondary Education,

Orissa as well as report of the Examiner of Questioned Document that High School Certificate Examination on the basis of which the petitioner secured admission for higher education and employment is a forged certificate. Placing specific reliance on the police statements of Giridhari Rout, Prasanna Kumar Dash, Pradipta Kumar Mohapatra, Fakir Charan Swain, Govinda Nayak, Prativa Rani Mohapatra, Nirranjan Basantia, and Swarnanjali Rath, it was contended that though there is no positive material on record to conclude that it was the petitioner who forged the certificate, undisputedly, the petitioner is found to have used the forged certificate. Therefore, commission of offences under Sections 420, 468 and 471 of the I.P.C. are well made out against the petitioner for facing the trial.

6. In order to appreciate the rival submissions it is necessary to examine the nature of offences alleged against the petitioner. In the charge-sheet it has been alleged that the petitioner used as genuine a forged High School Certificate issued by Board of Secondary Education, Orissa which is known to be forged, for appearing I.A. examination under Utkal University, for getting admission into B.A., S.V.M. College, Jagatsinghpur, for registering her name through Employment Exchange and thereby inducing Government to provide her a job and finally for entering into a Government job, i.e., Lady Social Organizer on 7.1.1980 and continuing in service till date as Additional Tahasildar (LR), Cuttack Sadar, pretending herself as a genuinely qualified person, thereby

cheating her authority by forgery, and committed offences under Sections 420, 468 and 471 of the I.P.C.

7. Section 420 of the I.P.C. provides:

“Cheating and dishonestly inducing delivery of property.- Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

8. Thus, offence under Section 420 of I.P.C. constitutes of the following ingredients:-

- (1) Deception of any person,
- (2) Fraudulently or dishonestly inducing such person-
 - (i) to deliver any property to any person, or
 - (ii) to consent that any person shall retain any property,
- (3)(i) Intentionally inducing the person to do or omit to do anything which he would not do or omit, if he were not so deceived; and
- (ii) Such act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property.

In order to bring a case within the four corners of Section 420 of the I.P.C., prosecution is required to *prima facie* satisfy commission of offence of 'cheating' as defined in Section 415 of the I.P.C.

9. Section 468 of the I.P.C. provides:

“Forgery for purpose of cheating-Whoever commits forgery, intending that the document or electronic record forged shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

10. The following ingredients constitute offence under Section 468 of the I.P.C.:-

- (1) The document in question is forged,
- (2) Accused forged the document, and
- (3) Accused forged the document intending that the forged document would be used for purpose of cheating.

Thus, offence under Section 468 of the I.P.C. is an aggravated form of forgery for the purpose of cheating a person.

11. Offence of cheating has been defined under Section 415 of the I.P.C. which reads:

“Cheating- Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to “cheat”.”

12. Thus, the essential ingredients for offence of cheating are:-

- (1) Deception of any person, and
- (2) Fraudulently or dishonestly inducing that person-
 - (a) to deliver any property to any person, or
 - (b) to consent that any person shall retain any property or intentionally inducing that person to do or omit to do anything which he would not do or omit if he were not so deceived and which act or omission causes or likely to cause damage or harm to that person in body, mind, reputation or property.

13. Section 471 of the I.P.C. provides:

“Using as genuine a forged document or electronic record.”-Whoever fraudulently or dishonestly uses as genuine any document or electronic record which he knows or has reason to believe to be a forged document or electronic record, shall be punished in the same manner as if he had forged such document or electronic record.”

14. Offence under Section 471 of the I.P.C. constitutes of the following ingredients:-

- (1) The document is a forged one,
- (2) Accused used the document as genuine,
- (3) Accused knew or had reason to believe that it was a forged document, and
- (4) Accused used it fraudulently or dishonestly, knowing or having reason to believe that it was a forged document.

15. Offence of forgery has been defined under Section 463 of the I.P.C. which reads:

“Forgery. – Whoever makes any false documents or false electronic record or part of a document or electronic record, with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.”

16. The expression ‘making a false document’ has been defined under Section 464 of the I.P.C. It reads:

“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 digital signature on any electronic record;
- (d) makes any mark denoting the execution of a document or the authenticity of the digital signature,

with the intention of causing it to be believed that such document or part of document, electronic record or digital 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 digital 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 digital signature on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practiced upon him, he does not know the contents of the document or electronic record or the nature of the alteration.”

Thus, fraudulent or dishonest intention is an essential ingredient for commission of offences of cheating and forgery.

17. Section 24 of the I.P.C. defines the expression 'dishonestly' as follows:

"Dishonestly".- Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing "dishonestly".

18. Section 25 of the I.P.C. defines the expression 'fraudulently' as follows:

"Fraudulently".- A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise."

19. In the present case, gravamen of allegations is forgery of High School Certificate purported to have been issued to the petitioner by the Board of Secondary Education, Orissa for the purpose of cheating. Therefore, under the facts, in order to attract implication of the petitioner for commission of offence under section 468 of the I.P.C. it has to be prima facie shown that it was the petitioner who forged the High School Certificate intending that the forged document would be used for the purpose of cheating. Prosecution has to place materials to indicate that the petitioner forged the document with intention to cheat. Offence of cheating as defined under section 415 of the I.P.C. requires essential element of deception as well as fraudulent or dishonest inducement by the accused. While analyzing the provisions under sections 420 and 415 of the I.P.C. it has been pointed by the Supreme Court in **Inder Mohan Goswami & Anr. -vs- State of Uttaranchal &**

Ors.: AIR 2008 Supreme Court 251 that it is the intention which is gist of offence of cheating. Similarly, it has been pointed out by this Court in **Muralidhar Satpathy -vs- State of Orissa:** 2007(I) OLR 611 that guilty intention is an essential ingredient of the offence of cheating. In order to constitute offence punishable under section 420 of the I.P.C., intention to deceive should be in existence at the time when inducement was offered. Forgery as defined under section 463 of the I.P.C. requires that making of any false document must be with intent to cause damage or injury or with intent to commit fraud. As provided under section 464 of the I.P.C. making of a false document for the purpose of forgery must be with dishonest or fraudulent intention. Section 471 of the I.P.C., providing for punishment for the offence of using of forged document as genuine, postulates that the accused knew or had reason to believe that it was a forged document and also that accused used it fraudulently or dishonestly. User of a forged document dishonestly or fraudulently shall arise only when accused uses the document with intention of causing wrongful gain or wrongful loss or to defraud.

20. In the present case, even in the charge sheet it has not been alleged that it was the petitioner who forged the High School Certificate. In fact, in course of argument, learned counsel for the State fairly submitted that there is no positive material on record to implicate the petitioner with the offence of commission of forgery for the purpose of cheating inasmuch as it has not been alleged by any of the witnesses that the petitioner made the forged document. However, it was

contended that the petitioner used a forged certificate purported to have been issued by the Board of Secondary Education, Orissa, which was in fact not issued by the Board of Secondary Education, Orissa, as genuine for the purpose of securing admission into I.A. course and further higher education and for securing and continuing with employment. It was argued that as the petitioner derived benefits out of the forged certificate, she is guilty of cheating under section 420 of the I.P.C., for forgery for the purpose of cheating under section 468 of the I.P.C. and for using as genuine forged document under section 471 of the I.P.C. In this connection, learned counsel for the State placed reliance of police statements of eight witnesses referred to above.

21. Among the eight witnesses Giridhari Rout and Niranjana Basantia were teachers of Bajrabudhi Girls High School. Giridhari Rout who claims to be a teacher of the school from 1970 to 1973 has stated before the police that he does not know the petitioner personally and vaguely stated that he does not remember that the petitioner was regularly attending classes. However, it is in the evidence that the petitioner was admitted to the school in the year 1969 and was promoted to Class-XI in the same year. Niranjana Basantia stated that he was working as teacher in the said school in the year 1973. He also stated that the petitioner got admitted in the school in the year 1969 and appeared in the Annual High School Certificate Examination in the year 1972. Prasanna Kumar Dash and Fakir Charan Swain were employees of Board of Secondary Education, Orissa. Prasanna Kumar

Dash stated before police that nobody would believe that High School Certificate issued to the petitioner is a forged document. However, he pointed out certain discrepancies in the certificate to conclude that said certificate is not similar to certificates issued to other students. Fakir Charan Swain stated to have issued marks sheet of the petitioner on being directed by the S.P., CID, Crime Branch on the basis of Marksheet Tabulation Register which indicated that the petitioner had failed in the year 1972. This witness stated before police that High School Certificate of the petitioner was not issued from the Certificate Issue Section of the Board of Secondary Education, Orissa. Pradipta Kumar Mohapatra was working as Under Secretary to the Government of Orissa in the Revenue Department. He stated that allegation against the petitioner was received by him from one Govinda Nayak, an Advocate. Upon enquiry in the office of the Board of Secondary Education, Orissa, it was found that the petitioner had failed in the Annual High School Certificate Examination in the year 1972. Govinda Nayak stated to have learnt regarding the forgery from the petitioner herself. Police has examined Prativa Rani Mohapatra and Swarnajali Rath who stated that they were students in Brajabudhi Girls High School. Both of them stated that the petitioner was not student in Brajabudhi Girls High School in the year 1972. However, as has been pointed out earlier it is not disputed that the petitioner got admitted in the school in the year 1969 and appeared Annual High School Certificate Examination in the year 1972. It is stated by Prativa Rani

Mohapatra that School Leaving Certificate is required to be produced by a student while taking admission into the I.A. course in the college. School Leaving Certificate of the petitioner produced at the time of admission to the I.A. course does not appear to have been seized by the Investigating Agency.

22. On perusal of statements of all the above witnesses it is found that none of them has alleged that it was the petitioner who forged the High School Certificate purported to have been issued by the Board of Secondary Education, Orissa in her favour. Allegations in the case cannot be appreciated in isolation. It has to be borne in mind that the petitioner was a girl child of less than 16 years of age in 1972 when the alleged forgery of the High School Certificate, for the purpose of cheating, was made. The Investigating Agency has filed age certificate of the petitioner obtained from the Board of Secondary Education, Orissa indicating that the petitioner was born on 26.12.1956. Not only none of the witnesses has alleged that the petitioner made a false document and thereby committed offence of forgery but also there is no material to indicate that the petitioner had herself procured the forged High School Certificate. In such view of the matter, no inference can be made on the basis of surmises and conjectures in a criminal proceeding that the petitioner did anything with dishonest or fraudulent intention as defined under sections 24 and 25 of the Indian Penal Code. In absence of any material indicating the required intention or knowledge on the part of the petitioner in making a forged document or using the same with the

required knowledge, criminal proceeding against the petitioner will amount to an abuse of process of court. Materials on record placed by the Investigating Agency, even if taken at their face value and accepted in entirety do not, *prima facie*, implicate the petitioner with commission of any of the alleged offences in view of absence of any material to indicate existence of the essential ingredient of required knowledge or intention. Therefore, criminal proceeding against the petitioner is liable to be dropped.

23. Accordingly, the revision is allowed. The impugned order dated 29.4.2008 in G.R.Case No.1126 of 2007 pending in the court of learned S.D.J.M., Sadar, Cuttack is set aside. The criminal proceeding against the petitioner is dropped.

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B.K. Patel, J.