



THE HIGH COURT OF SIKKIM : GANGTOK

(Criminal Appellate Jurisdiction)

DATED : 15th MARCH, 2018

SINGLE BENCH : THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

Crl.A. No.29 of 2016

Appellant : Ramayana Singh Meena
alias Ramayan Singh
S/o Late Rameshwar Dayal,
R/o B-91 (S-2), Balaji Apartment,
Dilsad Colony,
P.S. Seemapuri,
New Delhi – 110 095.

versus

Respondent : State of Sikkim
Through the Central Bureau
of Investigation (CBI)

Appeal under Section 374(2) read with Section
482 of the Code of Criminal Procedure, 1973

Appearance

Mr. Sudesh Joshi and Mr. Sujan Sunwar, Advocates for the
Appellant.

Mr. Md. Ashraf Ali, Advocate for the Respondent.

J U D G M E N T

Meenakshi Madan Rai, J.

1. The Appellant (hereinafter "A2") was convicted under
Section 471 of the Indian Penal Code, 1860 (for short "IPC") by the
Court of the Special Judge, Prevention of Corruption Act, 1988, East
District at Gangtok, East Sikkim, vide Judgment dated 30-08-2016,
in S.T.(CBI) Case No.01 of 2013. He was sentenced to undergo



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simple imprisonment for 2 (two) years and to pay a fine of Rs.10,000/- (Rupees ten thousand) only, under Section 466 of the IPC for the offence defined under Section 471 of the IPC, with a default clause of imprisonment, vide Order on Sentence dated 31-08-2016. The period of imprisonment already undergone by A2 during investigation and trial was set off against the sentence imposed.

2. The grievance of A2 hinges around the finding of the Learned Trial Court, which he alleges, concluded without any basis that the Caste Certificate, Exhibit 81, submitted by him, is false and fabricated, therefore, he is guilty of dishonestly using as genuine a forged Scheduled Tribe Certificate. That infact, the Prosecution is in possession of two Caste Certificates issued in the name of "Ramayan Singh". Exhibit 75 is a Certificate issued in the name of A2 as "son of Munshi", while Exhibit 81 is another Certificate issued in his name as "son of Rameshwar Dayal". In Exhibit 81, in the column pertaining to father's name the Prosecution alleges that 'Munshi' has been erased and the name of "Rameshwar Dayal" has been inserted. A2 being in possession of this document had submitted it for employment, but was convicted and sentenced in the aforesaid case, as detailed hereinabove. Assailing the Judgment Learned Counsel for the Appellant exposted that the Trial Court failed to consider the evidence of Om Prakash Yadav, P.W.14, who deposed that the Dispatch Register, Exhibit 78, is an official document maintained by the dealing Clerk and kept in his possession. That, Exhibit 78, at Sl. No.1090, indicates no



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alteration, thereby vouching for the authenticity of Exhibit 81. Although the Prosecution placed reliance on Exhibit 76 as the application submitted by A2 for issuance of Caste Certificate to him, the said document cannot be attributed to A2 as it bears the name of 'Munshi' as the father of Ramayan Singh, while A2 is the son of "Rameshwar Dayal", besides no evidence exists to establish that Exhibit 76 was submitted by A2. Moreover, Surendra Singh Khairiya, P.W.10 has deposed that Exhibit 76 bears no date nor does it bear the details of which Certificate the Applicant had sought. However, his statement that Sl. No.1090 in Exhibit 78 is a false entry, finds no substantiation the entry being untampered. Inviting the attention of this Court to the impugned Judgment, Learned Counsel would further contend that the Learned Trial Court merely stated that P.W.10 confirmed the evidence given by P.W.14 without considering the evidence of P.W.10 in its entirety.

3. It was further contended that Kamlesh Jain, P.W.31, admitted to taking over charge of the concerned Section from Amar Chand, the Clerk who was maintaining Exhibit 78 and was responsible for forwarding the papers to the then Tehsildar P.W.14. The seizure of Exhibit 78 was made in the presence of P.W.31 from their Office, thereby augmenting his statement that Exhibit 78 was kept in the safe custody of the Lower Division Clerk (LDC) and outsiders were not permitted to make entries in the document, but his evidence was ignored. That, Deepak Gaur, P.W.32, the Inspector of Police, CBI (ACB), Jaipur, who partly investigated the case admitted that neither he saw nor seized any Rules pertaining to



issuance of Scheduled Caste Certificates. No personal efforts were made by him to trace out the Office copy of Exhibit 81 issued in the name of "Ramayan Singh, son of Rameshwar Dayal" and not son of 'Munshi' in the Office of the Tehsildar. Although the witness admitted to examining Amar Chand who was responsible for making entries in Exhibit 78, but curiously he was not a Prosecution Witness nor were his specimen handwriting and signatures forwarded for Forensic analysis. The Learned Trial Court ignored the statement of P.W.32 who stated that no verification was made to test the authenticity of Exhibit 81. That, although Exhibit 81 was sent to the Handwriting Expert Shri B. P. Mishra, P.W.29, at CFSL, Kolkata, the specimen handwritings and signatures of A2 in Hindi were admittedly not supplied to him by the Investigating Agency for comparison with the questioned documents. The finding of the Learned Sessions Court that the name 'Munshi' has been erased or scratched and the name of "Rameshwar Dayal" inserted contradicts the evidence of P.W.29 who admitted that the erased writing though visible in Exhibit 81, was not decipherable, thus evidently no fingers point at A2 in this context.

4. That, contradictions existed between the statements of A2 and Kuntan Gain, P.W.26 with regard to the seizure of Exhibit 81. Learned Counsel would urge that it is not the Prosecution case that the Appellant is not a Scheduled Tribe, based on this premise there would be no necessity for him to forge the Certificate. Munshi Ram, P.W.18, in his evidence stated that he had no son by the name of "Ramayan Singh", thus raising doubts about the authenticity of



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Exhibit 76 as also Exhibit 75, the Office copy of the Certificate, which was purportedly issued on the basis of Exhibit 76 and which finds no mention in the Dispatch Register, Exhibit 78. Placing reliance on the decision of the Hon'ble Supreme Court in ***Kumari Madhuri Patil and Another*** vs. ***Addl. Commissioner, Tribal Development and Others***¹ and ***State of Maharashtra and Others*** vs. ***Ravi Prakash Babulasing Parmar and Another***² it was contended that the Learned Trial Court ought to have referred the case of A2 with regard to the verification of the Caste Certificate to the Caste Scrutiny Committee and had the said Committee found the Certificate to be false then necessary action could have been initiated against A2 under the provisions of the IPC.

5. It was also urged that the seizure of the documents, namely, Exhibits 75, 76, 78 and 81, by the CBI was not in accordance with the CBI Manual as it is clear that P.W.32 who purportedly seized the document vide Seizure Memo Exhibit 74 on 20-08-2010 has not obtained the signature of any independent witness and the signature of only one witness appears on Exhibit 83 when seizure of Exhibit 77 was made. Placing reliance on the decision of the Hon'ble Supreme Court in ***Vineet Narain and Others*** vs. ***Union of India and Another***³ it was urged that the CBI Manual provides essential guidelines for the functioning of the CBI which must be scrupulously adhered to, *inter alia*, during raids, seizure and arrest. A deviation thereof ought to be dealt with severe disciplinary action.

¹ (1994) 6 SCC 241

² (2007) 1 SCC 80

³ (1998) 1 SCC 226



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That, the Prosecution in view of the aforestated grounds has not been able to establish the ingredients of Section 471 of the IPC against A2. Hence, the impugned Judgment and Order on Sentence be set aside and the Appellant be acquitted of the Charge against him.

6. The *contra* arguments on behalf of the CBI is that P.W.10, the Tehsildar, Nadbai, has described the procedure of obtaining a Caste Certificate, which entails submission of details by the applicant in prescribed Form or fresh application, on receipt of which verification is carried out by necessary Officials, the Tehsildar on being so satisfied issues the Certificate. Details thereof are entered in the Register and two copies of the Caste Certificate are issued out of which one is made over to the applicant and the other maintained in the Office records. On receipt of the Certificate the applicant affixes his signature on the Register (Exhibit 78) and the Office copy of the Certificate (Exhibit 75). That, Exhibit 75 is the original office copy of the Certificate issued to Ramayan Singh, "son of Munshi" of Village Karomev, Tehsil Nadbai. However, the entries made in Exhibit 78 as "son of Rameshwar" are false entries duly supported by Exhibit 79, the Spot Verification Report, which indicates that there is no person by the name of "Ramayan Singh, son of Rameshwar, by Caste Meena" in Village Karomev. 'Munshi', whose name appears on Exhibit 75 is the son of "Banni Ram" and has two minor school going sons, namely, Ravi and Vinod, indicating submission of a false application Exhibit 76, by A2. Exhibit 80 which is a letter addressed to the CBI by the Tehsildar, Nadbai based on



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Exhibit 79 is proof of the fact that no "Rameshwar Dayal" lived in Karomev. That, Exhibit 81 reveals that the father's name 'Munshi' has been scratched out and the name of "Rameshwar Dayal" inserted in its place fraudulently. That, due procedure was followed when Exhibit 81 was seized as per Seizure Memo Exhibit 92. It was further urged that P.W.31 has duly corroborated the evidence of P.W.10 and P.W.14 while P.W.29 has proved the forgery of the Caste Certificate. Thus, from the evidence of the Prosecution, it is clear that A2 by utilising the forged Caste Certificate obtained appointment in service, hence, the conviction and sentence require no interference.

7. In order to appreciate the matter, we may briefly advert to the facts of the Prosecution case. An Order of this High Court, dated 09-06-2006, in Writ Petition (C) No.22 of 2006, filed by one Hishey Sherpa, directed the CBI to conduct an enquiry into the process of selection and appointment made by the Regional Research Institute (Ay) Gangtok, particularly the Officer-in-Charge therein and Dr. Pratap Makhija (hereinafter "A1"), the Research Officer and Chairman of the Selection Committee at the relevant time and should a *prima facie* case be found against any Officer, to investigate the case in accordance with law. In compliance thereof, the CBI, SCB, Kolkata, conducted an enquiry, where a *prima facie* case was established against A1 as well as against three candidates, namely, Ramayan Singh Meena (A2), Surendra Mohan Sihara (A3) and Mukesh Kumar (A4) who had been appointed in three different posts at the RRI (Ay), Gangtok. A Regular Case was registered on



25-10-2006 under Sections 120B read with 420, 468, 471 of the IPC read with Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988. During the course of enquiry by the CBI, A2 filed SLP(C) No.CC 118/2007 in the Hon'ble Supreme Court of India assailing the Order of this High Court dated 09-06-2006. The matter was remitted back to the High Court for fresh disposal and discontinuance of CBI investigation. Consequently, the CBI filed a Closure Report dated 27-02-2007 before the Court of the Special Judge, East Sikkim, at Gangtok on 08-03-2007. However, in Civil Appeal No.684 of 2008 arising out of SLP(C) No.2301 of 2007, filed by the Central Council for Research in Ayurveda and Siddha (CCRAS), New Delhi, the Supreme Court vide an Order dated 25-01-2008 clarified that no opinion had been expressed about criminal proceedings which were initiated. In pursuance of the said Order, the CBI filed a Petition on 08-10-2009 in the Court of the Special Judge, East Sikkim, seeking permission to investigate into the closed case which was duly granted.

8. Investigation would reveal that in 2004 the Department of Ayurveda, Yoga & Naturopathy, Unani, Siddha and Homeopathy (Ayush) under Ministry of Health and Family Welfare, Government of India, took the initiative of filling up backlog vacancies reserved for SC & ST categories. The Ministry clarified that direct recruitment in backlog reserved vacancies would be determined as per post based reservation rosters, but prohibited exchange of reservation between SC and ST rosters. The RRI (Ay) Gangtok despite directions failed to maintain the post based reservation roster. Recruitment of the



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Group C and D posts were to be done through local Employment Exchanges or the Central Employment Exchange, as the case may be. In the event of non-availability of local candidates and issuance of Certificates to such effect, the Director was to advertise or authorize the Project Officer to advertise the vacancies through Central Employment Exchange. However, this was flouted and an advertisement was issued in the local newspapers on 04-10-2005, reiterated on 10-10-2005, subsequent to which the local Employment Exchange was approached on 13-10-2005, which furnished sufficient candidates suitable for the posts advertised.

9. That, an incompetent Scrutiny Committee was constituted who violated all norms for screening of candidates. A2 had applied for the post of General Duty Assistant (GDA) bereft of Experience Certificate or Typing Certificate, but the intervention of A1 ensured acceptance of his application with the assurance of subsequent submission of requisites. A2 while submitting his application mentioned his father's name as "Late Rameshwar Dayal", his address for correspondence as Dara Gaon, Tadong, along with a fake Caste Certificate. For the purposes of the instant matter, it would suffice to state that A2 despite lacking the requisite qualification was appointed at the RRI (Ay) Gangtok, his appointment letters collected by one Malay Kumar Saha, P.W.6, Pharmacist of RRI (Ay) Gangtok and handed over to A2. Further investigation would reveal that Ration Card No.864 (Document X), issued to "Munshi Ram" filed by A2 along with his application seeking Caste Certificate was fake, as the Ration Card issued to



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"Munshi Ram" was numbered "925" (Exhibit 77) and not "864" (Document 'X'). The name of "Binod, son of Munshi Ram", at Sl. No.6 was found to have been erased from Document 'X' and the name of "Ramayan Singh" inserted. It further came to light that Tara Chand (A5) had certified the application of A2 as the son of Munshi, Caste Meena and resident of Village Karomev, Tehsil Nadbai. The name of Munshi was erased from the Caste Certificate, Exhibit 81 and the name of Rameshwar Dayal inserted which was submitted by A2 along with his application before the RRI (Ay) Gangtok seeking appointment. The Prosecution case is that A1 by abusing his official position and in conspiracy with three candidates, being A2, A3 and A4 and others got them appointed in various posts in the RRI (Ay), Gangtok fraudulently and dishonestly thereby depriving the genuine local candidates of employment. That, the three candidates had furnished false information to prove their eligibility and establish themselves as local residents of Sikkim. Hence, Charge-sheet was submitted against all the Accused Persons under Sections 120B read with 420, 468, 471 of the IPC read with Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988.

10. After hearing Learned Special Public Prosecutor for the CBI and the Learned Defence Counsel, the Learned Trial Court framed Charge against A2 under Sections 420, 471, 120B of the IPC. The Prosecution furnished and examined 33 (thirty-three) witnesses. Thereafter, A2 was examined under Section 313 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C.") and his



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individual responses recorded, whereupon A2 sought to and examined himself and one Lekhraj as witnesses. Arguments were heard and concluded and the impugned Judgment and Order on Sentence were pronounced.

11. The opposing arguments of Learned Counsel for the parties were heard at length and given due consideration. Careful examination has been made of the evidence and documents on record and the citations made at the Bar as also the impugned Judgment and Order on Sentence.

12. The question that falls for consideration before this Court is, Whether the Learned Trial Court correctly convicted the Appellant under Section 471 of the IPC or did A2 deserve an acquittal. To determine this, we may now consider the evidence of the relevant witnesses and documents on record.

13. Before delving into the documents and the evidence, it would indeed be essential to extract Section 471 of the IPC. The said Section reads as follows;

"471. 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."

Hence, using of a forged document with knowledge that it was forged or with reason to believe that it was forged entails the same penalty as if he had forged the document. Walking back to the



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provisions of Section 463 of the IPC this Section defines forgery and reads as follows;

"463. 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."

To establish an offence under Section 471 the requisites would be, (a) fraudulent or dishonest use of a document as genuine and (b) the person using it must have knowledge or reason to believe that the document is a forged one. On the anvil of the above principles, it would now be essential to gauge whether A2 committed the offence.

14. The evidence of P.W.10, a retired Tehsildar, who was posted as Tehsildar, Nadbai, sheds light on the various modes of applying for a Scheduled Caste/Scheduled Tribe Certificate which is not disputed. The witness identified Exhibit 75 as the Caste Certificate maintained in the Office records and stated in rather uncertain terms as follows;

"..... I also find a signature of a person signing as Ramayan Singh who received the Certificate."

Although he identified Exhibit 76 as the original application for issuance of the Caste Certificate he admitted to lack of personal knowledge as to who made the application or who signed on Exhibit 75 when receiving the original or whether A2 infact appeared in person to receive Exhibit 81. That, A5 Patwari at the relevant time had reported that the applicant A2 was the son of "Munshi of



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Karomev, Nadbai”, but the application is devoid of a date. When the witness was confronted with Exhibit 78 the Dispatch Register of Caste Certificates issued from his Office, he admitted that at Page No.87, under Sl. No.1090, dated 30-08-2000, an entry has been made showing “Ramayan Singh S/o Rameshwar Dayal Meena Karomev” who has been issued a Scheduled Tribe Certificate from the Office of the Tehsildar, Nadbai under the signature of Om Prakash, Deputy Tehsildar, P.W.14. That, at the relevant time, one Amar Chand was the concerned Clerk dealing with issuance of such Certificates and that records pertaining to the Scheduled Caste and Scheduled Tribe Certificates issued by the Office of the Tehsildar at Nadbai were kept in the custody of the said Amar Chand. The witness also stated that the handwritings appearing in Sl. No.1090 at Exhibit 78 is of Amar Chand. It also transpires that issuance of Exhibit 75 was on the basis of the report of the Patwari on Exhibit 76. He also claimed that along with Exhibit 75 the Document ‘X’, viz; Ration Card bearing No.864 in the name of “Munshi Ram” was submitted. Pausing here for a moment, Prosecution by this statement seeks to garner strength for their allegation that the Ration Card itself bore a false entry showing insertion of the name of A2, as son of “Munshi Ram” at Sl. No.6, by allegedly removing the name of one of Munshi Ram’s sons already there. Firstly, no such proof of submission of the Document ‘X’ with Exhibit 75 is on record, besides the document is in photocopy sans reasons for non-production of the original and hence, is outside the purview of the consideration of this Court. The witness also identified Exhibit 77 as



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the Ration Card of Munshi bearing No.925, but this is of no assistance to the Prosecution case as nothing therein has been tampered with. The witness voluntarily disclosed that Sl. No.1090 in Exhibit 78 is a false entry and that false entries are made in his Office with the connivance of certain staff, but this was unsubstantiated. Nothing cogent could be established against A2 from his evidence, besides it was confirmed by the witness as follows;

"The handwritings appearing in Serial No.1090 of Exbt. 78 belongs to the concerned clerk, Amarchand".

15. P.W.11, a retired Land Records Officer in the Office of the Tehsildar, Nadbai Tehsil, District Bharatpur, on being shown Exhibit 79, identified it as the Spot Verification Report prepared by him along with one Ramcharan Gupta, Patwari of Karomev Village on 01-04-2010. Ramcharan Gupta was not a Prosecution witness. The evidence of P.W.11 on careful consideration is of no avail to the Prosecution case as Exhibit 79 identified by him as a Spot Verification Report prepared by him and Ramcharan Gupta and certified by P.W.10 is a document in photocopy. No explanation is furnished for filing of the photocopy and the fate of the original is unknown. The Learned Trial Court therefore ought not to have admitted the document as evidence being in contravention to the provisions of the Indian Evidence Act, 1872 (for short "Evidence Act"), consequently irrelevant for the present purpose. Although the witness identified Exhibit 80 as a letter dated 05-04-2010 addressed to the Superintendent of Police, CBI, Jaipur, from the Tehsildar P.W.10, the contents thereof remained unproved on the objection of



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Learned Counsel for A2 before the Learned Trial Court the document allegedly having been prepared by P.W.10 who was already examined, but not shown the document by the Prosecution despite having it in their possession. The evidence of P.W.11 bolsters the evidence of P.W.10 that Exhibit 81, Caste Certificate, in the name of Ramayan Singh, son of "Rameshwar Dayal" had been issued from the Office of the Tehsildar Nadbai under the signature of the then Naib Tehsildar, Om Prakash Yadav, P.W.14 and admitted that in Rajasthan 'Meena' is a Scheduled Tribe. Exhibit 80 the letter sent to the CBI (based on Exhibit 79) indicates that Rameshwar Dayal did not live in Karomev village in the year 2010, but no such verification appears to have been made for the year 2000 when Exhibit 81 was issued. The witness also admitted that Sl. No.1090 in Exhibit 78 bears no entry of "Ramayan Singh, son of Munshi" and details reflected in Exhibit 75 have not been entered in Exhibit 78.

16. P.W.14 had worked as a Naib Tehsildar in the same Tehsil Office where his job included issuance of Caste Certificate. The witness while corroborating the evidence of P.W.10 pertaining to procedure for preparation of Scheduled Caste/Tribe Certificate, proceeded to state that in Exhibit 81, the name 'Munshi' had been deleted and words "Rameshwar Dayal" incorporated in the vacant space, but admitted that at Sl. No.1090 of Exhibit 78 the name "Ramayan Singh, son of Rameshwar Dayal Meena" Karomev, was written. Alike P.W.10 he stated that the dealing Clerk at the relevant time was Amar Chand who could throw light on Exhibit 75 and Exhibit 81, which were in Amar Chand's handwriting as also on



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Exhibit 78 maintained by him. Although his evidence indicated that the dealing Clerk appeared to have obtained the signature of the recipient on Exhibit 75 itself, but this was followed by the admission that he did not see the applicant affixing his signature on Exhibit 75. That, in Exhibit 76 there was no endorsement made by him under his signature approving the issuance of Caste Certificate in favour of the applicant, Ramayan Singh "son of Munshi". Under cross-examination, it was conceded that Caste Certificate was issued to Ramayan Singh, "son of Rameshwar Dayal Meena", Caste 'Meena' from their Office, bearing Sl. No.1090, vide Exhibit 78. While dissecting the evidence of this witness although he testified that the name 'Munshi' had been deleted and the name "Rameshwar Dayal" incorporated subsequently, this was not buttressed by any evidence. As we shall discuss later the Handwriting Expert also drew a blank on this aspect. Thus, he is unable to illuminate this Court as to who was responsible for the alleged insertion in Exhibit 81, of the name "Rameshwar Dayal" where previously "Munshi" allegedly existed.

17. P.W.17 would depose that a CBI Officer in the year 2010 seized from his possession one Ration Card No.925 of Munshi Ram, Exhibit 77. To establish insertion of A2's name in the Ration Card reliance was placed on Document 'X' which as already discussed brooks no consideration. P.W.18 of the Prosecution was Munshi Ram, whose evidence lends no succour to the Prosecution case.

18. P.W.31 an Upper Division Clerk in the Tehsil Office admitted that when he was posted in the Office from March 2009 to



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February 2011 one Amar Chand was the LDC at the said Office. His evidence substantiates the evidence of P.W.10 and P.W.14 to the effect that Amar Chand was the dealing Clerk. The witness identified the handwriting appearing on Exhibit 76, marked Exhibit 76(c) as that of A5 Tara Chand, the Patwari of the Tehsil at the relevant time and Exhibit 75 as the office copy of the Caste Certificate issued from the Office of Tehsildar in the name of "Ramayan Singh, son of Munshi of Village Karomev". The witness conceded that Exhibit 78 maintained in their Office, at Page No.87, Sl. No.1090, indicated that the Caste Certificate had been issued to "Ramayan Singh, son of Rameshwar Dayal Meena" of Karomev and the Register had been taken by him from his Office and handed over to the Tehsildar.

19. As the conspectus of the Prosecution case revolves around the alleged insertion made in Exhibit 81, viz., the name "Rameshwar Dayal" and whether Exhibit 75 is the Office copy of Exhibit 81 and who made the entries in Exhibit 78, the Dispatch Register, it becomes imperative to closely examine the evidence of P.W.29, the Handwriting Expert. Exhibit 107 is his opinion pertaining to the different specimen handwritings and questioned documents forwarded to him for analysis and opinion. We may straightaway go to Exhibit 106 (S32 to S37) which are the signatures of A2 in English. Similarly, Exhibit 37 and Exhibit 38 bear the signatures marked "Q7 and Q8" by the P.W., purportedly the English signatures of A2. Forwarding of these signatures for analysis was obviously bereft of logic and assistance to the Prosecution case as the questioned/contested entries are all made in



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Hindi/Devanagari script. The witness has admitted that the specimen handwritings and signatures of A2 in Hindi were not supplied to him by the Investigating Agency. His further admission is that he cannot say whether document Exhibit 81 was actually blank or with the erasures or whether the words had been filled at a later time. He would further go on to state that there are marks of erasures at Q23 in Exhibit 81, in the space for "father's name" and prior to the word "Rameshwar Dayal" in Hindi. That, remnants of the erased writings are visible, but not completely decipherable. What emanates is lack of assistance to the Prosecution case by the evidence of this witness. P.W.31, the LDC who took charge from Amar Chand would depose that the Caste Certificate vide Exhibit 78 was issued to "Ramayan Singh son of Rameshwar Dayal Meena" and Exhibit 78 was taken out from his Office and handed over to the Tehsildar.

20. The Investigating Officer (I.O.) of the case P.W.32, Deepak Gaur admitted that he had recorded the statement of Amar Chand and had also obtained his specimen handwritings and signatures. Correlated to this is his admission that he did not refer the document marked Exhibit 75 to an Expert to determine whether the seal appearing therein marked Exhibit 75(d) or the signatures appearing therein were genuine.

21. What manifests from the evidence of the witnesses extracted hereinabove is that, in the first instance, Exhibit 81 which is the Scheduled Tribe Certificate in the name of A2, "Ramayan Singh, son of Rameshwar Dayal", was issued vide Exhibit 78, the

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Dispatch Register, which at Sl. No.1090 clearly reveals the name of "Ramayan Singh, son of Rameshwar Dayal". Exhibit 75 is a Caste Certificate in the name of "Ramayan Singh son of Munshi" purporting to be the Office copy of Exhibit 81, allegedly received by A2 after acknowledging receipt on Exhibit 75 by signing on it. Both Exhibits were admittedly issued by the Tehsildar, Nadbai and Exhibit 75 remained in the Office records. The evidence of P.Ws 10, 11, 14 and 31 clarifies that Exhibit 81 was issued from the Tehsil Office at Nadbai. The Prosecution case rages around the contention that Exhibit 81 is a forged document utilized by A2 to obtain employment at RRI (Ay) Gangtok. Although the Prosecution case is that Exhibit 76 was the application submitted by A2 in the printed proforma of the concerned Tehsil, addressed to the Tehsildar recording his father's name as "Munshi", no proof of this allegation exists. Exhibit 81 has been issued on 30-08-2000, but Exhibit 76 has not been dated by the applicant, it is only the concerned Officer who has endorsed a date below his signature. The signature alleged to be of A2 is unidentified and it is not proved that A2 is the applicant. Even assuming that Exhibit 81 was the offshoot of Exhibit 76, it has not been established by the Prosecution that the insertion of the name "Rameshwar Dayal" was infact made by A2 or that he had knowledge of such insertion or whether Exhibit 76 pertained at all to Exhibit 81. In other words, there could have been two persons by the name of "Ramayan Singh", of which one could have been the son of "Munshi" and the other the son of "Rameshwar Dayal". It is the constant refrain of the Prosecution that Exhibit 75 is the office



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copy of the Scheduled Tribe Certificate issued to A2 and is, therefore, the correct version of the document issued. If this be so, then one cannot help but be perplexed at the entry in the Dispatch Register Exhibit 78 which shows issuance of Certificate to "Ramayan Singh, son of Rameshwar Dayal" and not "Ramayan Singh, son of Munshi". The evidence on record has also clearly established that the Dispatch Register, Exhibit 78 remains in the custody of the Office and more specifically with the dealing Clerk, one Amar Chand and the general public have no access to it. The entries in Exhibit 78 are said to have been made by Amar Chand. It is not the claim of any of the witnesses that the entry in Exhibit 78 was made by A2. A2 had no access to Exhibit 78 as per evidence on record. The I.O. has admitted that he examined Amar Chand recorded his statements and obtained his handwriting and signatures, but Amar Chand although listed as a Prosecution witness was not produced before the Learned Trial Court to establish the Prosecution case. Amar Chand appears to be a pivotal witness, therefore, on his non-production suspicion rears its head and enables this Court to draw an adverse inference under Section 114, *Illustration* (g) of the Evidence Act. It is also questionable as to why Ramcharan who accompanied P.W.11 was not produced as a witness although listed as a Prosecution witness.

22. Another factor that also baffles the mind is as to why the I.O., P.W.32 would collect the signatures of A2 in English, being Exhibit 106 and not in the Devanagari Script/Hindi, when, the questioned entries have been made in Hindi. The evidence of the



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other I.O., P.W.33, R. K. Bhattacharjee is also laden with contradictions, in his evidence-in-chief he claims to have collected the specimen handwriting and signatures of the accused persons and witnesses and forwarded it to CFSL Kolkata through his Branch Head and received the opinion. Contrarily, under cross-examination he admits that he had obtained the specimen signatures and handwritings of A2 in English, but did not send the same to GEQD for their opinion as he did not find it relevant. That, he did not send the specimen handwritings and signatures of A2 obtained in Hindi to GEQD for comparison with handwritings and signatures appearing in Exhibit 76. The vacillating evidence of this I.O. would lead to the inevitable inference of his unreliability as a witness. He would testify that the handwritings appearing in Exhibit 76 and Exhibit 81 could not be ascertained by him. He went on to admit that there is nothing on record to show that Exhibit 81 was tampered by A2 and further stated that Sl. No.1090 was "inserted" between Sl. No.1089 and 1091 in Exhibit 78. At best this is an incongruous statement as nothing could be more obvious than the fact that the number '1090' would logically follow the number '1089'. Assuming that the Handwriting Expert had stated that the name 'Munshi' was written earlier and erased and the name "Rameshwar Dayal" inserted, which I hasten to add he has not, would it have solved the Prosecution case to establish cogently that it was A2 who was responsible or that it was done at his behest? In my considered opinion, this has to be answered in the negative as no proof whatsoever exists to foist the responsibility on A2 of having inserted the name



"Rameshwar Dayal" or having instigated someone else to do it for him nor can any inference be gathered from the evidence that he had knowledge that the document was a forged one.

23. The cavernous gap in the Prosecution case, which stares one in the face, is the lack of investigation on "Rameshwar Dayal" whose existence is shrouded in mystery apart from the statement of A2 that "Rameshwar Dayal" is his father as recorded when he was examined under Section 313 of the Cr.P.C. and in the documents relied on by him during his evidence being Exhibits AZ 9 and AZ 10. Then the next question that emerges is whose son is A2? It is an admitted fact that no effort was made to check any records or make inquiries as to whether any "Rameshwar Dayal" lived in the area in the year 2000. At the same time, it is not denied that A2 indeed belongs to the Caste 'Meena' a Scheduled Tribe as validated by the evidence of the Prosecution witness. If that be so, then what would necessitate the forging of a Scheduled Tribe Certificate showing the name of a third person 'Munshi' as his father is indeed mind boggling. When the Prosecution has not been able to establish through any clinching, consistent and cogent evidence that the document Exhibit 81 was a forged document, the question of A2 using Exhibit 81 as genuine does not arise. Added to this is the admission of the I.O., P.W.32, that he did not look for the original of Exhibit 81. Thus, it is not disproved that A2 is the son of Rameshwar Dayal.



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24. It was next contended that Exhibit 74 vide which seizures of Exhibits 75, 76 and 78 was made were not in terms of the Central Bureau of Investigation (Crime) Manual – 2005 and the I.O., P.W.32 had admitted that there was no witness to Exhibit 74. Perusal of Exhibit 74 would indicate that there was indeed a witness to the seizure, i.e., P.W.10. If we revert to the evidence of P.W.10, he had identified Exhibit 74(a) and Exhibit 74(b) as his signatures on Exhibit 74. He further went on to state that the CBI Officer had prepared the Receipt Memo at the time of seizure of Exhibits 75, 76 and 78. His evidence withstood the cross-examination. However, it has to be reflected here that Central Bureau of Investigation (Crime) Manual – 2005, reveals at Chapter 13, Clause 13.6 that it is mandatory, as per the provision of Section 100(4) of the Cr.P.C., for an Officer making a search, to obtain two or more independent and respectable inhabitants of the locality in which the place to be searched is situated or of any other locality if such inhabitant of the locality is available or is willing to be a witness to the search. That, non-compliance of the order amounts to an offence under Section 187 of the IPC provided under Section 11(b) of the Cr.P.C. The second seizure was made by the I.O., P.W.33, vide seizure Memo Exhibit 92 whereby Exhibit 81 was seized. A perusal of Exhibit 92 would indicate that two witnesses were present during the seizure, i.e., P.W.26 and one N. T. Bhutia, who was numbered as Prosecution Witness 42 in the Charge-Sheet, but who was not produced before the Learned Trial Court for his evidence. From the evidence, it cannot be said that the seizures were in compliance to



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the CBI (Crime) Manual thereby placing it outside the ambit of consideration, the seizures themselves being doubtful.

25. So far as the allegation that A2 had intentionally suppressed the fact of his original address as Rajasthan/New Delhi and knowingly furnished a false local address to establish himself as a local resident, finds no support. In this context, if we peruse Exhibit 3, the advertisement, issued by the RRI (Ay), Gangtok, it is clear that in the proforma for application, the requirements at Sl. No.8 are for Permanent and Correspondence address. A2 has submitted his correspondence address. It was for the Scrutiny Committee to have rejected his application, if requirements were incomplete, in this regard, A2 cannot be held at ransom.

26. The Learned Trial Court at Paragraphs 76 to 79 of the Judgment had discussed the evidence with regard to Exhibits 75, 76, 78 and 81 and concluded at Paragraph 80 as follows;

"80. At this juncture, it would be profitable to compare the Scheduled Tribe Certificate (Exhibit-81) with its Office copy (Exhibit-75). All the entries mentioned in both the certificates are identical except in the certificate (Exhibit-81), the name of the father "Munshi" has been erased or scratched and the name "Rameshwar Dayal" inserted. If one compares both the certificates properly, even to an untrained eye, the erasure on the portion meant for the father's name is visible. This has also been confirmed by the handwriting expert, B.P Mishra (PW-29). Hence, it is palpable that after the said certificate was received by accused No.2, the father's name "Munshi" was erased and "Rameshwar Dayal" inserted."

27. In my considered opinion, firstly the Learned Trial Court has not stated that the entry was made by A2 or at his behest, the Learned Trial Court has also failed to discuss as to why the entry at



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Sl. No.1090 on Exhibit 78 reveals the name of "Ramayan Singh" son of Rameshwar Dayal Meena" and not the name of "Ramayan Singh, son of Munshi". Apart from which, it cannot but be noticed that the Learned Trial Court has also taken into consideration the contents of Document 'X', a photocopy of Ration Card of Munshi bearing No.864 which is clearly inadmissible in evidence as also Exhibit 79, a document in photocopy. Further, the Learned Trial Court failed to consider that the custodian of the documents Exhibits 75, 76 and 78, Amar Chand, was never examined by the Prosecution. At Paragraph 83, the Learned Trial Court also observed, *inter alia*, as follows;

"83. The fact that the said certificate (Exhibit-81) was seized by the I.O in the Office of CBI at Kolkata has also been admitted. Under such circumstances, it becomes imperative on the part of accused No.2 to explain how his father's name was changed from "Munshi" to "Rameshwar Dayal" in the Scheduled Tribe Certificate (Exhibit-81)."

28. I have to disagree on this count as it is the cardinal principle of Criminal Jurisprudence that the Prosecution will have to establish its case against the accused beyond a reasonable doubt. In the instant matter, merely because Exhibit 81 was seized by the I.O. from A2 it is unfathomable as to why the Learned Trial Court is of the opinion that it becomes 'imperative' on the part of A2 to explain the change in his father's name from 'Munshi' to "Rameshwar Dayal". In this context, I once again revert to the insertion at Sl. No.1090 in Exhibit 78, unless this is explained by the Prosecution, the question of Exhibit 81 being a forged document remains unfortified and unproved.



29. Germane herein would be the provisions of Section 106 of the Evidence Act, which reads as follows;

"106. Burden of proving fact especially within knowledge.—When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

Illustrations

(a) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.

(b) A is charged with travelling on a railway without a ticket. The burden of proving that he had a ticket is on him."

This Section cannot be invoked to fill up the lacunae in the Prosecution case or the inability of the Prosecution to produce evidence pointing to the guilt of the accused. In ***Shambhu Nath Mehra vs. The State of Ajmer***⁴, Vivian Bose, J., while considering a case against the Appellant under Section 420 of the IPC and Section 5(2) of the Prevention of Corruption Act, 1947, observed that Section 106 of the Evidence Act is designed to meet exceptional cases in which it would be high impossible for the Prosecution to establish certain facts which are particularly in the knowledge of the accused. In Paragraph 11, it was observed as follows;

"(11) This lays down the general rule that in a criminal case the burden of proof is on the prosecution and S.106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult, for the prosecution to establish facts which are "especially" within the knowledge of the accused and which he could prove without difficulty or inconvenience.

The word "especially" stresses that. It means facts that are pre-eminently or exceptionally within his knowledge. If the section were to be interpreted otherwise, it would lead to the very startling conclusion

⁴ AIR 1956 SC 404



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that in a murder case the burden lies on the accused to prove that he did not commit the murder because who could know better than he whether he did or did not.

.....”

30. On pain of repetition, it may be stated that the entry in Exhibit 78 and Exhibit 81 are the same and it was for the Prosecution to have established that ‘Munshi’ allegedly scored out in Exhibit 81 correlated to the entry in Exhibit 78, but this is not so as the evidence and documents on record have revealed.

31. In view of the gamut of discussions, it cannot but be concluded that the Prosecution has failed to bring home the Charge of Section 471 of the IPC against A2 of which he is accordingly acquitted.

32. Consequently, the Appeal is allowed.

33. The impugned Judgment and Order on Sentence of the Learned Trial Court is set aside.

34. The Appellant is discharged from his bail bonds.

35. Copy of this Judgment be transmitted to the Learned Trial Court for information along with records of the Learned Trial Court.

Sd/-
(**Meenakshi Madan Rai**)
Judge
15-03-2018

Approved for reporting : **Yes**

Internet : **Yes**