

Madhya Pradesh High Court

Amit Chandrawanshi vs The State Of Madhya Pradesh on 12 September, 2019

Author: Rajendra Kumar Srivastava

THE HIGH COURT OF MADHYA PRADESH

PRINCIPAL SEAT AT JABALPUR

Hon'ble Shri Justice Rajendra Kumar Srivastava

Cr.R. No. 1025/2018

Amit Chandrawanshi

Vs

State of M.P.

Mr. Manish Datt-Senior Advocate with Shri Nishant Datt-
Advocate for the petitioner.

Ms. Anjana Kuraria, Govt. Advocate for the respondent-State.

ORDER

(12/09/2019) This revision petition under Section 397/401 of Cr.P.C. has been preferred by the petitioner being aggrieved by the order dated 10.01.2018 passed in S.T. No. 608/17 passed by 10 th ASJ, Bhopal whereby the learned ASJ has framed the charges against the petitioner for offence punishable under Sections 420/511, 467, 468, 471(Part-II) of IPC.

2. According to case, complainant-Janardan Singh, Project Engineer, M.P. Police Housing Corporation Ltd. Division-Sagar has filed written complaint against the petitioner alleging that under 'Mukhyamantri Police Awas Yojna', there is scheme for constructing 25000 houses for police officials for which tender was invited. For getting tender, there is some condition and qualification is required for tenderer. Petitioner-tenderer has filed some documents with regard to desired qualification, which were found to be forged on Cr.R. No. 1025/18 verification. It is mentioned in the document that the petitioner did the work of installing fire extinguisher in M/s. Unicorp Solution Pvt. Limited whereas it is informed by the company that the certificate of experience had not been issued by them. Thus, it appears that to get tender, petitioner has committed forgery and manipulation for preparing document, thus, FIR has been registered against him and charge-sheet has also been filed.

3. Learned senior counsel for the petitioner submits that the order of framing charges passed by the learned trial court is illegal and contrary to law. He further submits that the documents are said to be submitted online but there is no evidence on record that the same has been submitted by the petitioner. The prosecution neither filed the original document with the charge-sheet nor does it contain certificate under Section 65-B of Evidence Act. The Handwriting Expert has also indicated nowhere that the said document bears the signature of the petitioner. Further, the envelop of experience certificate was never opened by the authority and only on technical ground, the bid of the

petitioner's company was rejected. Thus, the order passed by the trial judge is not sustainable. He further submits that ingredients to make the offence of cheating and forgery are completely missing in the case. The applicant was never involved in the said offence. It is based on the principle of law that while framing of charges, the court is required to evaluate the materials and documents on record with a view to find out whether facts emerging therefrom taken on their face value disclose the existence of all the ingredients constituting the alleged offence or not. But learned trial court did not evaluate the Cr.R. No. 1025/18 material in proper way and has wrongly been framed the charges against the petitioner. With the aforesaid submissions, he prays for allowing this petition.

4. On the other hand, learned G.A. for the respondent-State opposes the prayer and submits that there is sufficient material available on the record to constitute the above said offences against the petitioner. The defence of petitioner cannot be looked into at this stage in revision petition and petitioner has remedy to put up the same before trial court at the appropriate stage of trial. The trial court did not make any error in framing charges against the petitioner, as prima facie it appears that the petitioner committed the alleged offences.

5. Heard both the parties and perused the case diary.

6. On perusal of case diary, it appears that petitioner is facing a trial for the offence punishable under Sections 420/511, 467, 468 and 471(Part-II) of IPC and the allegation against the petitioner is that to get tender, he has submitted forged experience certificate of one Unicorp Solution Pvt. Ltd. He has committed the offence for attempting cheating with the department of State. Before embarking on the facts of the case, it would be appropriate to first read the relevant provisions of IPC, same are quoted as under:-

"420. 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.

467. Forgery of valuable security, will, etc.--

Whoever forges a document which purports to be a valuable security or a will, or an authority to adopt a son, or which purports to give authority to any person to make or transfer any valuable security, or to receive the principal, interest or dividends thereon, or to receive or deliver any money, movable property, or valuable security, or any document purporting to be an acquittance or receipt acknowledging the payment of money, or an acquittance or receipt for the delivery of any movable property or valuable security, shall be punished with [imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

468. 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.

471. Using as genuine a forged 1[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 1[document or electronic record]."

511. Punishment for attempting to commit offences punishable with imprisonment for life or other imprisonment.--Whoever attempts to commit an offence punishable by this Code with [imprisonment for life] or imprisonment, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall, where no express provision is made by this Code for the punishment of such attempt, be punished with [imprisonment of any description provided for the offence, for a term which may extend to one-half of the imprisonment for life or, as the case may be, one-half of the longest term of imprisonment provided for that offence], or with such fine as is provided for the offence, or with both."

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7. After careful reading of aforesaid provision, I revert back to the facts of the case to decide the same.

8. According to prosecution, to construct 5000 houses for police officials, a tender has been issued by the police housing corporation department and the mandatory conditions to take the tender was that the tenderer should be experienced to install lift and fire extinguisher. The petitioner is director of M/s. Ashva Realinfra Pvt. Ltd. and he has applied for getting tender and to fulfill the condition, as specified by the department, he has made forged document of desired experience certificate of one Unicorp Solution Pvt. Ltd., as at the time of scrutiny, the document was found to be forged by the authority, thus, the offence of cheating was not executed, hence, the case is registered under Section 420/511 of IPC.

9. Under the IPC, the definition of forgery is provided under Section 463 and according to it 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 any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery whereas Section 467 prescribe the punishment for making forgery of valuable security, bill, etc. In the case, the allegation against the present petitioner is for making forged in experience certificate of one Unicorp Solution Pvt. Ltd. and in this regard the company has given information in letterhead that they have never awarded any work of lift and firefighting system to Cr.R. No. 1025/18 petitioner. Thus, it prima facie shows that the document which has been produced by the petitioner is forged and manipulated, but

there is no specific information in the case diary that the victim-company (Unicorp Solution Pvt. Ltd.) has filed any complaint in this regard or not. Apart from that a report of handwriting expert has also been received and according to it the handwriting marked in the forged document is different from the handwriting of petitioner. The prosecution has not inquired as to whether who has prepared the forged document and in this regard no instrument or any other thing has been seized by the prosecution. It also shows from the case diary, the petitioner is sole accused of the case, therefore, in such circumstances particularly when the handwriting expert report is in the favour of petitioner/accused, it becomes clear that the petitioner has not created the alleged documents. Section 464 IPC provides about making a false document and to understand the scope of Section 464 IPC, it would be necessary to read the same, provision is also quoted as under:-

"464 Making a false document. -- A person is said to make a false document or false electronic record-- First --Who dishonestly or fraudulently--

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

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

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

(d) makes any mark denoting the execution of a document or the authenticity of the electronic signature, with the intention of causing it to be believed that such document or part of document, electronic record or electronic signature was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or Cr.R. No. 1025/18 Secondly --Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with electronic signature either by himself or by any other person, whether such person be living or dead at the time of such alteration; or Thirdly --Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his electronic signature on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or electronic record or the nature of the alteration."

10. In the case of Sheila Sebastian Vs. R. Jawaharaj and another Etc. reported in 2008(2) Crimes 449 (SC), the Hon'ble Apex court held that the offence of forgery can not lie against a person who has not created or sign the document. Relevant para is also quoted as under:-

"19. A close scrutiny of the aforesaid provisions makes it clear that, Section 463 defines the offence of forgery, while Section 464 substantiates the same by providing an answer as to when a false document could be said to have been made for the purpose of committing an offence of forgery under Section 463, IPC. Therefore, we

can safely deduce that Section 464 defines one of the ingredients of forgery i.e., making of a false document. Further, Section 465 provides punishment for the commission of the offence of forgery. In order to sustain a conviction under Section 465, first it has to be proved that forgery was committed under Section 463, implying that ingredients under Section 464 should also be satisfied. Therefore unless and until ingredients under Section 463 are satisfied a person cannot be convicted under Section 465 by solely relying on the ingredients of Section 464, as the offence of forgery would remain incomplete.

20. The key to unfold the present dispute lies in understanding Explanation 2 as given in Section 464 of IPC. As Collin J., puts it precisely in *Dickins v. Gill*, (1896) 2 QB 310, a case dealing with the possession and making of fictitious stamp wherein he stated that "to make", in itself involves conscious act on the part of the maker. Therefore, an offence of forgery cannot lie against a person who has not created it or signed it.

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11. On careful reading of above quoted provision and pronouncement of Hon'ble Apex Court it is manifest that a charge of forgery can not be imposed on a person who is not the maker of the same. To convict the accused for the offence of the forgery it is imperative that a false document is made and the accused person is the maker of the same, otherwise, an accused person is not liable for the offence of forgery. The definition of false document is a part of the definition of forgery and both must be read together. Since, the prosecution has not inquired about the origination of forged document, and report of handwriting expert indicate that the forged document has not been created by the petitioner accused, therefore, offence under Section 467 of IPC is not made out against the petitioner/accused.

12. So far as Section 468 IPC is concerned, it provides the punishment for forgery for purpose of cheating. Since, it is found that the petitioner has not created the alleged document, therefore, offence under Section 468 of IPC is also not made out against the petitioner. Now, to the context of offence under Section 420/511 of IPC, this Court finds that according to prosecution, the petitioner has made alleged forged document of experience certificate belongs to Unicorp Solution Pvt. Ltd. to get the tender of police housing corporation department wherein the condition of experience in installing lift and firefighting system is mandatory. Though, it is found that the petitioner has not created the alleged document, but prima facie shows that the documents submitted by the petitioner are said to be forged and it can not be said that he was not aware with the fact of Cr.R. No. 1025/18 forgery. Since, the act of the petitioner could not be completed to commit the offence of cheating, therefore, same would fall under the purview of offence 420/511 IPC, as the petitioner has attempted to commit cheating with the department.

13. Further, as alleged, the petitioner has committed alleged forge of experience certificate of one Unicorp Solution Pvt. Ltd. To fulfill the condition of experience in installing lift and firefighting system and produced the same in tender proceedings as a genuine experience certificate to get the

tender of police housing corporation department, though there is no material which shows that the petitioner created the forged experience certificate, but merely on this basis, at this stage, it can not be said that the petitioner was not aware to the fact that the document (experience certificate) which was produced by him is forged, thus, the prima facie ingredients of Section 471 of IPC is found to be satisfied.

14. The learned counsel for the petitioner took the ground with regard to Section 65-b of Evidence Act and submits that the tender proceeding was online and the prosecution did not produce certificate under Section 65-B of Evidence Act. On perusal of case diary, it appears that under invitation notice, it is mentioned that tenderer shall purchase tender online by paying the money through some mentioned electronic mode but the tender process shall be based on three envelop scheme in which first is for security deposit, Second is for technical bid and third one is for prize bid. It is directed that the envelopes be deposited in Project Engineer Office. It is also mentioned in the Invitation Notice that the tenderer, who has Cr.R. No. 1025/18 experience of installation of lift and firefighting system would participate in the tender proceeding. Further under the column of mandatory conditions at serial No.1, it is mentioned that the tenderer has to submit the certified copy of completed work but after being certified by the office not below the rank of Executive Engineer. The documents were to be submitted through online and technical bid be examined through the same. The condition is reproduced as under:-

1- fufonkdkjksa }kjk iw.kZ fd;s x;s dk;ksZa dks lacaf/kr dk;Zikyu ;a=h Lrj ds vf/kdkjh ls lR;kfir dj izek.k i= vkWuykbZu izLrqr djuk vfuok;Z gS A vkWuykbZu izLrqr nLrkost gh ekU; gkasxs A vkWuykbZu izLrqr nLrkostksa ds vk/kkj ij gh rdudh fcm dk ijh{k.k fd;k tk;sxk A

15. Thus, it appears that the procedure to submit documents like experience certificate is online and same would be admissible in evidence once the certificate is obtained under Section 65-B of Indian Evidence Act but in the recent pronouncement of Hon'ble Apex Court in the case of Shafhi Mohd. Vs. State of Himachal Pradesh, (2018)2 SCC 801, the court has held that the requirement of certificate under Section 65-B(4) is procedural and can be relaxed by the court wherever interest of justice so justifies, the requirement of certificate under Section 65-B(4) is not always mandatory. In para 30 the court has held as under:-

"Accordingly, we clarify the legal position on the subject on the admissibility of the electronic evidence, especially by a party who is not in possession of device from which the document is produced. Such party cannot be required to produce certificate under Section 65-B (4) of the Evidence Act. The applicability of requirement of certificate being procedural can be relaxed by the court wherever interest of justice so justifies." (underlining added) Cr.R. No. 1025/18

16. Thus, in view of the principle laid down by the Hon'ble Apex Court, at this stage it cannot be said that such procedural fault of prosecution would be completely fatal to its case. It is well-settled principle of law that while framing charges court should see the documents annexed with the charge-sheet. Deep merits of the case cannot be considered at the stage of framing of charges. It is

true that not obtaining the certificate under Section 65-B can affect the trial adversely against the prosecution but same can be taken into consideration during trial and not this stage.

17. Apart from that, another aspect of the case is that the envelope of technical bid had to be submitted in office of Project Engineer and on perusal of case diary, it appears that the alleged certificate has been submitted before the authority under Technical Bid documents, thus, prima facie it is seen that the petitioner has submitted the same in the office of Project Engineer. This fact may also be examined in trial only.

18. Therefore, in view of the principle laid down by the Hon'ble Apex Court in the case of Shafhi Mohd. (supra) and after considering the material available on record, I am of the view that no prima facie sufficient materials are available on record to frame the charges under Section 467 and 468 of IPC against the petitioner. So far as charges under Section 420/511 and 471 of IPC is concerned, I found no error in the impugned order.

19. Accordingly, this petition is partly allowed and petitioner is discharged from the offence punishable under Section Cr.R. No. 1025/18 467 and 468 of IPC. He shall be prosecuted continue for the charges punishable under Section 420/511 and 471 of IPC.

20. C.C. as per rules.

(Rajendra Kumar Srivastava) Judge L.R.

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