State Of U.P vs Ranjit Singh on 19 February, 1999

Equivalent citations: AIR 1999 SUPREME COURT 1201, 1999 (2) SCC 617, 1999 AIR SCW 863, 1999 ALL. L. J. 970, (1999) 1 JT 626 (SC), 1999 CRILR(SC&MP) 153, 1999 CRILR(SC MAH GUJ) 153, 1999 (1) LRI 499, 1999 CRIAPPR(SC) 143, 1999 (2) ADSC 49, 1999 CALCRILR 436, 1999 (3) SRJ 434, 1999 (1) UJ (SC) 473, 1999 (1) JT 626, (1999) 24 ALLCRIR 571, (1999) 2 RECCRIR 40, (1999) 16 OCR 525, (1999) 2 SUPREME 291, 1999 SCC (CRI) 293, (1999) SCCRIR 333, (1999) 38 ALLCRIC 534, (1999) 2 EASTCRIC 33, (1999) 1 CHANDCRIC 82, (1999) 1 CURCRIR 123, (1999) 2 CALLT 33, (1999) 1 SCALE 580, (1999) 1 CRIMES 127, (1999) 1 ALLCRILR 674, (2000) 1 MADLW(CRI) 137, (1999) 2 PAT LJR 11, (1999) MAD LJ(CRI) 474

Bench: M.B.Shah, R.C.Lahoti

PETITIONER:
STATE OF U.P.

Vs.

RESPONDENT:
RANJIT SINGH

DATE OF JUDGMENT: 19/02/1999

BENCH:
G.B.Pattanaik, M.B.Shah, R.C.Lahoti.

JUDGMENT:

PATTANAIK,J.

The respondent was a Stenographer of a learned Judge of Allahabad High Court. He stood the trial for having committed offences under Sections 417, 420, 466, 467 and 468 of the Indian Penal Code on the allegation that he fabricated a forged bail order for one accused Khelawan. The accused however denied the allegations in the trial. On the basis of the evidence adduced by the prosecution, the learned Chief Judicial Magistrate convicted him of all the charges and passed different sentences thereunder. On an appeal being carried, the Additional Sessions Judge, Allahabad in Criminal Appeal No. 65 of 1985 acquitted the accused of the offence under Sections 417, 420 and 467 IPC but maintained his conviction under Sections 466 and 468 and sentenced him to rigorous imprisonment for two years and a fine of Rs.500/- for each of the offences under Sections 466 and

468 IPC and in default, to serve out rigorous imprisonment for three months more, with the further direction that the sentences will run concurrently. But instead of sending the accused to Jail, he was given the benefit of Section 4 of Probation of First Offenders Act, 1958 and it was ordered that he will file a personal bond of Rs.2000/- with one reliable local surety of the like amount for keeping peace and good behaviour for a period of two years. The accused, then filed a revision in the High Court and the High Court by the impugned Judgment came to the conclusion that since the accused has not signed the bail order, the said bail order cannot be said to constitute a document and, therefore, it cannot be said that the ingredients of the offence under Sections 466 and 468 have been satisfied and the High Court accordingly acquitted the accused of the charges under Sections 466 and 468. The High Court also peculiarly enough further came to the conclusion that the grant of benefit of Section 4 of the U.P. First Offenders Act by the learned Additional Sessions Judge cannot be treated as a punishment and, therefore, the accused cannot be treated as suspended from service and on the other hand must be deemed to have been in continuous service without break. The court, therefore ordered that he should be paid his pay and allowances immediately for the period of his suspension. It is against this order of the learned Single Judge of the Allahbad High Court the present appeal has been preferred by the State.

Mr. Chaudhary, learned counsel for the appellant contended that the prosecution having fully established the fact that the bail order in question was in the hand-writing of the accused which was utilised for getting Khelawan on bail, even though in fact the Hon'le Judge had not passed any bail order, the charges under Sections 466 and 468 as against the accused-respondent must be held to have been proved beyond reasonable doubt and the High Court committed error in coming to the conclusion that the ingredients have not been satisfied merely because it had not been established that the signature in the bail order had not been put by the accused, even though it was established that the bail order was in the hand-writing of the accused.

Mr. Upadhyay, appearing for the respondent on the other hand contended that in order to attract the offence of forgery of record of court under Section 466, it must be established that a document has been forged. Forgery as defined in Section 463 means whoever makes any false document and making a false document under Section 464 of the Indian Penal Code means whoever dishonestly or fraudulently makes, signs, seals or executes a document or a part of a document. According to Mr. Upadhyay, the expression 'ishonestly'has been defined in Section 24 to mean whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person and 'rongful gain'and 'rongful loss' have been defined under Section 23 to mean a gain by unlawful means of property to which the person gaining is not legally entitled and loss by unlawful means of property to which the person losing it is legally entitled. According to Mr. Upadhyay, since by the bail order in question, no 'rongful gain' or 'rongful loss'can be said to have been achieved, there was no dishonesty in making the document and, therefore, Section 464 of the Indian Penal Code cannot be attracted and consequently, Section 466 of the Indian Penal Code will also not be attracted. The learned counsel also submitted that for the same reasons the offence under Section 468 cannot be said to have been committed and, therefore, the High Court was justified in acquitting the accused of the charges. We, however are not persuaded to agree with the contentions raised by Mr. Upadhyay, learned counsel for the respondent. There is no dispute and in-fact on the basis of the evidence of the hand-writing expert as well as the evidence of Hon'le Mr. Justice J.L. Sinha, in

whose court the accused was working as Personal Assistant, it has been proved that the forged bail order in question has been written by the accused-respondent. The High Court, in our view committed gross error in recording the conclusion that the bail order in question cannot be said to be a 'ocument' since the accused- respondent did not put the signature under the bail order. The Court has lost sight of the fact that under Section 464 of the Indian Penal Code, a person is said to make a false document who dishonestly or fraudulently makes, signs, seals or executes a document or part of a document. The reasoning of the High Court, therefore, that the bail order without the signature cannot be said to be a document thereby not attracting the provisions of Section 464 of the Indian Penal Code is wholly unsustainable. Coming now to the contention raised by Mr. Upadhyay, appearing for the accused-respondent, it would be seen from Section 466 of the Indian Penal Code that whoever forges a document, purporting to be a record or proceeding of or in a Court of Justice commits the offence. The bail order in question undoubtedly purports to be a proceeding in a court of justice and the question, therefore is whether the accused-respondent can be said to have forged the said document. 'orgery'has been defined in Section 463 of the Indian Penal Code to mean whoever makes any false document or part of a document with intent to cause damage or injury to the public and the expression 'aking a false document'is defined in Section 464 of the Indian Penal Code to mean that a person is said to make a false document who dishonestly or fraudulently makes, signs, seals or executes a document or part of a document. In view of the conclusion of the courts below that the accused-respondent did write the bail order in his own hand-writing, even though the learned Judge did not pass any bail order, the conclusion is irresistible that the accused-respondent made a false document, as a result of which a person not entitled to be released on bail could make himself free from custody. The question, therefore, is whether under such circumstances it can be held that the accused-respondent made a false document either dishonestly or fraudulently. The expression 'rongful'in Section 23 of the Act means prejudicially affecting a party in some legal right. The words 'aining wrongfully' or 'osing wrongfully' need not be confined only to the acquisition or to the actual deprivation of property. In this view of the matter if by virtue of preparing a false document purporting it to be a document of a court of justice and by virtue of such document a person who is not entitled to be released on bail could be released then, undoubtedly damage or injury has been caused to the public at large and, therefore, there is no reason why under such circumstances the accused who is the author of such forged document cannot be said to have committed offence under Section 466 of the Indian Penal Code. Then again under Section 464 whoever dishonestly or fraudulently makes a document or part of a document can be said to have made a false document. A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise. The expression 'efraud' involves two elements, namely deceit and injury to the person deceived. Injury is something other than economic loss and it will include any harm whatever caused to any person in body , mind, reputation or such others. A benefit or advantage to the deceiver will almost always cause loss or detriment to the deceived. Where, therefore, a document is prepared with the intention to deceive and by means of deceit, an advantage is obtained then there is a fraud and judged from this stand point, the preparation of a forged bail order by the utilisation of which the person concerned obtained an advantage of being released deceiving the courts and the society at large cannot but be said to have made the document fraudulently, thereby attracting Section 466 of the Indian Penal Code. In the case of Mahesh Chandra Prasad and another vs. Emperor A.I.R.(30) 1943 Patna 393, a Bench of Patna High Court observed:

> "To tamper with the record of a proceeding in a Court of justice in order to obtain from that Court a decision or order which it otherwise would not make, is to my mind, as much a public mischief as to attempt to secure the unauthorised release of a prisoner from jail or to obtain for an unqualified person credentials entitling him to practise as a surgeon or to navigate a ship. I can see no occurs in Section 25 of the Penal Code, should be more narrowly construed by the Courts in India than it has been construed by the Courts of Common Law in England in which, in an indictment for forgery, an intent to defraud had to be alleged."

Consequently, charges under Sections 466 and 468 of the Indian Penal Code must be held to have been proved beyond reasonable doubt.

In this view of the matter, we unhesitatingly reject the contention raised by Mr. Upadhyay, appearing for the respondent and hold that the accused-respondent committed the offence under Sections 466 and 468 of the Indian Penal Code. We, therefore, set aside the order of acquittal, passed by the High Court of Allahabad and convict the accused- respondent under Sections 466 and 468 of the Indian Penal Code but since the incident itself was of the year 1971 and more than 27 years have elapsed in the meantime and the learned Sessions Judge himself had granted the benefit of Section 4 of the U.P. First Offenders Probation Act and there is no bad antecedents, we also affirm the order of learned Additional Sessions Judge and direct that the respondent should execute a personal bond of Rs.2000/- with one surety of the like amount for keeping peace and good behaviour for a period of two years.

We also fail to understand how the High Court, while deciding a Criminal Revision can direct that the accused must be deemed to have been in continuous service without break and, therefore, he should be paid his full pay and D.A. during the period of his suspension. This direction and observation is wholly without jurisdiction and we, accordingly quash the said direction contained in the impugned judgment of the High Court. This appeal is accordingly allowed.