
(2021) 01 UK CK 0083
In the Uttarakhand High Court
Case No : Criminal Revision No. 197 Of 2013

Amit Kumar Saini

APPELLANT

Vs

State Of Uttarakhand

RESPONDENT

Date of Decision : 15-01-2021

Acts Referred:

Indian Penal Code, 1860 — Section 308, 323, 325, 406, 420, 452, 468, 471
Code Of Criminal Procedure, 1973 — Section 313

Citation : (2021) 01 UK CK 0083

Hon'ble Judges : Lok Pal Singh, J

Bench : Single Bench

Advocate : S.P.S. Panwar, H.C. Pathak, S.T. Bhardwaj, V.S. Rathour

Final Decision : Allowed

Judgement

Lok Pal Singh, J

1. This criminal revision is directed against the judgment and order dated 28.03.2013 passed by the learned Chief Judicial Magistrate, Tehri, District

Tehri Garhwal in Criminal Case No.844 of 2007 — State Vs. Amit Kumar, whereby the revisionist has been convicted under Sections 420, 468

and 471 of IPC, has been sentenced to undergo five years of imprisonment with a fine of Rs.3,000/- (Rupees Three Thousand Only) under section

420 of IPC, to undergo four years of imprisonment with a fine of Rs.3,000/- (Rupees Three Thousand Only) under Section 468 of IPC, and to undergo

four years of imprisonment with a fine of Rs.3,000/- (Rupees Three Thousand Only) under Section 471 of IPC, with default stipulation. Against the

order dated 28.03.2013, the revisionist/accused filed an appeal before the Sessions Judge, Tehri Garhwal in Criminal Appeal No.13 of 2013, by which

the conviction of the revisionist/accused under Sections 420, 471 and 468 of IPC

is reduced to one year imprisonment, but the fine is upheld vide order dated 19.07.2013. Hence, the present criminal revision before this Court.

2. Prosecution story in brief is that PW-3 Bhagwat Sharan Azad lodged a report at Police Station New Tehri with the allegation that in District Tehri

recruitment for the posts of Police Constable and PAC Constables were advertised by way of advertisement no.DG-Seven-31-2005 dated 21.01.2006,

for recruiting 125 male Police Constable, 70 PAC and 14 female police constables. Against that advertisement appellant applied, he was qualified for

the physical and written examination, subsequently he was selected for the appointment. After completion of his selection process, department asked

from the candidates that an affidavit on the stamp of Rs.10/- attested by notary be submitted. It was informed that it must be filled up carefully, he

submitted his affidavit and concealed the fact that a Case Crime No.192/2003 under Sections 452, 323, 406, 325 and 308 of IPC was registered

against revisionist/accused at Kotwali Roorkee. The matter was investigated by Sri B.K. Juiyal, then Circle Officer and it was found that the

revisionist concealed the registration of case against him.

3. After investigation, the Investigating Officer submitted the charge-sheet against the revisionist/accused under Sections 420, 468 and 471 of IPC

before the court concerned.

4. On denial of guilt, the prosecution got examined as many as seven witnesses i.e. PW-1 Constable CP Darshan Lal, PW-2 Ramanand Badhani,

Advocate, PW-3 S.I. (M) Bhagwat Sharan Azad, PW-4 S.I. Hukum Singh Rauthan, PW-5 retired Sub Inspector Vijendra Kumar Juyal, PW-6

BabuRam and PW-7 S.I. Rishiram. Thereafter the statement of the revisionist/accused was recorded under Section 313 of CrPC, in which he denied

the guilt.

5. Admittedly, the advertisement was issued for appointment of the Constables in the Home Department of the State of Uttarakhand. Pursuant of the

Advertisement issued by the Home Department, State of Uttarakhand, the revisionist/accused submitted his application form and finally he was

selected in the Home Department of the State of Uttarakhand as Constable.

6. During the training period, the Home Department has asked from the candidates to give an affidavit on the stamp of Rs.10/- informing the

Department about the criminal cases pending against the candidates. The revisionist/accused submitted his application form, in which he has written the word 'Nil'.

7. After the appointment of revisionist/accused on the post of Constable, it has come to the light that Case Crime No.192/2003 under Sections 452, 323, 406, 325 and 308 of IPC was registered against the revisionist at Kotwali, Roorkee, District Haridwar, in which the revisionist/accused was exonerated from the charges as no prosecution witnesses deposed against the revisionist/accused. The order of acquittal of the revisionist/accused was passed and the matter was not taken up in the appeal.

8. During the course of the inquiry, it reveals that the revisionist/accused did not furnish the correct information with regard to the fact that criminal cases registered against him. The revisionist was dismissed from service on the ground of filling the incorrect affidavit. Both the Courts below having considered the fact that the revisionist by playing a fraud has given a false affidavit and the revisionist has been convicted for the offences punishable under Sections 420, 468 and 471 of IPC and sentenced accordingly.

9. Mr. S.P.S. Panwar, learned Senior Counsel appearing for the revisionist/accused would submit that the format of affidavit, as supplied by the Home Department, State of Uttarakhand was vague and contradictory. It is further argued that bona fide the revisionist filled the affidavit as per the directions of the Home Department. Mr. S.P.S. Panwar, learned Senior Counsel further argued that as the format of affidavit was vague and terms were contradictory, therefore, so many candidates filled the affidavits bona fide as no one can understand the clear language of the affidavit. He urged that against those candidates, who submitted their affidavits, they could not understand the language of the affidavit and though they faced criminal cases, they were acquitted before submitting their application form.

10. Learned Senior Counsel for the revisionist/accused submits that one Mr. Mahendra Singh Karayat filed a writ petition before this Court being WPSB No.53 of 2014, which was allowed by this Court vide order dated 05.03.2014. The relevant portion of the judgment and order dated 05.03.2014 passed by a Division Bench of this Court reads as under:-

'A look at the affidavit will show that the same was a printed one supplied by the Department. In Paragraph 4 of the said affidavit, it was to be

stated that no police case has been registered against the person giving the affidavit. In Paragraph 6, it was stated that if any police case has been

registered, particulars thereof have to be furnished and, if not, the word 'NIL' has to be indicated. After having had stated in Paragraph 4 of the

affidavit that no police case has been registered, in Paragraph 6, it could not be stated that a police case has been registered. The affidavit was so

confusing and meaningless that the same really did never permit the person concerned to speak out the truth. Paragraph 7 of the said affidavit requires

furnishing of particulars in respect of matters, where the person had been accused and, thereupon, had been found guilty, punished or discharged. For

the reasons as above, having had stated what was required to be stated in Paragraph 4, no information, in terms of Paragraph 7 could be supplied.

Paragraphs 4 and 7 are contrary to each other and totally misleading.

11. The Division Bench of this Court while setting aside the order of dismissal of the writ petitioner from service in filling of the incorrect affidavit, as

it was elaborately discussed the anomalies and contradictions in the affidavit, which was given by the Department to the candidates.

12. The revisionist/accused was convicted and sentenced by the Court below under sections 420, 468 and 471 of IPC read as under:-

"Section 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.

Section 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.

Section 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].â??

13. In appeal, the sentence of the revisionist/accused under Sections 420, 468 and 471 of IPC is reduced to one year imprisonment, but the fine is upheld.

14. Having heard the learned Counsels for the parties. Though this Court should slow in appreciating evidence, but this Court in its revisional

jurisdiction can very much competent to re-appreciate the evidence for proper adjudication of the case. The fact remains that this Court has to

consider as to whether any illegality has been committed by the Courts below. Having considered the submissions of the learned Counsels for the

parties and perusal of the material available on record, this Court has no hesitation in its mind that the Courts below have illegally convicted and

sentenced the revisionist/accused under Sections 420, 468 and 471 of IPC, wherefor none of the ingredients of Sections 420, 468 and 471 of IPC are

attracted in the matter. In view of this Court, at the most, it might be a case of furnishing wrong information to the Home Department but the same

cannot be termed as cheating, dishonesty, forgery and using as genuine a forged document. This Court is of the firm view that the courts below have

committed patent illegality in convicting and sentencing the revisionist/accused under Sections 420, 468 and 471 of IPC. Furthermore, the findings

recorded by a Division Bench of this Court in Mr. Mahendra Singh Karayat (Supra) has binding effect on this Court.

15. In view of this Court, the courts below have committed gross illegality in convicting the revisionist/accused under Sections 420, 468 and 471 of

IPC.

16. Consequently, the criminal revision is allowed. The impugned judgment and orders dated 28.03.2013 and 19.07.2013 passed by the courts below

are hereby quashed and set aside.

17. Let a copy of this judgment be sent to Court concerned for onward compliance.

18. Lower court record, be also sent back, to the court concerned.