(1991) 10 AP CK 0015

In the Andhra Pradesh High Court

Case No : C.R.C. No. 577 of 1990 and Cri Rev. Petition No. 574 of 1990

Galla Nageswara Rao APPELLANT

Vs

State of Andhra Pradesh RESPONDENT

Date of Decision : 25-10-1991

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) — Section 239, 313
Penal Code, 1860 (IPC) — Section 420, 463, 464, 465, 466

Citation : (1992) CriLJ 2601

Hon'ble Judges : G. Radhakrishna Rao, J

Bench : Single Bench

Advocate : A. Narasimha Sarma, for the Appellant; Public Prosecutor, for the Respondent

Judgement

1. On a charge-sheet filed against the petitioner herein in Crime No. 140 x 691 of 1988 of Nagarampalem Police Station alleging that he has committed the offences punishable u/Ss. 471 and 420 of the Penal Code, the VI Additional District Munsif, Guntur convicted the petitioner for the offences under Ss. 471 and 420 read with 511 of the Penal Code and sentenced him to suffer simple imprisonment for two years under each of the two counts but, however, directed the sentences to be run concurrently. Aggrieved by the same, the petitioner preferred an appeal to the District and Sessions Judge, Guntur. The district and Sessions Judge, Guntur confirmed the conviction of the accused, but reduced the sentence of imprisonment from two years under each count, to one year under each count, and also directed the sentences to run concurrently, Yet aggrieved by the conviction and sentence imposed against him, the accused preferred this revision. The case of the prosecution is that up to the year 1971, the deceased served in Military service and after his discharge, he was employed in the State Bank of India, Guntur on 14-9-1971 as watchman. The date of birth that was entered in the service records of the accused basing on the discharge certificate issued by the military authorities is 10-2-1929. On 28-11-1986 he filed representation stating that his date of birth is 10-2-1932, but not 10-2-1929. As

per the original entry he has to retire on 10-2-1987.

2. On 28-11-1986, a few months before his retirement, the accused submitted an application along with his Transfer certificate, Ex. P. 4 dated 30-6-1959 alleged to have been issued by the Head Master of Kogantivari High School, Kuchipudi, Tenali Taluk showing his date of birth as 10-2-1932, but not 10-2-1929. After receipt of that representation from the accused, P.W. 1 Branch Manager of the State Bank of India. Guntur forwarded the same along with Transfer Certificate to P.W. 4, an enquiry officer appointed to enquire into the genuineness or otherwise of the transfer certificate. After enquiry the Regional Officer of the State Bank of India found that Ex. P. 4, transfer Certificate filed by the accused said to have been issued by the Head Master of the Kogantivari High School, is a forged one. Consequently, the accused was dismissed from service on 25-5-1987 on the ground that he pressed into service a forged document and attempted to cheat the Bank with a view to gain three more years'' of service.

3. Later P.W. 1 reported the matter to the Police Station by sending Ex. P. 1 report, and the Police registered an FIR. Ex. P. 10 basing on Ex. P. 1. After completing the investigation into the case, the Police filed the charge-sheet.

4. In order to prove the case, the prosecution has examined in all 8 witnesses and marked Exs. P-1 to P-10. However, the accused did neither choose to examine any witness nor mark any document in defence of his plea. After full trial, the trial court convicted and sentenced the accused, as mentioned supra.

5. P.Ws. 1 to 4 are the official witnesses and they were examined to prove that the accused originally submitted an application mentioning his date of birth as 10-2-1929 when he sought employment, that later he filed an application enclosing a transfer certificate alleged to have been given by the Head Master of Kogantivari High School requesting of Bank of change his date of birth to 10-2-1932, that an enquiry was conducted in connection therewith and that in the enquiry, it was found that the accused produced a false transfer certificate with wrong date of birth and tried to derive benefit of serving three more years in service. Ex. P-4 is dated 30-6-1959. If really the said certificate was obtained on that date itself, the accused would not have failed to produce the same before the Military authorities under whom he worked for a longer period. Equally, he would not have failed to produce the same at the time when he sought employment in the bank, after his discharge from the Military service. Non-filing non-production of this document (Ex. P. 4) even though, according to him, it is available with him from 1959, casts any amount of doubt upon the bona fide nature of the accused, particularly in filing the same, just three months before his date of retirement.

6. On a plain reading and close analysis of the evidence of P.W. 5 who worked as a Teacher in the Kogantivari High School, it is revealed that the so called Ex. P. 4 certificate was not at all issued by their school. When a competent person denies the truth of a document on which the accused mainly harped upon, the burden

then shifts on to the accused himself to establish the truthness of the contents of the document, by cogent and trustworthy evidence.

7. At this stage, it is highly relevant to note that the accused took the plea that he has not filed the application, Ex. P. 3 or transfer certificate, Ex. P. 4 before the authorities concerned and it is only due to difference of opinion, this case was foisted against him. If it is so, the accused ought to have appeared in the domestic enquiry and set up this plea. On a perusal of the record, it reveals that the accused did not present in the domestic enquiry. This malicious conduct of the accused is not participating in the domestic enquiry further strengthens the case of the prosecution even. Thus, the finding in the domestic enquiry clinchingly corroborates the disinterested testimonies of P.Ws. 1 to 4, to the effect that the accused indeed produced a forged document and attempted to cheat the Bank. Normally in cases of alteration of date of birth, it can surely be presumed that the person who is interested and who will derive consequential benefit, will alone file such applications seeking alteration of date of birth. Mere bald denial is not sufficient. The accused and accused alone will be the person that can benefited if such a document is considered and a favourable view is taken. So, the intention of the accused is to get advantage of the forged document and deprive other eligible persons. The plea of the accused that non-examination of the person before whom the original application was filed, is not at all fatal to the case of the prosecution and it is not necessary for the prosecution to prove the same if they are able to prove that the application is filed by the accused. Since the accused disputed that he has not filed Ex. P. 3 application, the court has examined his signature on Ex. P. 3 with reference to his signatures available on the statements of accused recorded Under Ss. 239 and 313, Cr.P.C. during the course of trial. When available signatures are there to compare the disputed signature, the court is well within its power to have the signatures compared by itself, and it need not brush aside the case of the prosecution on flimsy ground that the person before whom the application was filed, was not examined. So, the plea of the accused that he has not filed Ex. P. 3 does not stand to scrutiny.

8. In The Crown v. Chann Singh, ILR 1929 AP 545 it was held as follows :

"with a view to qualify for appearance at the competitive P.C.S. Examination the accused (On being asked to do so for comparison with the original) Presented to the Punjab University a certified copy of the certificate Ex. P. A granted to him by the University at his Matriculation Examination, in which the date of birth had been altered from 5th January, 1901 to 15th January 1904. He was charged with an offence under S. 471, IPC. The High Court held on the evidence that the date in Ex. P. A had been altered and that the accused knew Ex. P-A to be a false document."

It was further held that :

"in presenting Ex. PA to the University, the accused had committed an offence under S. 471, IPC, inasmuch as the document presented, being a false document, was used with intent to cause damage and injury to the other candidates in the competitive examination for the P.C.S. and to support accused''s claim to appear."

9. In Kotehraju Venkatarayudu ILR 1905 (28) Mad 90 (FB) it was held as follows :

"Where a candidate for the Matriculation Examination of the University of Madras, for the purpose of being admitted to the Examination, forwarded to the registrar of the University a certificate that he was of good character and that he had completed his twentieth year which purported to be signed by the Headmaster of a recognised school, but was, in fact, not signed by him but was signed by the candidate in his own handwriting, it was held that the certificate was a forged document within the meaning Ss. 467 and 464, IPC."

10. The ingredients of S. 471 are : (1) there must be fraudulent or dishonest use of a document as genuine and (2) the person using it must have knowledge or reason to believe that the document is a forged one. Ex. P. 4 in this case being not issued by the school, which fact was proved beyond doubt; the person who produced the said document for the purpose of getting benefit, deemed that he has knowledge that it is a forged document. The intention (presumption Ed.) that can be drawn is that, with a dishonest intention by using a forged document, the accused tried to derive benefit. Therefore, in this case the above referred ingredients are satisfied.

11. The user need not be an effective one. Therefore, what is relevant under this Section is the use to which the forged document is put by the offender and not whether the party to whom the document is presented accepts or treats that document as genuine. To constitute use of a document, it is not necessary that the court should accept the document produced before it or filed in Court. If a person puts forward document as supporting his claim in any matter, whether that document is acted upon by the Court or used in evidence, is immaterial for the purpose of constituting use of the document by the party within the meaning of S. 471, IPC.

12. In Khandusingh ILR 1896 (22) Bombay 768 it was observed as follows :

"The accused applied to the Superintendent of Police at Poona for employment in the Police Force. In support of his application he presented two certificates which he knew to be false. One of these certificates was a wholly fabricated document, whilst the other was altered by several additions made subsequently to the issue of the certificate. It was held that the accused was guilty of offences under Ss. 463 and 471, IPC."

13. In Empress v. Abbas Ali ILR 1896, (25) Calcutta, 255 (Sic) involves the same issue, rather it went further by holding that :

"It is not an essential ingredient of the offences of forgery or using as genuine a forged document as defined in Ss. 463 to 471, that there should be an intention on the part of the accused to deprive another of property."

14. In Ishwarlal Girdharlal Parekh Vs. State of Maharashtra and Others, the Supreme Court held that the word ''Property'' as mentioned in S. 420, IPC does not necessarily mean that the thing, of which a delivery is dishonestly desired by the person who cheats, must have a money value or a market value, in the hand of the person cheated. Even if the thing has no money value in the hand of the person cheated, but becomes a thing of value in the hand of the person who may get possession of it, as a result of the cheating practised by him, it would fall within the connotation of the term ''property''.

15. In Abhayanand Mishra Vs. The State of Bihar, it was observed that an admission card to sit for an examination of a University is property" within the meaning of S. 420, IPC though the admission card as such has no pecuniary value, it has immense value to the candidate for the examination.

16. In view of my above elaborate discussion, I hold that both the courts below rightly convicted the accused for the offences under Ss. 471 and 420 read with 511, IPC. But with regard to the quantum of sentence, the learned counsel for the petitioner herein submits that the petitioner having served in Military service for a longer period; after discharge, served in the Bank and now he is at the fag end of his life having marriageable children, a sympathetic view may be taken.

I quite see sufficient force in this argument. Having regard to the facts and over all circumstances of the case while confirming the conviction of the accused as held by the two courts below, the sentence of imprisonment is reduced from one year to six months. Subject to the modification in the sentence as mentioned above, the criminal revision case is dismissed.

17. Petition dismissed.

