
(2001) 07 PAT CK 0028

In the Patna High Court

Case No : Criminal Revision No. 248 of 1999

Netram Sharma

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 05-07-2001

Acts Referred:

Citation : (2001) 07 PAT CK 0028

Final Decision : Allowed

Judgement

A.K. Sinha, J.—This revision application has been directed against the order dated 20.3.99 passed by 6th Additional Sessions Judge, Patna in Criminal Appeal No. 60 of 1996, whereby he dismissed the appeal preferred by the Petitioner. The Petitioner was tried for the offence under Sections 420, 467, 468 and 471 of the Indian Penal Code by the trial Magistrate who acquitted the Petitioner of the charge under sections 467, 468 and 471 of the I.P.C. but he was found guilty for committing the offence u/s 420 of the I.P.C. and was sentenced to undergo rigorous imprisonment for one year. Being aggrieved with the order of conviction and sentence passed by the learned Magistrate, the Petitioner preferred an appeal which was dismissed and the learned appellate court confirmed the order of conviction sentence as recorded by the trial court.

2. Some of the relevant facts may be stated that the Petitioner was appointed as Nayak in B.M.P. 16 by the Selection Committee on 15.4.83. He continued in service for a pretty long period but later on it was detected that Petitioner has obtained employment by furnishing wrong information, inasmuch, as his name was Net Ram but in his service book filed by him his name was described as Net Ram Sharma. Similarly, the Petitioner was shown working as Nayak in the military service but he was only a constable and his character was fair but in the service book produced by him character was mentioned as exemplary. Dy. S.P. of B.M.P., 16 (P.W. 3) was entrusted to make an enquiry into the matter and he went to Bangalore to make verification from the service book and he submitted his enquiry report wherein it was stated that the Petitioner had actually given

wrong informations to the authority at the time of obtaining employment. As such, a disciplinary proceeding was initiated against the Petitioner and subsequently F.I.R. was lodged against him under sections 420, 467, 468 and 471 of the Indian Penal Code.

3. The learned Counsel appearing for the Petitioner submitted that the Petitioner could not have been convicted for the offence u/s 420 of the I.P.C. when the trial court had acquitted him of the charges under Sections 467, 468 and 471 of the I.P.C. inasmuch, as section 420 I.P.C. was a consequential offence of the main offences viz. sections 467, 408 and 471 of the I.P.C. and both the courts below committed illegality in convicting the Petitioner u/s 420 of the I.P.C. In support of his contention the learned Counsel has relied upon a decision in the case of *Guru Bipin Singh Vs. Chongtham Manihar Singh and Another*, wherein the Apex Court held as hereunder:

In view of all the above, we agree with Shri Jethmalani that the allegations made in the complaint, even if true, do not make out the case of forgery. Now, if forgery be not there, allegation u/s 420 would fail because the allegation in para 5 of the complaint is that by "forging the said book" deception was caused and members of the public were induced to purchase the same. So, forgery is the principal allegation; cheating being a consequential offence. If forgery goes, cheating cannot stand. So, the complaint does not make out a case under any of the three sections, namely, 420, 465 and 468. It may be pointed out that section 468 is intimately connected with Sections 420 and 465.

4. The decision referred to above is fully applicable in the facts and circumstances of the instant case because the learned trial court found that the prosecution has failed to prove the charges under sections 467, 468 and 471 of the I.P.C. for which detailed discussion has been made by the learned Magistrate and he has given reason for coming to the aforesaid conclusion. It appears that the learned appellate court has observed in the impugned judgment that the prosecution has been able to prove that the Petitioner-Appellant cheated the B.M.P., 16 office by producing forged documents to suit his purpose for appointment as Havildar and as such it was of the view that the charge u/s 420 had been brought home by the prosecution. Such finding of the appellate court apparently looks erroneous, inasmuch, as the charge of forgery had not been established by the prosecution then how the Petitioner can be convicted for the offence of cheating on account of the forgery committed by him. I am, therefore, of the view that the charge u/s 420 of the I.P.C. would fail the moment the prosecution failed to prove the charge of committing forgery. The learned appellate court was, therefore, not justified in confirming the order of conviction and sentence u/s 420 of the I.P.C. recorded by the trial court against the Petitioner-Appellant. As such, the finding of the appellate court must be set aside.

5. In the facts and circumstances of the case and in view of the decision of the Apex Court, referred to above, the judgments and orders of the appellate court/trial court are hereby set aside and the Petitioner/Appellant is held not guilty of

the charge u/s 420 of the I.P.C. and he is acquitted of the same.

6. In the result, therefore, this revision application: is allowed and the Petitioner is discharged from the liability of the bail bonds.