

(2024) 11 BOM CK 0020

In the Bombay High Court

Case No : Criminal Revision Application No.108 Of 2020

Seema W/O Suresh Khobragade

APPELLANT

Vs

State Of Maharashtra Thr. Pso Ps Bhadravati, Dist.
Chandrapur

RESPONDENT

Date of Decision : 21-11-2024

Acts Referred:

Indian Penal Code, 1860 — Section 419, 420, 471

Citation : (2024) 11 BOM CK 0020

Hon'ble Judges : G. A. Sanap, J

Bench : Single Bench

Advocate : Mahesh Rai, Ritu Sharma

Final Decision : Disposed Of

Judgement

G. A. Sanap, J

1. In this revision application, challenge is to the judgment and order dated 07.10.2020 passed by the learned Additional Sessions Judge, Warora, whereby the learned Judge dismissed the appeal filed by the applicant against her conviction and sentence dated 03.03.2012 passed by the learned Judicial Magistrate First Class, Bhadravati. The learned Additional Sessions Judge, Warora, however, reduced the substantive sentence to six months. Learned Judicial Magistrate First Class, Bhadravati had convicted the applicant for the offences punishable under Sections 419, 420 and 471 of the Indian Penal Code (for short, 'I.P.C.') and sentenced to suffer rigorous imprisonment for six months and to pay a fine of Rs.500/-, in default of payment of fine to further undergo simple imprisonment of one month for the offence punishable under Section 419 of the I.P.C. and sentenced to suffer rigorous imprisonment of one year and to pay a fine of Rs.1000/-, in default of payment of fine to further undergo simple imprisonment of one month for the offence punishable under Section 420 of the I.P.C. and sentenced to suffer simple imprisonment of one month and to pay a fine of Rs.200/-, in default of payment of fine to further undergo simple

imprisonment for 15 days for the offence punishable under Section 471 of the I.P.C.

2. The facts leading to this revision application are as follows:-

Nilesh Raut (PW-10) was attached to Bhadrawati Police Station as a Police Inspector. The First Information Report was registered on his report. One Shri S.D. Gondane, r/o Pohara (Purna), Tq. Chandur Bazar, District Amravati, had made a complaint to the Chief Vigilance Commissioner, Central Government, Delhi, against the applicant alleging that the applicant misused the mark list and transfer certificate of her sister Mangala for taking admission to the DEd course at Sindkhed Raja, District Buldhana. This complaint was forwarded to the office of Superintendent of Police Chandrapur. The Superintendent of Police Chandrapur forwarded the same to Bhadrawati Police Station for necessary action. After registration of the crime on the basis of this complaint, PW-10 carried out the investigation. The investigation transpired that Mangala Eknath Gondane is the elder sister of the applicant, Seema Gondane. She passed her 10th standard examination in the year 1986. The applicant passed the 10th standard examination in the year 1989. Since the applicant secured less marks in the 10th standard examination, she misused the mark list and TC (transfer certificate) of her sister Mangala for taking admission to the DEd course at Sindkhed Raja, District Buldhana. The applicant completed her diploma. After completion of diploma, on the basis of the certificate, she secured a job as a Teacher in Zilla Parishad, Chandrapur. Before securing the job, she got married with Suresh Khobragade. After marriage, she changed her name from Mangala Eknath Gondane to Sau. Seema Suresh Khobragade. This change was duly published in the Government Gazette.

3. PW-10 during the course of the investigation made the inquiry with Mangala Gondane. The inquiry revealed that Mangala took the admission for the BAMS Course at Vidarbha Ayurved Mahavidyalaya, Amravati and successfully completed the said course. The inquiry further revealed that Mangala did not take admission in DEd College at Sindkhed Raja District Buldhana. The admission was taken by her sister Seema by using TC and the mark sheet of Mangala. The investigating officer seized the documents. During the course of the investigation, it was revealed that the applicant misused the documents of her sister. The applicant cheated the Government and Mangala. She committed cheating by personation.

4. After completion of the investigation, a charge sheet was filed against the applicant in the Court of Judicial Magistrate First Class Bhadrawati. Learned Magistrate framed the charge against the applicant. The applicant pleaded not guilty. The defence of the applicant is of false implication. The prosecution, in order to bring home guilt against the applicant, examined ten witnesses. Learned Magistrate, on consideration of the evidence, held the applicant guilty of the charge and convicted and sentenced her as above. The appeal filed by the applicant against the judgment and order passed by the learned Magistrate on merits was dismissed. However, learned Judge by taking a sympathetic view

reduced the sentence from one year to six months for the offence punishable under Section 420 of the I.P.C. Being aggrieved by the judgment and order the applicant has come before this Court.

5. I have heard Mr. Mahesh Rai, learned Advocate for the applicant and Ms Ritu Sharma, learned APP for the State. Perused the record and proceedings.

6. Learned Advocate for the applicant submitted that the evidence adduced by the prosecution is not sufficient to prove the charge leveled against the applicant. The prosecution has miserably failed to prove the contents of the documents. Learned Additional Sessions Judge has failed to appreciate this aspect. The documents have not been proved. Learned Advocate submitted that the courts below have considered the inadmissible evidence to convict the applicant. Learned Advocate submitted that oral and documentary evidence is not sufficient to prove the charge. The courts below have not properly appreciated the evidence and therefore, the orders and findings recorded by the courts below are perverse. Learned Advocate submitted that without examining the important witnesses to prove the contents of the documents, the documents have been exhibited and used against the applicant. Learned Advocate further submitted that the learned Magistrate was not justified to deny the benefit of the Probation of Offenders Act, 1958 (for short, 'the Act of 1958') to the applicant. Learned Advocate submitted that on this count, the learned Additional Sessions Judge has also committed the mistake. In short, the learned Advocate submitted that the applicant has been facing the ordeal of this prosecution since 2003 and therefore, she needs to be granted the benefit of the Act of 1958. Learned Advocate pointed out that the applicant is now more than 50 years old and therefore, no purpose would be served by sending her to jail. She has two daughters. In short, it is submitted that the ordeal of this criminal prosecution suffered by the applicant is a severe punishment.

7. Learned APP submitted that there is ample oral and documentary evidence to prove the charge against the applicant. The courts below have properly appreciated the oral and documentary evidence. The findings of fact have been recorded on the basis of the minute scrutiny and appreciation of the evidence. It is submitted that the courts below have not committed any mistake or illegality. The findings recorded by the courts below do not suffer from perversity. Learned APP took me through the evidence to buttress her submission. Learned APP further submitted that this is an open-and-shut case. There is voluminous documentary evidence to prove the guilt of the applicant. Learned APP submitted that the benefit of the provisions of the Act of 1958 was rightly denied to the applicant. Learned APP pointed out that the applicant not only cheated her sister and the government but also at the same time, despite securing less marks in the 10th standard examination, obtained the admission on the basis of the documents of her sister and denied admission to the DEd course for the relevant year to an eligible candidate. The said eligible candidate would have secured a job as a teacher. In short, learned APP submitted that such crime has to be dealt

with very strictly so that it becomes example in the society.

8. I have perused the record and proceeding. I have minutely gone through the oral and documentary evidence. I have perused the judgment and order passed by the courts below. On perusal of the record and the evidence, I am satisfied that the courts below have not committed any mistake, illegality or perversity while holding the applicant guilty of the charge and awarding the sentence. It is to be noted that the scope of revisional jurisdiction is not as wide as the scope of appellate jurisdiction. In exercise of revisional jurisdiction the impugned order cannot be reversed and set aside unless and until the Court is satisfied that the court below has committed patent illegality, mistake or perversity while deciding the matter. It must be demonstrated by the party concern that the evidence on record is not sufficient to pass judgment of conviction and sentence against him or her. Party concern must satisfy the Court that the evidence available on record has not been properly appreciated. It needs to be stated that unless and until it is pointed out that there is no evidence or available evidence has not been properly appreciated and a wrong conclusion has been arrived at, the interference in the judgment and order passed by the courts below cannot be made.

9. Learned Advocate has submitted that the contents of the documents have not been proved and the courts below relied upon those documents and recorded the order of conviction and sentence against the applicant. On going through the oral and documentary evidence, I am satisfied that there is no substance in this contention. The undisputed facts, which have great bearing with the issue involved in the proceeding needs to be stated at this stage. Mangala is the elder sister of the applicant. Birth date of Mangla is 26.07.1970. Birth date of the applicant is 10.06.1974. Mangala took admission for the BAMS course and successfully completed it. She is a doctor and presently doing government service. Mangala did not take admission to the DEd course at Sindkhed Raja. She completed her BAMS from Vidarbh Ayurved Mahavidyalaya at Amravati. The applicant obtained a DEd diploma from Sindkhed Raja, DEd College District Buldhana. Mangala did not obtain a diploma from the said college. The applicant secured a job as a teacher in Zilla Parishad Chandrapur. The documents produced on record are consistent with all the above stated admitted facts. The applicant, after marriage, with the intention to conceal this cheating, changed her name from Mangala Eknath Gondane to Seema Suresh Khobragade. Undisputedly, before change of her name, she personated her to be Mangala, though she is Seema.

10. It is to be noted that when this crime committed by the applicant came to light, her sister came forward to assist the police. It needs to be stated that if sister Mangala had not supported the police, then today she would have been facing prosecution with the applicant in this crime. Mangala has been examined as PW-5. In her evidence, she has stated that in the year 1994 she completed her BAMS course from Vidarbh Ayurved Mahavidyalaya, Amravati. She has stated

that she completed her education up to the 10th standard from Holy Cross Convent, Amravati. She passed her 10th standard examination in the year 1986 and completed her HSC from Shivaji Mahavidyalaya, Amravati. She obtained 70% marks. Exh.61 is her mark list of her 10th standard and Exh.62 is the board certificate. Her evidence is consistent with the case of prosecution. The crime, in this case, was registered on 02.10.2003. It seems that when Mangala (PW-5) came to know about the complaint made against the applicant she tried to do the damage control exercise. On 25.08.2003 she prepared the affidavit and stated therein that recently she came to know about the misuse of school leaving certificate and TC by the applicant. PW-5 in this affidavit placed on record black and white of the relevant facts. The said affidavit was sworn before Nayab Tahsildar (PW-4). The affidavit is at Exh.20. In her affidavit she stated that her sister Seema used her TC and mark list for taking admission to the DEd course. She was staying at a hostel. Her documents were at home. She was not aware of this fact. Her evidence before the Court is consistent with the case of prosecution. She has stated that her documents had been taken by son-in-law, Sukhdev Meshram. She has admitted the contents of the affidavit at Exh.20. It seems that in her cross-examination, to the extent a helping hand to her sister-applicant she has stated that the alias name of Seema is Mangala. The courts below have discarded this admission. This admission in cross examination is not consistent with the proved facts. Chintaman Nandeshwar (PW-4) Naib Tahsildar, before whom the affidavit was sworn by PW-5, has been examined as PW-4. The affidavit is at Exh.20. The evidence of PW-5 is therefore, sufficient to prove that she did not take admission to the DEd Diploma Course. It is clear from her evidence that she completed her BAMS course and now she is a doctor.

11. Sister Lelipili (PW-8) is another important witness. She is the senior clerk from Holy Cross Vidyalaya, Amravati. It was necessary for the prosecution to establish that Mangala and Seema are sisters by producing the documents. The documentary evidence was collected by the investigating officer. PW-8 has deposed on the basis of the documentary evidence she has stated that the applicant studied in their school from 1984 to 1989. In the year 1989, she passed her 10th standard examination. She obtained 41.28 % marks in the said examination. She has stated that on receipt of the requisition from the police the necessary documents had been provided to the investigating officer. She has proved the contents of those documents. Exh.43 is the communication from the Head Mistress to the P.I. Bhadrawati Police Station. The particulars with regard to the admission etc. of Mangala and Seema have been stated in the documents. Exh.45 is the certified copy of the leaving certificate of the applicant. Exh.46 is the mark sheet of the applicant. PW-8 has stated in her cross-examination that Mangala Gondane is the sister of the applicant. It has been stated in Exh.43 that Mangala Gondane studied in the said school from 03.05.1983 to 30.04.1986. Exh.61 is the mark list of 10th standard of Mangala Gondane. She secured 470 marks out of 700 marks. Exh.62 is the Board Certificate of Mangala. It shows that she secured 67.14% marks in 10th standard. Even if the defence of the

applicant put forth on the basis of admission given by PW-5 in her evidence and her cross-examination is appreciated in proper perspective, it would show that it is nothing but a lame attempt to help the applicant. It is not the case of the applicant that she passed her 10th standard examination in the year 1986. In her 313 Cr.P.C. statement, she has admitted some of the documents produced by the prosecution. The documents produced on record show that Mangala passed 10th standard examination in the year 1986 and Seema passed 10th standard examination in the year 1989. It is not the case of Mangala that Seema passed 10th standard examination in the year 1986.

12. It is to be noted that during the course of investigation, the investigating officer had seized the important documents from the custody of the applicant. Exh.71 is the 10th standard mark list of the applicant issued by SSC Board. Exh.72 is the SSC Board certificate issued to the applicant. Perusal of these certificates shows that the applicant passed her 10th standard examination in the year 1989 and secured 41.28% marks. It is further seen that during the course of the investigation, the investigating officer collected the documents submitted by the applicant to Zilla Parishad Chandrapur. Exh.74/1 is the extract of the service book record of the applicant. The remaining documents are with regard to her service with Zilla Parishad as a Teacher. Exh.74/9 is the birth certificate. It shows that it is the birth certificate of Mangala. Exh.74/10 is the photo copy of the board certificate of Mangala. Exh.74/13 is the cast certificate issued to Mangala. It is seen that at the time of securing the job as a teacher, she submitted the mark list and birth certificate of her sister. The prosecution, on the basis of this evidence, has proved that the applicant completed her matriculation in the year 1989 and she secured 41.28 % marks. Her sister Mangala, who completed her matriculation in the year 1986 had secured 67.14 % marks. The evidence on record is sufficient to establish the separate and distinct identity of Mangala, who is now a doctor. The record does not show that alias name of the applicant is Mangala. The documents of Mangala and the documents of the applicant produced on record. It does not show that alias name of the applicant was Mangala. The prosecution by leading cogent and concrete evidence has proved that the applicant personated her to be Mangala though she is Seema. The applicant misused the TC and school leaving certificate of Mangala to get admission to DEd Course at Sindkhed Raja DEd Collage and obtained diploma. It is further proved on record that after obtaining a diploma she secured the job and at that time also submitted the birth certificate, mark sheet and transfer certificate of her sister Mangala. It is to be noted that with the ordinary intelligence the applicant tried to achieve extraordinary feat. She was almost succeeded, but the offence committed by her surfaced like a bubble from the bottom of the ocean. In my view, therefore, the evidence on record is sufficient to prove the charge against the applicant. The courts below have not committed any mistake, illegality or perversity while appreciating the evidence. The findings are based on the proper appreciation of the evidence. The applicant did not adduce any evidence in her defence. It was necessary for her to adduce the

evidence and at least to establish that her alias name is Mangala. The applicant tried to fool the government machinery. However, the diligent citizen who seems to be the detractor of the family of the applicant reported the incident to the Vigilance Commissioner of India. The Vigilance Commissioner forwarded the complaint made by the diligent citizen to S.P., Chandrapur and the inquiry in the complaint revealed that the crime was committed by the applicant.

13. It is to be noted that the certificate and mark sheet was used by the applicant in the year 1992. She secured the job in the year 1997. She continued to do the job till 2003. She was removed from service when the crime was registered against her. Her birth date is 10.06.1974. It is to be noted that today she is around 51 years old. She has two daughters. It is submitted that she has remorse and repentance over the crime committed by her. It is submitted that She has suffered the ordeal of the prosecution since 2003. It is submitted that therefore, the sentence awarded is disproportionate. It is submitted that the gravity of this crime has been greatly diminished with the passage of time on account of the ordeal suffered by the applicant. It is seen that this submission was advanced before the courts below. Learned Additional Sessions Judge recorded in his order that the applicant does not deserve the benefit of the provisions of the Act of 1958. Learned Judge took a sympathetic view and reduced the sentence for the offence under Section 420 of the I.P.C. to six months from one year. It is now submitted that the substantive sentence on all counts be done away with and in place of same she be directed to pay the moderate amount of fine. In my view, this submission on both counts cannot be accepted. The crime committed by the applicant is very serious crime. By applying any standard she does not deserve the benefit of the Act of 1958. Similarly, the substantive sentence of six months cannot be further reduced. The sentence awarded must be proportionate to the gravity of the crime. She misused the documents of her sister and secured the admission. She further secured the job. She changed her name to conceal her crime. The act committed by the applicant was not an accidental act. It was committed with proper planning, with an intention to get over her ordinary intelligence. The applicant cheated her sister. The applicant cheated the college, where she secured the admission. She also cheated Zilla Parishad Chandrapur when she secured the job on the basis of the documents, which were false to her knowledge. It is to be noted that in the DEd college there are limited seats. In the ordinary circumstances with 41.28% marks in 10th standard she would not have got the admission. The applicant by misusing the documents of her sister took the admission and denied the admission to one eligible student. She has also denied the opportunity of service as a teacher to the eligible student who would have secured the admission in the diploma course if the applicant had not committed this cheating. In my view, this act committed by the applicant is not pardonable. If the applicant is let of without any substantive sentence or minimum sentence, then it would send a wrong message to society. The punishment awarded by the Court in such a crime must be proportionate to the gravity of the crime. The

punishment awarded in such a crime must set an example for the perpetrator of the crime as well as to the society. The punishment in such a crime must be stringent so that it set an example for the people with the people of the mind set of the applicant to cheat and obtain the service by cheating. The Court has to balance the interest of the accused as well as the interest of the society. In my view, therefore, the applicant does not deserve leniency on this count. I do not see any substance in the submission. The revision application is devoid of substance. Therefore, it deserves to be rejected.

14. It is accordingly, rejected. The applicant shall surrender before the Judicial Magistrate First Class, Bhadrawati within one month to serve the sentence.

15. The Criminal Revision Application stands disposed of. Pending application, if any, stands disposed of.