
(2009) 08 CAL CK 0036
In the Calcutta High Court
Case No : C.R.R. No. 1804 of 2009

Sri Sanat Kumar Banerjee	Vs	APPELLANT
The State of West Bengal and Another		RESPONDENT

Date of Decision : 24-08-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 195(1), 239
Penal Code, 1860 (IPC) — Section 418, 468, 471

Citation : (2009) 08 CAL CK 0036

Hon'ble Judges : Ashim Kumar Roy, J

Bench : Single Bench

Advocate : Anand Keshari, for the Appellant; Ranjan Roy, Ld. Spl. P.P., for the Respondent

Final Decision : Dismissed

Judgement

Ashim Kumar Roy, J.—Against an order rejecting the petitioner's prayer for discharge u/s 239 of the Code of Criminal Procedure in connection with a case relating to the offences punishable under Sections 418/468/471 of the Indian Penal Code, the petitioners has brought this criminal revision before this Court.

2. Mr. Anand Keshri appearing for the petitioner contended that the impugned order was passed mechanically and without appreciating the case of defence in its proper perspective. He vehemently urged the petitioner was entitled to discharge for the following reasons:

- (a) The accused was already working in a reputed company and as such has no reason to secure a new job by producing a forged Mark Sheet.
- (b) Since accused was possessing the requisite qualification for the post there is no reason for him to produce forged Mark Sheet.
- (c) According to the prosecution the accused produced the forged Mark Sheet of M.B.A. Examination but M.B.A. was an additional qualification which was not necessary for obtaining the job.

(d) The Mark Sheet the accused produced was verified and checked with the original by the members of the recruitment board as well as the General Manager of Haldia Dock Complex.

(e) No original forged Mark Sheet was seized by the C.B.I. and only the Xerox copy which was lying in the custody of the Haldia Dock Complex has been seized and relied upon by the prosecution to submit the charge-sheet.

(f) The accused has no bad antecedent.

(g) During his 7 years in service there is no allegation that he committed any offence.

On the other hand, Mr. Ranjan Roy, the Learned Special Public Prosecutor, C.B.I. produced the Case Records and submitted that sufficient materials have been collected by the Investigating Agency to show that accused/petitioner has obtained his job dishonestly and fraudulently on production of a Mark Sheet of M.B.A. Examination knowing the same to be forged and there is no bar in institution of a case of forgery even in the absence of the original forged document.

3. It is the case of the prosecution that the petitioner got a job in the post of Material Manager in Haldia Dock Complex, Kolkata by producing a forged Mark Sheet of M.B.A. with an intention to get an undue weightage from the selection committee. It is their further case that actually the petitioner obtained a total marks 558 in final semester of three years part time evening course of M.B.A. under the Calcutta University held in 1990 and passed in II Class but he tampered the Mark Sheet by altering total marks 558 to 658 and Class II by Class I. I further find during investigation CBI seized the forged copy of the Mark Sheet containing the endorsement "submitted by me" in hand writing of the accused with his signature. The CBI has also got the said forged Mark Sheet verified with the records of the Calcutta University and found that the marks and class mentioned therein are not correct and did not tally with the relevant records of University. The statement of the person in whose presence the accused endorsed the said Mark Sheet in his own hand writing as well as the statement of the concerned staff of the University was also recorded. Thus, from the aforesaid charge-sheet materials it cannot be said that no offence for which charge-sheet has been submitted has been made out against the petitioner. In the case of Basappa Ramappa Naik and Others Vs. State, the Hon''ble Supreme Court held,

...When he sent the attested copy of the original which was forged he was clearly using the original forged document, for by the production of the copy he was giving secondary evidence of the contents of a document which he knew or had reason to believe to be forged. What Section 471 requires is the use as genuine of any document which is known or believed to be a forged document; it does not lay down that such use can only occur when the original itself is produced, for the section does not require the production of the original. Where, for

example, under the rules, an attested copy would suffice the production of an attested copy would in our opinion amount to use of the original document as genuine if it is known or is believed to be a forged document. The difference between Section 471 of the Indian Penal Code and Section 195(1)(c) of the Code of Criminal Procedure is that while Section 195(1)(c) requires the production of the forged document itself in a court to make it necessary for a complaint to be filed before a person can be prosecuted for forging or using such document as genuine, Section 471 does not require the production of the original forged document. Where it is possible to produce an attested copy of the forged document and that attested copy will serve the purpose of the original forged document there would in our opinion be use of the original forged document as genuine, though through the attested copy. We are therefore of opinion as an attested copy of a forged document was produced in this case before the Assistant Settlement Officer, it must be held that there was use of the document, which was known or was believed to be a forged document within the meaning of Section 471.

Similarly, in the case of *Rama Shankar Lal v. The State of U.P.*, 1971 (3) SCC 905 the Hon'ble Apex Court held as follows,

The certified copy in the case before us being a forged document it must be held that it was used by Rama Shankar Lal and Sukh Bhanjan Lal, appellants, as genuine which they knew to be forged and this was done both fraudulently and dishonestly. On behalf of the appellants the challenge to their conviction in this Court was confined to the attempt to show that the certified copy is a true copy of the original sale deed. In other words, it was sought to be established that the original sale deed conveyed four plots of land measuring 22 biswas and not two plots measuring only 10 biswas as alleged by the prosecution. On this point the High Court disagreed with the Trial Court and, in our opinion, rightly. No legal infirmity had been pointed out in the reasoning and the conclusion of the High Court on this point. In any event, whether the original sale deed was a first forged and then a copy made of the forged document or the copy was a false document, makes little difference. The appellants in this case knew that the document they used did not represent the original sale deed. In other words it was either forged or a forged copy was prepared. In either event they were using as genuine a forged document knowing it to be forged....

The submissions of the Learned Counsel that at the material time the petitioner was working in a reputed company possessed the requisite qualification for the said job, therefore, he had no reason to commit any forgery for getting his job in Haldia Dock Complex and the accused had no dishonest and fraudulent intention, are all the matter of defence. Whatever defence the accused may have can very well be considered and enquired into at the trial but not at the stage of consideration of the question of framing charge or when the framing of charge is under challenge before High Court. Thus, where there is prima facie case, even though much can be said by the accused in his defence to establish his

innocence, but as the law stands, the Court is bound to frame charge and to proceed with his trial.

This criminal revision has no merit and, accordingly, stands dismissed.

However, it will be opened to the accused to raise all his defence taken in this criminal revision during the trial and necessarily the Trial Court shall adjudged the same independently without being swayed by any of the observations made herein above. The Learned Trial Court is directed to proceed with the trial of the petitioner at once and conclude the same with all reasonable expedition. Criminal Section is directed to deliver urgent Photostat certified copy of this Judgement to the parties, if applied for, as early as possible.