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**(2005) 06 J&K CK 0004**  
**In the Jammu And Kashmir High Court**  
**Case No : Criminal Acq. A. No. 05 of 2002**

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| State of J. and K. | Vs | APPELLANT  |
| Jalal-Ud-Din Ganai |    | RESPONDENT |

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**Date of Decision :** 09-06-2005

**Acts Referred:**

Penal Code, 1860 (IPC) — Section 471  
Ranbir Penal Code, 1989 — Section 201, 420, 461, 467, 471

**Citation :** (2006) CriLJ 1054 : (2010) 3 JKJ 438

**Hon'ble Judges :** Mansoor Ahmad Mir, J

**Bench :** Single Bench

**Advocate :** M.A. Rathore, for the Appellant; A. Haqani, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Mansoor Ahmad Mir, J.—This appeal is outcome of a challan which has its roots in terms of a complaint received by S. S. P. Crime

Branch, Srinagar received on 17-11-1994 with the allegation that respondent produced fake and fictitious matriculation certificate before the

concerned authorities of Irrigation Department and managed promotion from the cadre of Watchman to the Cadre of Works Supervisor.

2. The Crime Branch presented the charge sheet against the accused/respondent before learned Chief Judicial Magistrate, Budgam on 1st July,

1996. The learned Chief Judicial Magistrate framed the charge against the accused for the commission of offence punishable under Sections 420,

461, 471, 201 of RPC, accused pleaded not guilty and claimed to be tried. The learned Chief Judicial Magistrate. Budgam passed the final

judgment dated 12-12-2001 and acquitted the accused.

3. The State feeling aggrieved by the said judgment, preferred this acquittal

appeal, assailing the judgment on the grounds taken in the memo of appeal.

4. In order to arrive at just conclusion that, whether the impugned judgment has been passed rightly or otherwise, it is necessary to notice the facts of the case.

5. The Crime Branch, was set in motion in terms of complaint received on 17-11-1994. The investigating officer came to the conclusion that the accused has cheated the Irrigation Department and got promotion on the basis of fake and fraudulent matriculation certificate and thereby derived wrongful gain by using the said certificate. It is also alleged that the accused has managed to destroy the matriculation certificate.

6. The prosecution has examined all the prosecution witnesses cited in the calendar.

7. PWs Ghulam Mohi-ud-Din Wani, Mohammad Shaft, Gulzar Ahmad Wani are witnesses to the seizure.

8. PWs Fayaz Ahmad Bhat, Abdul Rehman Parray, Ghulam Mohammad Dar, Abdul Rehman ASI, Javed Ahmad Shah and Reyaz Ahmad are witnesses to the record.

9. The trial Court has given the resume of their statements in the impugned judgment. Thus it is proper not to reproduce the statements herein, however, reference can be made to the impugned judgment.

10. Perused. Heard, Considered.

11. The point for consideration is; whether the prosecution has proved the charge framed against the accused?

12. Statements of PWs Fayaz Ahmad Bhat, Ghulam Mehdi Dar and Reyaz Ahmad are relevant.

13. Fayaz Ahmad Bhat has deposed that accused produced original matriculation certificate which was returned to the accused but photo copy of

the same was kept on record. The police has neither seized photo copy of the said certificate nor there is allegation that accused has destroyed the

photo copy of the said certificate. Why the photo copy of the certificate is not traceable from the record and why the same has not been seized is

best known to the investigating officer?

14. The said witness has also stated that he has not obtained the receipt from

the accused while returning the original certificate. Why he has not obtained receipt and in which circumstances he returned the certificate has also not been explained.

15. Witness Abdul Rehman Parra has deposed that case of the petitioner was considered in terms of the application filed by the accused wherein

he has stated that he is a matriculate and accused had annexed matriculation certificate with the said application. The witness has further stated that

the accused could not have been considered for re-designation, if he would not have filed the application.

16. Thus it is crystal clear that on the basis of application, the case of the petitioner has been considered by the competent authority and was re-

designated as Works Supervisor. The investigating officer has not seized the said application. The charge sheet is silent on the said point. The

prosecution should have explained, why the said application has not been seized.

17. The prosecution has not come for-ward with the allegation that the accused has also destroyed the said application.

18. PW Medic Dar has deposed that the accused neither derived any benefit by re-designation nor was he promoted. The accused has not filed

any application wherein he has stated that he is a matriculate.

19. The Investigating Officer has stated that during investigation, the witness have deposed before him that accused destroyed the certificate. All

the witnesses cited in the calender have been examined. The witnesses have not deposed during the trial that the accused destroyed the certificate.

It was for the investigating officer to explain that if the original was received back by the accused, how the photo copy and the application of the

accused were removed from the record and who were the persons involved in the said commission of offence. There is no evidence on the file

pointing towards the fact that accused had destroyed the original or photo copy of the certificate.

20. PW Javed Ahmad Shah, has deposed that he took the charge of the said Establishment Section from Fayaz Ahmad. No certificate was on the

service record of the accused. He has further deposed that he cannot say that whether the accused derived any benefit in terms of order dated 26-

ID-1992 i.e. the order of re-designation.

21. There is evidence on the file, as discussed above, that accused has not

derived any monetary benefit and even witness, namely, Mehdi Dar has deposed that accused was not promoted in terms of the said order. It is profitable to notice the entry made in the service book, which reads as under :--

Redesignated as works supervisor in his own pay and grade being a matriculate vide this office No. 3410-15 dated 26-10-92 in pursuance to

Government order No. E of 1987 dated 2-1-87. Sd/- Executive Engineer.

22. While going through the order dated 26-10-1992, entries made in the service book and the statements of the witnesses, one comes to

inescapable conclusion that accused has not derived any monetary benefit.

23. The prosecution has failed to prove, as discussed above, that the accused has, managed a fake and forged matriculation certificate, and thus

the charge framed against the accused u/s 468 fails.

24. There is nothing on the file suggesting the fact, as discussed above, that accused has cheated the department in any way with dishonest

intention. All the ingredients for constituting offence punishable u/s 420, RPC are lacking. The prosecution has failed to prove that accused has

used forged certificate. Thus the charge framed u/s 471 of RPC also fails.

25. There is not an iota of evidence on the file suggesting the fact that accused had access to the record and he managed to re-move the same and

destroy the same. Thus the charge framed u/s 201 of RPC also fails.

26. The entire case of the prosecution is shrouded in doubts. The strong suspicion cannot form basis for the conviction. The Apex Court has

observed in Manilal Vs. State of Kerala, as under :--

3. ...The Supreme Court, as I have adverted to above, is quite clear that before convicting an accused u/s 471, I.P.C. the prosecution ought to

have established beyond all doubt, as to who has forged the document. Then only, the next stage comes that such forged document has been used

by the accused as a genuine one. In the absence of the proof as to forgery, no conviction can be rendered u/s 471, I.P.C. In that view of the

Supreme Court, when the facts of the present case are examined, as I have stated above, prosecution has not established the criminal liability to

attract Section 467. When that be the position, the criminal liability u/s 471 cannot be put on the shoulder of the revision-petitioner/accused.

Therefore, on account of the above position of law, settled, the conviction rendered by the Sessions Judge, can-not be supported by this Court

and it calls for an interference....

27. The Hon'ble Division Bench of this Court has observed in case State v. Abdul Salam Bhat reported in 2003 (2) SLJ 312, as under :--

5. We have perused the record and considered the matter. We find that the FIR has not been proved as a piece of substantive evidence in the

case. The accused by an order dated 12-4-1993 of the Govt. where he figures at S. No. 8 is adjusted as in-charge lecturer in his own pay and

grade initially for a period of six months or till the post is filled up by the Departmental Promotion Committee or Public Service Commission,

whichever is earlier. Obviously order does not confer any extra monetary benefit on him. It cannot be construed at all a promotion. The

appointment of accused as teacher is neither questioned nor disputed nor qualification of the accused for that post is under challenge. The accused

reported to be post-graduate in faculty of Science (Physics) is not proved to have been regular student of Session/Batch 1986. No record to that

end has been produced in Court. Primarily burden of proof is on prosecution to bring home guilt to the accused, notwithstanding shifting of onus of

proof during trial. The suspicion, howsoever, strong it may be cannot take place of 'proof beyond reasonable doubt.' The on record evidence in

this case is not having so much of "cut-ting edge as to penetrate the fortress of in-innocence built round the accused in criminal jurisprudence.

In Sharad Birdhichand Sarda Vs. State of Maharashtra, , it is observed :--

That suspicion however great, cannot take place of legal proof and that "Fouler the crime higher the proof.

28. Viewed thus the learned Magistrate has passed a speaking judgment and is well founded based on reasons.

20. In the given circumstance appeal merits dismissal and the impugned judgment needs to be upheld.

30. The service book is returned in the open Court to Mr. Rathore.

31. Accordingly, the appeal is dismissed and the judgment of the trial Magistrate is upheld. Send down the record.