

CRR-267-2016

(HEMLATA MEHRA Vs THE STATE OF MADHYA PRADESH)

03-08-2016

Shri Umesh Sharma, learned counsel for the petitioner.

Shri Mukesh Kumawat, learned counsel for the respondent-State.

With the consent of the parties, this petition is heard finally.

ORDER

This petition under Section 397 of Cr.P.C. has been preferred against the order dated 16/02/2016 passed by the learned Trial Court in S.T. No.64/2016.

Vide the impugned order charges for offences under Section 467, 468 & 471 & 420/511 of IPC have been framed against the petitioner.

Relevant facts, briefly stated, are that, in order to get '*Protsahan Rashi*' under the scheme floated by Govt. of Madhya Pradesh, the petitioner filled up a form in the prescribed proforma with a declaration that the information being furnished by her is correct to her knowledge and that she has not received any '*Protsahan Rashi*' from the Government. However, it was revealed that the petitioner had already received '*Protsahan Rashi*' with regard to State Civil Services Preliminary Examination-2013 conducted by the Madhya

Pradesh Public Service Commission, in which she appeared as a candidate with Roll No.157542. Allegedly, the information with regard to appearing in the preliminary examination was given by the petitioner in para-7 of the proforma, however, in the declaration, she falsely stated that she has not received '*Protsahan Rashi*'.

Learned counsel for the petitioner submits that if all the allegations made against the petitioner are accepted in entirety on the face value, still the offences under Section 467, 468 & 471 of IPC are not made out because that requires 'making of a false document' as defined in Section 464 of IPC and that making of a false declaration does not amount to 'making of a false document'.

In response, learned counsel for the State submits that the petitioner had made a false declaration in the form submitted by her for getting '*Protsahan Rashi*', therefore, the case is squarely covered within the mischief of Sections 467, 468 & 471 of IPC.

Heard the learned counsel for the parties and perused the record.

In **Mohd. Ibrahim vs. State of Bihar, (2009) 8 SCC 751**, Hon'ble the apex Court has considered the applicability of Sections 464, 467 & 471 of IPC. Para 10 to 14 of the report which are relevant in this regard run as under:

10. Section 467 (in so far as it is

relevant to this case) provides that whoever forges a document which purports to be a valuable security, shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine. Section 471, relevant to our purpose, provides that whoever fraudulently or dishonestly uses as genuine any document which he knows or has reason to believe to be a forged document, shall be punished in the same manner as if he had forged such document.

11. Section 470 defines a forged document as a false document made by forgery. The term "forgery" used in these two sections is defined in section 463. Whoever makes any false documents with intent to cause damage or injury to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into express or implied contract, or with intent to commit fraud or that the fraud may be committed, commits forgery.

12. Section 464 defining "making a false document" is extracted below:

"464. Making a false document.--A person is said to make a false document or false electronic record-- First.--Who dishonestly or fraudulently -

(a) makes, signs, seals or executes a document or part of a document;

(b) makes or transmits any electronic record or part of any electronic record;

(c) affixes any digital signature on any electronic record;

(d) makes any mark denoting the execution of a document or the authenticity of the digital signature,

with the intention of causing it to be believed that such document or a part of document, electronic record or digital signature was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or

Secondly.--Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with digital signature either by himself or by any other person, whether such person be living or dead at the time of such alternation; or

Thirdly.--Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his digital signature on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised

upon him, he does not know the contents of the document or electronic record or the nature of the alteration.

Explanation 1 - A man's signature of his own name may amount to forgery.

Explanation 2 - The making of a false document in the name of a fictitious person, intending it to be believed that the document was made by a real person, or in the name of a deceased person, intending it to be believed that the document was made by the person in his lifetime, may amount to forgery.

[Note: The words `digital signature' wherever it occurs were substituted by the words `electronic signature' by Amendment Act 10 of 2009]."

13. The condition precedent for an offence under sections 467 and 471 is forgery. The condition precedent for forgery is making a false document (or false electronic record or part thereof). This case does not relate to any false electronic record. Therefore, the question is whether the first accused, in executing and registering the two sale deeds purporting to sell a property (even if it is assumed that it did not belong to him), can be said to have made and executed false documents, in collusion with the other accused.

14. An analysis of section 464 of Penal Code shows that it divides

false documents into three categories:

1. The first is where a person dishonestly or fraudulently makes or executes a document with the intention of causing it to be believed that such document was made or executed by some other person, or by the authority of some other person, by whom or by whose authority he knows it was not made or executed.

2. The second is where a person dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part, without lawful authority, after it has been made or executed by either himself or any other person.

3. The third is where a person dishonestly or fraudulently causes any person to sign, execute or alter a document knowing that such person could not by reason of (a) unsoundness of mind; or (b) intoxication; or (c) deception practised upon him, know the contents of the document or the nature of the alteration.

In short, a person is said to have made a 'false document', if (i) he made or executed a document claiming to be someone else or authorised by someone else; or (ii) he altered or tampered a document; or (iii) he obtained a document by practicing deception, or from a person not in control of his senses.â□□

In the instant case, it is not alleged that the petitioner had put her signatures in the name of

some other person, rather as per prosecution, she had put her signatures in her own name. Further, it is not the allegation that any document was altered or modified by her. Lastly, it is also not the case of the prosecution that the petitioner obtained signatures on a document from a person by practicing deception or a person who was under intoxication or a person of unsoundness of mind, therefore, the alleged act or conduct of the petitioner in making a false declaration in the form submitted by her is not covered under any of the situations contemplated in Section 464 of IPC so as to constitute an offence under Section 467, 468 & 471 of IPC. Therefore, in absence thereof, *prima facie*, it cannot be said that the said offences u/S. 467, 468 & 471 of IPC are made out. The learned trial Judge while framing the charges has not considered the aforesaid factual and legal aspects and has framed the charges in a mechanical manner.

A person can be subjected to criminal trial only for the culpable act or conduct attributable to him. In the instant case even if all the allegations made in the charge-sheet are accepted on their face value, still a case for making of false document is not made out, therefore, charges for offences under Section 467, 468 & 471 of IPC, *prima facie* cannot be said to be made out against her, hence, the

impugned order to that extent being illegal, is unsustainable.

As regards, charge under Section 420/511 of IPC, learned Counsel for the petitioner submits that he is not challenging the order in that behalf, therefore, no further discussion is required in this regard.

Accordingly, this petition is **partly allowed** and the charges that have been framed against the petitioner for offences under Section 467, 468 & 471 of IPC are hereby quashed.

CC as per rules.

(VED PRAKASH SHARMA)
JUDGE