

THE HIGH COURT OF SIKKIM : GANGTOK

(Criminal Appeal Jurisdiction)

DATED : 24th MARCH, 2021

SINGLE BENCH : THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

Crl.A. No.15 of 2018

Appellant : Central Bureau of Investigation

versus

Respondents : Dr. Pratap Makhija and Others

Appeal under Section 378(2) of the
Code of Criminal Procedure, 1973

Appearance

Mr. Kali Charan Mishra, Special Public Prosecutor/Additional Legal Advisor, CBI, Kolkata, for the Appellant.

Mr. K. T. Bhutia, Senior Advocate with Ms. Sunita Chettri, Advocate for the Respondent No.1.

Mr. S. K. Pandey, Advocate for the Respondent No.2.

Mr. N. Rai, Senior Advocate for the Respondent No.3.

Mr. B. K. Rai, Advocate with Mr. Loknath Khanal, Advocate for the Respondent No.4.

Mr. S. S. Hamal, Advocate for the Respondent No.5.

J U D G M E N T

Meenakshi Madan Rai, J.

1. The Appellant assails the Judgment of the Learned Special Judge, Prevention of Corruption Act, 1988, East District, at Gangtok, dated 30-08-2016, in S.T. (CBI) Case No.01 of 2013, by which,

- (a) the Respondent No.1, Dr. Pratap Makhija, (hereinafter "A1") was acquitted of the offence under Sections 120B, 471 of the Indian Penal Code (for short, "IPC") and Section 13(1)(d)(iii) of the Prevention of Corruption Act, 1988 (for short, "P. C. Act");

Central Bureau of Investigation vs. Dr. Pratap Makhija and Others

- (b) the Respondent No.2, Ramayana Singh Meena (hereinafter "A2"), was acquitted of the offence under Sections 420 and 120B of the IPC;
- (c) the Respondent No.3, Surendra Mohan Sihara (hereinafter "A3"), was acquitted of the offence under Sections 420, 471 and 120B of the IPC;
- (d) the Respondent No.4, Mukesh Kumar (hereinafter "A4"), was acquitted of the offence under Sections 420, 471 and 120B of the IPC; and
- (e) the Respondent No.5, Tara Chand (hereinafter "A5"), was acquitted of the offence under Sections 197 and 120B of the IPC and Section 13(1)(d)(iii) of the P. C. Act.

2(i). The Special Public Prosecutor Mr. Kali Charan Mishra for the Appellant/Central Bureau of Investigation (CBI) advancing his arguments for the Appellant briefly put forth the facts leading to registration of the case against the Respondents on 25-10-2006. That, on completion of investigation Charge-Sheet was submitted against A1 to A5 and one Dr. Khagendra Neopaney under Sections 120B, 420, 468, 471 of the IPC and Section 13(2) read with 13(1)(d) of the P.C. Act.

(ii) It was the submission of Learned Special Public Prosecutor that relevant sanction for launching prosecution against A1 to A4 had been obtained from the concerned authority, P.W.30 Ramesh Babu Devella as evident from Exhibits 111 to 114. That, A1 in connivance with A2, A3 and A4 adopted procedural irregularities in the selection process by accepting their applications which were not only devoid of necessary documentation, but forged documents had also been submitted. That, A2 while seeking appointment as General Duty Attendant had submitted a

Central Bureau of Investigation vs. Dr. Pratap Makhija and Others

false Scheduled Caste Certificate, besides which his mother's name was recorded as 'Mina' in Exhibit 39 and "Sunhari" in Exhibit 40 with intent to cheat the Government. A3 while seeking appointment as a Laboratory Attendant had furnished a false local address to project himself as a local candidate, this act was duly supported by the evidence of P.W.2, P.W.6, P.W.12, reliance was also placed on Exhibit 60 and Exhibit 41. A4 had furnished a forged Birth Certificate and inadequate Typing Certificate. The furnishing of a forged Birth Certificate was established by the evidence of P.W.21 and Exhibits 47, 48, 86 and 87. Exhibit 42 submitted by A4 stating that he was undergoing a typing course was false as P.W.27 had deposed that he was suspended from the course and P.W.15 vide Exhibit 85 proved that the typing speed of A4 was '21' words per minute as against the required speed of 30 words per minute for a candidate. That, A2 and A4 had also furnished local addresses dishonestly to project themselves as local candidates and consequently obtained 5 (five) extra marks and were selected for appointment by fraudulent means.

(iii) That, there were other procedural requirements that were flouted by A1 since the Recruitment Rules, Exhibit 'F' required that appointments to the posts were to be made from local candidates by obtaining information of eligible local candidates from the Local Employment Cell. Contrary to the Rules, A1 issued the advertisement for employment first and thereafter sought a list of candidates from the Local Employment Cell. He had also not maintained any backlog roster for Scheduled Caste (SC) and Scheduled Tribe (ST) candidates and discrepancies were found in the roster submitted by him. These facts were supported by the

Central Bureau of Investigation vs. Dr. Pratap Makhija and Others

evidence of P.W.1 and P.W.5 as also Exhibits 4, 5, 6, 19, 34, 35, 'F' and 'L'. A1 deliberately concealed the medium of typing test as being in Hindi to enable manipulation and select A2, A3 and A4 as fortified by Section 164 of the Code of Criminal Procedure, 1973 (for short, Cr.P.C.) statements of P.W.6, P.W.7 and one K. K. Rakshit. As per P.W.5, when he took over charge from A1, the Files relating to the selection procedure of Group 'C' and 'D' staff were concealed from him indicating the dubious intention of A1. The Scrutiny Committee which was to scrutinize applications was constituted by A1 who gave directions to the Committee to accept the applications of A2, A3 and A4 even without the requisite documentation.

(iv) A5 for his part in connivance with A2 issued and signed a false Scheduled Tribe Certificate for A2 which helped him to obtain employment in the Regional Research Institute (Ayurveda) [for short, "RRI (Ay)"]. Arguments were also furnished with regard to A2 and Exhibits 75 and 76 in this context, but as this has already been discussed at length in Cri.A. No.29 of 2006 by this Court, no further arguments of the Prosecution need be considered being irrelevant. That, the evidence on record establishes the Prosecution case against the Respondents. That, the Learned Trial Court acquitted the Respondents herein on unfounded considerations which thereby occasioned a total failure of justice, as such, the Judgment of the Learned Trial Court is liable to be set aside.

3(i). Learned Senior Counsel Mr. K. T. Bhutia placing his arguments for A1 contended that the Prosecution has failed to

Central Bureau of Investigation vs. Dr. Pratap Makhija and Others

prove any *mens rea* and *actus reus* on the part of A1 for the offences he was charged with. That, a simple case of recruitment was blown out of proportion on a misunderstanding of facts. That, A1 as the Head of the RRI (Ay) at the relevant time admittedly was a novice in administrative matters, duly established by the evidence of the Prosecution witnesses themselves. On a requisition by the Central Office, A1 sent the roster indicating the vacancies on the basis of percentage and then proceeded on leave. The next In-Charge sent the vacancies category-wise. Till then, the roster system had not been maintained by the RRI (Ay) as indicated in the evidence of P.W.2 (Lakshmi Kanta Ganguli), P.W.5 (Dr. Ashok Kumar Panda) and P.W.7 (Gopi Prasad). Following instructions received from the Central Authority to fill up the posts for specified categories A1 published the advertisement and on further instructions he sought the names of eligible candidates from the Employment Cell of the Government of Sikkim. The time for interview was extended to enable the local candidates to appear thereof. Pursuant thereto the Selection Committee was constituted by the Central Authority comprising of A1, P.W.3 and P.W.4. This Committee suo moto decided to give extra marks to the local candidates as deposed by P.W.2, contingent upon production of Certificate of Identification/Sikkim Subject.

(ii) Out of 45 (forty-five) non-local candidates, 25 (twenty-five) had furnished local addresses for correspondence, hence the furnishing of local address was not confined only to A2, A3 and A4 nor did they seek to project themselves as local candidates. A1 did not participate in the scrutiny of applications and documents, but constituted a Scrutiny Committee comprising of P.W.6, P.W.7 and

Central Bureau of Investigation vs. Dr. Pratap Makhija and Others

one K. K. Rakshit, vide Exhibit 'C', based on their administrative experience. Decisions for appointment were taken by the Selection Committee, hence if A1 is found to have committed offences P.W.3 and P.W.4 were also equally liable and ought to have been arrayed as accused persons. The Selection Committee was to award a total of 50 (fifty) marks to the candidates and it was decided that 20 (twenty) marks would be allotted to A1 as Chairman for the purpose of marking the candidates and the other two Members would do so on 15 (fifteen) marks each. That, P.W.3 and P.W.4 have deposed that there was no unfairness in the functioning of the Selection Committee and in such circumstances the Charge-Sheet was filed merely to harass A1 to A5.

(iii) The departmental enquiry held against A1 during the pendency of WP(C) No.22 of 2006 exonerated him from all charges, while the services of A2, A3 and A4 were terminated but the order of termination was set aside by the Central Administrative Tribunal (CAT). The Order of the CAT came to be challenged by way of WP(C) No.32 of 2009 in this Court which was dismissed. Assailing this Court's Order, a Special Leave Petition (SLP) was preferred before the Hon'ble Supreme Court of India which dismissed the SLP. That, despite these facts, the Prosecution is pursuing this matter by way of Appeal.

(iv) Learned Senior Counsel further urged that the Selection Committee gave extra marks to the local candidates despite their lack of past experience and Exhibit 'K' reveals this circumstance, while P.W.2, P.W.3, P.W.6 and P.W.7 have deposed in this context and P.W.32 has stated unequivocally that no

Central Bureau of Investigation vs. Dr. Pratap Makhija and Others

favouritism was shown to A2 by A1. That, Exhibit 3 the relevant advertisement required the typing qualification to be not less than 30 (thirty) words per minute, but did not require the production of a Certificate to that effect. The candidates appeared in person and took the typing test where their speed was assessed. Besides, A1 had no motive to help A2 and the evidence would reveal that less marks were awarded to A2 by A1. A1 at no point had forced the inclusion of Hindi typing to facilitate the candidature of A2, and Hindi was included on instructions from the Central Authority to encourage the language. That, the entire procedure of appointment was transparent with due information to the Central Authority supported by Exhibit 61, the Dispatch Register, revealing such correspondence buttressed by the evidence of P.W.7. The minutes of the meeting pertaining to the examinations was scribed and prepared by P.W.3 and A1 had no hand in it as evidenced by Exhibits 15, 16 and 17. After the selection process was completed details were forwarded to the Central Authority upon which approval was granted for appointment, as stated by P.W.2 following which the appointments took place.

(v) That, the WP(C) 22 of 2006 came to be filed based on Exhibit 7 dated 20-05-1985 wherein an LDC sought transfer from Gangtok to Hyderabad which was disallowed. The correspondence was leaked by an inimical employee of RRI (Ay) to the newspaper "Hamro Prajashakti", Exhibit 58. The Writ Petitioner interpreted the correspondence to mean that the advertised posts were meant solely for local candidates which was an erroneous interpretation as the Counter-Affidavit relied on by A2 herein would indicate otherwise. Consequently, an Inspection Committee was constituted

Central Bureau of Investigation vs. Dr. Pratap Makhija and Others

by the Central Authority and inspection conducted by one Dr. Beni Madhav, Deputy Director (Admn.) and L. K. Ganguly, Admn. Officer (Vig.) [Exhibit 1] which in its report made vague allegations of irregularities, but revealed no illegality. That, Exhibit 7 does not reflect the provisions of the Recruitment Rules (Exhibit 'F') and if the letter had been brought to the notice of the Selection Committee before completion of the recruitment process, a clarification would have been issued to that effect. In the light of these facts, the Appeal be dismissed.

4. Learned Counsel Mr. S. K. Pandey appearing for A2 submitted that A2 was acquitted of the Charges under Sections 420 and 120B of the IPC by the Learned Trial Court, but convicted under Section 471 of the IPC, hence an Appeal was preferred being Crl.A. No.29 of 2016. Vide Judgment of this Court dated 15-03-2018, the Appeal was allowed and A2 acquitted of the offence under Section 471 of the IPC. However, the instant Appeal against A2 still pivots around Section 471 of the IPC. That, in fact the prosecuting agency had failed to establish any of the allegations against A2 or the nexus between A1 and A2. While adopting the submissions made by Learned Senior Counsel for A1, Learned Counsel for A2 contended that there was no requirement for submission of past Experience Certificate and neither was he the beneficiary by such non-furnishing. The local address furnished by A2 was only for the purposes of correspondence and no benefit accrued to A2 on this account. The evidence of P.W.6 in fact is indicative of the fact that he had allowed use of his address to A2. Due to non-possession of Certificate of Identification or a Sikkim Subject Certificate A2 obtained no extra marks as revealed by the

Central Bureau of Investigation vs. Dr. Pratap Makhija and Others

deposition of P.W.2. There is no proof of criminal conspiracy between A1 and A2 no offence by A2 as alleged is proved and the Judgment of the Learned Trial Court be confirmed.

5. Advancing his arguments for A3, Learned Senior Counsel Mr. N. Rai submitted that the specific allegation against A3 was that he had furnished the local address of P.W.12 without his knowledge, which was in fact the culmination of acrimonious relations between A3 and P.W.5 who vitiated the work environment when he came to head the RRI (Ay) and had a fist fight with A3. That, P.W.5 had inimical relations with most of the employees of the Centre, resulting in the instant matter with the object of harassing the Respondents herein. That, Exhibit 41, the application form of A3 for the post of Laboratory Attendant does not contain any requirement for permanent address, but merely provides for postal address. A3 had furnished the address of P.W.12 for correspondence on P.W.12 allowing D.W.3 to do so as D.W.3 had sought permission on behalf of A3. That, Exhibit 43 dated 05-08-2006, a letter addressed to P.W.5 by P.W.12 complaining that A3 had used his residential address was written at the behest of P.W.5 who was known to P.W.12, in order to harass A3. Records would reveal that earlier in time Exhibit 49 the Memorandum of appointment addressed to A3 dated December, 2005 was also delivered in the address of P.W.12 who had raised no objection then. A3 received the letter of appointment issued in the address of P.W.12 through one P.W.6, who was also known to P.W.12. It was urged that no extra marks were given to A3 merely because he furnished a local address. The prosecuting agency had recorded the statement of D.W.3 in this context during

Central Bureau of Investigation vs. Dr. Pratap Makhija and Others

investigation, however the statement having failed to support their case, he was not entered as a Prosecution witness. Relying on the decision of **State of Haryana vs. Ram Singh**¹ it was contended that defence evidence is sufficient to disprove the Prosecution case. That, Exhibit 'AS' letter of show cause dated 28-06-2006 shows two addresses of A3 and contrary to the evidence of P.W.5 that A3 did not reveal his permanent address his application form, Exhibit 41 and Caste Certificate, Exhibit 'O' reflect his permanent address. That, A3 was acquitted by the Learned Trial Court and the acquittal be confirmed.

6. Learned Counsel Mr. B. K. Rai submitting his contentions on behalf of A4 urged that there was no falsity in the Birth Certificate Exhibit 87 or the local address furnished by him as both his parents are employees at the RRI (Ay) and the address of RRI (Ay) was furnished by him in Exhibit 42. Contending that Exhibit 87 is the Birth Certificate of A4, it was argued that the document is dated 10-06-1991, as A4 was born on 25-07-1979 and the document was obtained by his father when A4 was 12 years old a minor, at which time there was no advertisement for vacancies in the RRI (Ay) thus no *mens rea* can be attributed to A4. P.W.7 in his evidence has clearly stated that A4 has furnished the address of Sikkim and Haryana and the evidence of P.W.8, P.W.9 and P.W.20 are proof of the fact that he was a student in a local school in Sikkim. That, in fact prior to the case under Appeal, a case was earlier registered against A4 under Sections 420, 468 and 471 of the IPC where Charge-Sheet was filed against him along with his father Ram Kishan Balmiki and one Khagendra

¹ AIR 2002 SC 620

Central Bureau of Investigation vs. Dr. Pratap Makhija and Others

Neopaney (Accused No.6) all of whom were arrested in G. R. Case No.143 of 2007. During the hearing on consideration of Charge, the Learned Chief Judicial Magistrate discharged all the three persons *supra* vide Order dated 19-06-2008. That, the Investigating Officer of the case has admitted that certain documents pertaining to the case were not seized, hence the non-seizure of relevant Registers fails to establish the alleged forgery of Exhibit 87. That, nothing erroneous emanates in the reasoning of the Learned Trial Court of the innocence of A4 and therefore the Judgment of the Learned Trial Court be upheld.

7. Learned Counsel Mr. S. S. Hamal appearing for A5 submitted that A5 was the Patwari of Nadbai, District Bharatpur in Rajasthan and retired in 2001. That, in fact, Exhibit 75 and Exhibit 81 are the relevant documents for the purposes of the case against A5. A5 being the concerned Officer at the relevant time made the necessary verification and submitted his report stating therein that A2 belongs to the "Meena Caste" and is a resident of Nadbai. As per the Prosecution, A2 is the son of 'Munshi' when in fact A2 is the son of "Rameshwar Dayal" as proved and buttressed by the documents submitted by A2 before A1 for employment. A2 has already been acquitted by the High Court of the Charge under Section 471 of the IPC, hence the foundation of the Prosecution case that A5 issued a false Scheduled Tribe Certificate to enable A2 to obtain employment is also demolished. The Prosecution allegation that Exhibit 76 was submitted by A2 to the Tehsildar, Nadbai is sans any proof. Reliance was placed on the evidence of P.W.10, P.W.11, P.W.14, P.W.17, P.W.18, P.W.31, P.W.32, P.W.33, D.W.1 and D.W.2. The issuance Register Exhibit 78 reveals that

Central Bureau of Investigation vs. Dr. Pratap Makhija and Others

Exhibit 81 was issued but there is no proof that Exhibit 75 was also issued, hence the CBI has not been able to establish its allegations against A5. It was next contended that Exhibit 81 and Exhibit 75 both are alleged to have been issued during the year 2005 to 2006 in all the three Charges framed against A5, as A5 had already retired from service on 31-10-2001, he had no role to play in the aforesaid period. The CBI made no effort to have the Charges or dates in the Charge-Sheet corrected. The first Charge against A5 stands categorically demolished as he was not required by law to issue or sign on Exhibit 75 or Exhibit 81 which was the duty of the Tehsildar. The Dispatch Register, Exhibit 78 also does not contain his signature. The custodian of Exhibit 75, Exhibit 78 and Exhibit 81 one Amar Chand was not examined by the Prosecution. The concerned authorities on submission of verification report by the Patwari themselves verify the authenticity of the documents furnished. The CBI's allegation is that the verification report was made by A5 based on Document 'X', the Ration Card, while A5 asserts that it could well have been based on the voter list or land documents furnished before him. Advancing his arguments with regard to the second Charge against A5, it was reiterated that he retired in 2001 and A2 never claimed to be the son of 'Munshi' and the Prosecution failed to establish the *mens rea* of A2 and A5. Reliance was placed on the documents of the Prosecution, i.e., Exhibits 37, 39, 40, 74 to 83 and Exhibit 92. That, in the absence of any proof of any offence by A5 or connivance between A2 and A5 the Judgment of the Learned Trial Court requires no interference and the acquittal of A5 be upheld.

Central Bureau of Investigation vs. Dr. Pratap Makhija and Others

8(i). Having heard Learned Counsel for the parties, it is essential to briefly set out the facts of the case.

(ii) On 09-06-2006, this High Court in WP(C) No.22 of 2006 directed the CBI to conduct an enquiry into the process of selection and appointment made by A1, the then Officer-in-Charge of RRI (Ay) and Chairman of the Selection Committee constituted for filling of backlog vacancies reserved for Scheduled Caste and Scheduled Tribe categories to various posts in RRI (Ay) in Gangtok, in pursuance to a special employment drive conducted by the Department of Ayurveda (AYUSH) under Ministry of Health and Family Welfare, Government of India. A preliminary enquiry was conducted by the CBI and thereafter a regular case was registered on 25-10-2006 against A1, A2, A3, A4, A5 and one Dr. Khagendra Neopaney (Accused No.6). When the investigation commenced A2 filed an SLP in the Supreme Court of India against the Order of the High Court dated 09-06-2006 (*supra*). Vide Order dated 31-01-2007, the Supreme Court of India remitted the matter to the High Court for fresh disposal and ordered discontinuation of CBI investigation. Pursuant thereto, CBI filed a closure report dated 27-02-2007 before the Learned Court of Sessions Judge on 08-03-2007. However, in Civil Appeal No.684/2008 arising out of SLP(C) No.2301/2007 the Supreme Court passed an Order dated 25-01-2008 wherein it *inter alia* observed that no opinion had been expressed about some criminal proceedings stated to have been initiated. Following this Order, the CBI withdrew the closure report with the permission of the Court and continued investigation. The allegations are that A1 in conspiracy with A2, A3 and A4 facilitated their appointment in various posts at RRI (Ay) based on false

Central Bureau of Investigation vs. Dr. Pratap Makhija and Others

information/Certificate submitted by A2 to A4 to establish eligibility of their candidature as well as to project themselves as local residents of Sikkim. These fraudulent acts led to deprivation of employment for the genuine local candidates. A5 was said to have facilitated A2 to obtain a false Caste Certificate to obtain employment at the RRI (Ay). Post based reservation rosters to calculate backlog vacancies was not maintained by the RRI (Ay) and the backlog vacancy position revealed discrepancies post-wise and category-wise which was not brought to the notice of the CCRAS to enable rectification. A1 published the advertisement in the local newspapers for employment, on 04-10-2005 and again on 10-10-2005 and then only approached the Local Employment Exchange on 13-10-2005 contrary to the Rules which required him to first approach the Local Employment Exchange. The Local Employment Cell allegedly sponsored sufficient suitable candidates for the posts advertised which A1 ignored. The Corrigendum issued in the daily local newspaper mentioning that local candidates of Sikkim would be given priority indicated his knowledge that recruitment in the Group 'C' and 'D' posts were to be from local candidates. Investigation further revealed that A1 formed a Scrutiny Committee without ascertaining the competence of the Members therein and despite the Committee finding the application forms of A2 to A4 lacking in relevant documentation, he directed them to accept the application forms. That, the selection of A2 to A4 were at the behest of A1, the Chairman of the Selection Committee.

(iii) Based on the investigation, Charge-Sheet was submitted against A1, A2, A3, A4 A5 and one Dr. Khagendra

Central Bureau of Investigation vs. Dr. Pratap Makhija and Others

Neopaney (Accused No.6) under Section 120B read with Sections 420, 468, 471 of the IPC and Section 13(2) read with Section 13(1)(d) of the P. C. Act. Dr. Khagendra Neopaney, the then Registrar, Births and Deaths, Government of Sikkim on filing Crl.Rev.P. No.04 of 2014 before this Court was discharged by the Order dated 15-04-2015.

9. The Learned Trial Court framed Charge against the Respondents as follows;

- (i) A1 under Sections 120B, 471 of the IPC and Section 13(1)(d)(iii) of the P. C. Act;
- (ii) A2 under Sections 420, 471 and 120B of the IPC;
- (iii) A3 under Sections 420, 471, 120B of the IPC;
- (iv) A4 under Sections 420, 471 and 120B of the IPC; and
- (v) A5 under Section 197 of the IPC read with Section 13(1)(d)(iii) of the P. C. Act and 120B of the IPC.

On due consideration of the evidence on record all the Respondents were acquitted of the offences charged with except A2 who was acquitted of the Charge under Sections 420 and 120B of the IPC, but convicted under Section 471 of the IPC. On Appeal by A2, Vide Judgment of this Court dated 15-03-2018 in Crl.A. No.29 of 2016, A2 was acquitted of the offence under Section 471 of the IPC.

10. The rival submissions of the parties were heard *in extenso*, the impugned Judgment and all documents and evidence on record carefully perused.

11. What falls for consideration of this Court is whether the Learned Trial Court acquitted the Respondents of the Charges without proper appreciation of the evidence on record?

Central Bureau of Investigation vs. Dr. Pratap Makhija and Others

12. A1 and A5 were charged with offences under Section 13(1)(d)(iii) of the P. C. Act. The relevant portion of the Section is extracted hereinbelow;

"13. Criminal misconduct by a public servant.—(1)
A public servant is said to commit the offence of criminal misconduct,—

.....
(d) if he,—
.....
(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or
....."

Dishonest intention is the essence of an offence under Section 13(1)(d)(iii) of the P. C. Act.

13. A2, A3 and A4 were charged under Section 420 of the IPC which provides as follows;

"420. Cheating and dishonestly inducing delivery of property.—Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

The offence is defined under Section 415 of the IPC. For establishing an offence under this Section it is necessary that there should be direct connection between the false representation and the delivery of the property for the doing of something by the person deceived. It is also necessary that the act or the omission complained of should cause or is likely to cause damage or harm to the person deceived, in mind, body, reputation or property.

14. A1, A2, A3 and A4 were charged under Section 471 which provides as follows;

"471. Using as genuine a forged document or electronic record.—Whoever fraudulently or dishonestly uses as genuine any document or electronic record which he knows or has reason to believe to be a forged document

Central Bureau of Investigation vs. Dr. Pratap Makhija and Others

or electronic record, shall be punished in the same manner as if he had forged such document or electronic record.”

As clarified *supra*, A2 on Appeal earlier was already acquitted of the offence. Section 471 of the IPC requires that there must be fraudulent or dishonest use of a document as genuine and knowledge or reasonable belief on the part of the person using the document that it is a forged one.

15. All the Respondents were charged under Section 120B of the IPC which is penalty for criminal conspiracy, the offence having been defined in Section 120A of the IPC. The Prosecution was to establish that there was an agreement between A1, A2, A3 and A4 to commit a criminal offence irrespective of whether or not the offence was actually committed. The evidence furnished must establish the meeting of minds of A1 with all other Respondents and that of A5 with A2.

16. Section 197 of the IPC under which A5 has been charged with deals with issuance or signing of any certificate required by law to be given or signed, or relating to any fact of which such certificate is by law admissible in evidence, knowing or believing that such certificate is false in any material point.

17(i). On careful perusal of the evidence furnished by the Prosecution, P.W.2 revealed that no roster was being maintained in the RRI (Ay), Gangtok, as also P.W.5 duly supported by the evidence of P.W.7 a former employee of the RRI (Ay), who stated that he along with P.W.6 after obtaining permission from A1 went to the National Sample Survey Organisation, typed the roster and handed it over to P.W.6 who affixed his signature on the same. Hence, A1 cannot be foisted with the allegation of non-

Central Bureau of Investigation vs. Dr. Pratap Makhija and Others

maintenance of roster as his predecessors too had not taken steps for such maintenance, consequently the blame for discrepancies in the roster cannot be laid at the doorstep of A1 alone. In fact, his predecessors ought to have been taken to task for shoddy administration. The Recruitment Rules, Exhibit 'F' indicates that the eligibility condition therein was that Indian Nationals as defined by the Union Public Service Commission were eligible for appointment under the Council. For Group 'C' and 'D' posts, Rule 3.3 provided that *"These posts shall be filled through the Local Employment Exchanges or the Central Employment Exchange as the case may be, depending on the level of the posts and availability of candidates at the Local/Central level. In cases where the local Employment Exchanges issue non-availability certificate on requisition sent to them in respect of the vacancies occurring in subordinate offices and Headquarters, the Director, CCRAS, may advertise or authorize the Project Officer to advertise these vacancies through Central Employment Exchange. If there are difficulties in advertising vacancies through Employment Exchange, he may advertise these vacancies at the Headquarters office level through D.A.V.P. Employees of the Council who are appointed on regular basis in the Council shall be eligible for consideration for higher posts alongwith the Employment Exchange candidates, if they apply."*

In the light of this Rule, it emerges that the posts were to be filled by local candidates whose names were sent by the Local Employment Exchanges. If the Employment Exchange issued non-availability Certificate of local candidates, in such a situation, either the Director, CCRAS was to advertise these vacancies or to authorize the Project Officer to do so. Admittedly, the Local Employment Exchange being the Department of Personnel, Government of Sikkim, had furnished the list of eligible names for

Central Bureau of Investigation vs. Dr. Pratap Makhija and Others

filling up the vacancies that had occurred. However, contrary to the aforementioned Rules, A1 first issued advertisement Exhibit 4 for vacancy of Laboratory Technician from SC candidates in an English local daily newspaper 'NOW' dated 05-10-2005. Following this, on 18-10-2005, Exhibit 3, advertisement was issued in the English local daily newspaper 'NOW' for the posts of Lower Division Clerk, General Duty Attendant, Laboratory Assistant and Peon with the caption "SPECIAL RECRUITMENT DRIVE FOR SCs/STs" indicating the vacancies therein. On 29-10-2005, A1 issued Exhibit 5, a letter to the Editor of 'NOW', stating that he was submitting Corrigendum for publishing in the 31-10-2005 edition of the newspaper. The Corrigendum provided that with reference to the advertisement issued on 05-10-2005 applications were again invited from 31-10-2005 to 05-11-2005. That, with reference to advertisement published on 18-10-2005 the closing date of applications would be 05-11-2005 instead of 31-10-2005. It mentioned "*NOTE: Local candidates of Sikkim will be given priority.*" In the interim, on 13-10-2005, it appears that A1 issued Exhibit 6, a letter to the Under Secretary, Employment Cell, Department of Personnel, Government of Sikkim, requesting him to send bio-data of suitable candidates within 20 (twenty) days from the date of issuance of the Circular for appointment in the posts reflected hereinabove. The procedure followed by A1 being contrary to the Rules exhibits irregularity at the hands of an inexperienced administrator, but in no way can it be given the garb of a criminal offence. The Prosecution witnesses have themselves stated that A1 was a technical person and had not been trained in

Central Bureau of Investigation vs. Dr. Pratap Makhija and Others

administrative procedure nor is it established that at any point in time he had prior experience in administrative work.

(ii) The allegation of the Prosecution is that A2, A3 and A4 had received undue favour by wrongly furnishing local address to project themselves as local candidates and had thereby obtained the benefit of additional marks and selection in the posts does not hold water. Contrary to the reasoning of the Learned Special Judge in the impugned Judgment that there was no specified format in which the applicants were supposed to submit their applications, Exhibit 4 and Exhibit 3 provide the format and details which the applicants were to submit in their applications. It is specified *inter alia* that the candidate was to furnish his "permanent address" and "correspondence address". A2 had given three addresses, one of Gangtok being that of P.W.20 (wife of P.W.6) in the application form Exhibit 37, another of Delhi in Exhibit 129 (collectively) and third one in the Caste Certificate Exhibit 75, being of Rajasthan. A3 had given two addresses, one of Gangtok of P.W.12 in the application form Exhibit 41 and one of Rajasthan in the attestation form Exhibit 'O'. A4 had given two addresses, one of Haryana and the other of RRI (Ay), both mentioned in Exhibit 42. Exhibit 3 the advertisement dated 18-10-2005 at Serial No.8 reads as follows;

"Permanent & Correspondence address (in block letters)"

(iii) Hence, A2, A3 and A4 cannot be faulted for furnishing the address of their permanent homes and a second address in which correspondence was to be made. Exhibit 129 (collectively) the Service Book of A2 reveals that his permanent home address has been mentioned as Delhi, but the Service Book would

Central Bureau of Investigation vs. Dr. Pratap Makhija and Others

obviously indicate his address after his appointment. The Prosecution did not make efforts to trace whether he had shifted to Delhi in the year 2006, the year his service book was signed by him. Exhibit 75 which shows an address of Rajasthan, the father's name as "Munshi" is relied on by the Prosecution. This argument is being discarded by this Court in view of the discussions in Crl.A. No.29 of 2016 where this document has been discussed at length in Paragraph 21 of the Judgment which is as follows;

"21. What manifests from the evidence of the witnesses extracted hereinabove is that, in the first instance, Exhibit 81 which is the Scheduled Tribe Certificate in the name of A2, "Ramayan Singh, son of Rameshwar Dayal", was issued vide Exhibit 78, the Dispatch Register, which at Sl. No.1090 clearly reveals the name of "Ramayan Singh, son of Rameshwar Dayal". Exhibit 75 is a Caste Certificate in the name of "Ramayan Singh son of Munshi" purporting to be the Office copy of Exhibit 81, allegedly received by A2 after acknowledging receipt on Exhibit 75 by signing on it. Both Exhibits were admittedly issued by the Tehsildar, Nadbai and Exhibit 75 remained in the Office records. The evidence of P.Ws 10, 11, 14 and 31 clarifies that Exhibit 81 was issued from the Tehsil Office at Nadbai. The Prosecution case rages around the contention that Exhibit 81 is a forged document utilized by A2 to obtain employment at RRI (Ay) Gangtok. Although the Prosecution case is that Exhibit 76 was the application submitted by A2 in the printed proforma of the concerned Tehsil, addressed to the Tehsildar recording his father's name as "Munshi", no proof of this allegation exists. Exhibit 81 has been issued on 30-08-2000, but Exhibit 76 has not been dated by the applicant, it is only the concerned Officer who has endorsed a date below his signature. The signature alleged to be of A2 is unidentified and it is not proved that A2 is the applicant. Even assuming that Exhibit 81 was the offshoot of Exhibit 76, it has not been established by the Prosecution that the insertion of the name "Rameshwar Dayal" was infact made by A2 or that he had knowledge of such insertion or whether Exhibit 76 pertained at all to Exhibit 81. In other words, there could have been two persons by the name of "Ramayan Singh", of which one could have been the son of "Munshi" and the other the son of "Rameshwar Dayal". It is the constant refrain of the Prosecution that Exhibit 75 is the office copy of the Scheduled Tribe Certificate issued to A2 and is, therefore, the correct version of the document issued. If this be so, then one cannot help but be perplexed at the entry in the Dispatch Register Exhibit 78 which shows issuance of Certificate to "Ramayan Singh, son of Rameshwar Dayal" and not "Ramayan Singh, son of Munshi". The evidence on record has also clearly established that the Dispatch Register, Exhibit 78 remains in the custody of the Office and more specifically with the dealing Clerk, one Amar Chand and the general public have no access to it. The entries in Exhibit 78 are said to have been made by Amar

Central Bureau of Investigation vs. Dr. Pratap Makhija and Others

Chand. It is not the claim of any of the witnesses that the entry in Exhibit 78 was made by A2. A2 had no access to Exhibit 78 as per evidence on record. The I.O. has admitted that he examined Amar Chand recorded his statements and obtained his handwriting and signatures, but Amar Chand although listed as a Prosecution witness was not produced before the Learned Trial Court to establish the Prosecution case. Amar Chand appears to be a pivotal witness, therefore, on his non-production suspicion rears its head and enables this Court to draw an adverse inference under Section 114, *Illustration (g)* of the Evidence Act. It is also questionable as to why Ramcharan who accompanied P.W.11 was not produced as a witness although listed as a Prosecution witness."

(iv) The Prosecution has also tried to make out a case that, as per P.W.6, A1 told him that the address of his wife was used by one of the candidates and A1 being the In-Charge of RRI (Ay) of which P.W.6 was an employee he could not refuse. However, on perusal of the evidence of P.W.6 he has stated that he used to reside in Daragaon, Tadong, along with his wife and one room therein was rented out by him to A2 and A3. In the light of this evidence, if A2 and A3 were tenants of P.W.6, in my considered opinion, no fault or criminality arises on their furnishing the address of P.W.6 as their correspondence address, in terms of Exhibit 3, as they were in occupation of the said premises. Similar would be the reasoning for A4 having furnished two different addresses as it is his case that he was a resident of Sikkim, his parents being employees in the RRI (Ay) but they originally came from Haryana. Furnishing of the two addresses by him was also in compliance to the requirement in Exhibit 3. The Prosecution has relied on the evidence of P.W.2 that in view of the differing signatures of A2 on the application form and the joining report gave rise to a doubt that Ramayan Singh was a different person. If that be so, it was for the Prosecution to have launched an investigation into the matter and by evidence cleared all doubts

Central Bureau of Investigation vs. Dr. Pratap Makhija and Others

and established their allegation. No finding can be arrived at by any Court based on conjectures and surmises.

(v) An effort has been made by the Prosecution to indicate that A1 had told P.W.6 to go to Tadong Post Office and collect the appointment letters in the name of A2 and A3, but P.W.6 in his evidence has stated that A2 and A3 told him while leaving Sikkim after the interview that in case they were successful and a calling letter was sent in his address, he should receive it. P.W.6 has specifically stated that he had no objection to them using his address and admittedly collected the appointment letters of A2 and A3 from the Post Office but not at the behest of or duress by A1. It is further the Prosecution case that A3 furnished the address of P.W.12 on the instructions of A1. This is not established by any evidence. Consequently, it is apparent that the Prosecution has failed to establish by any cogent evidence the allegation of the furnishing of address of P.W.12 by A3 on the alleged manipulation by A1. Evidently, A3 had in 2005 received correspondence in the same address but at that time P.W.12 had raised no objection who was offended only when the show cause notice of A3 was sent to his address. The evidence of D.W.3 in fact reveals that he was known to P.W.12 and on his request A3 had furnished the address of P.W.12, who permitted it. In ***Hanumant, Son of Govind Nargundhar vs. State of Madhya Pradesh***² it was observed thus;

"10.

It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be

² AIR 1952 SC 343

Central Bureau of Investigation vs. Dr. Pratap Makhija and Others

such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.”

(vi) P.W.2 has under cross-examination admitted that 10 (ten) marks earmarked for local candidates was to be given on production of Sikkim Subject/Certificate of Identification and not on the basis of the address given on the application form. That, no favouritism was shown to any candidate by virtue of having furnished a local address. Column 5 of Exhibit 21 reflects that 10 (ten) marks were for local candidates and 5 (five) for non-local candidates. The Prosecution was not able to establish by any evidence that A2, A3 and A4 were given the said additional 10 (ten) marks which were set aside for local candidates on the basis of the local addresses furnished by them. Exhibit 21 in fact reveals that A3 was given 5 (five) marks, whereas the local candidates were given 10 (ten) marks each. Admittedly, A2, A3 and A4 did not possess Certificate of Identification or Sikkim Subject, therefore, the question of awarding them extra marks did not arise.

(vii) Reliance has been placed by the Prosecution on Exhibit 7 and evidence of P.W.8 to support their contentions that the posts in Group 'C' and 'D' were meant only for local residents. The correspondence reveals *inter alia* that P.W.8 was not granted transfer to Hyderabad or Bhubaneswar and that the Council did not encourage employees in Group 'C' and 'D' recruited locally to seek transfer to other places since such posts are "mainly" meant for local residents. Exhibit 7 does not specify that the posts were

Central Bureau of Investigation vs. Dr. Pratap Makhija and Others

“only” for local residents but “mainly” and the correspondence did not reflect the Rules. That apart, the Selection Committee had been clothed with sufficient powers to select the appropriate candidate for a particular post. Even assuming that the Rules were flouted no criminality emanates, as it appears to have been done on account of lack of administrative experience.

(viii) It is not contested by the Prosecution that the Selection Committee was formed by the Central Office vide Exhibit ‘B’ comprising of one Dr. D. Baruah and B. Malik. No specific allegation has arisen from the Prosecution that A1 wrongly nominated himself as its Chairman of the Selection Committee. As per P.W.2, the Selection Committee constituted by CCRAS was incorrect, but the Prosecution did not take the concerned officials of CCRAS to task for their act. Besides, the irregularity detected in the Selection Committee, as per P.W.2, was that B. Mallick was not a Member of the SC/ST Community and Dr. Baruah was not a subject Expert, it was indeed not an error committed by A1. In addition, it is relevant to notice that Exhibit ‘F’ at Rule 5.5 provides that the Selection Committee shall comprise of the Project Head. As A1 was evidently heading the RRI (Ay) at the relevant time he became the Chairman of the selection by default. Hence, the constitution of the Selection Committee was not by or at the whim of A1.

(ix) It is not the Prosecution case that the backlog vacancies which were reserved for Scheduled Caste and Scheduled Tribe candidates were filled up by candidates of any other category by the Selection Committee. The Scrutiny Committee constituted

Central Bureau of Investigation vs. Dr. Pratap Makhija and Others

by A1 comprised of P.W.6, P.W.7 and one K. K. Rakshit who scrutinized the documents submitted by the candidates. P.W.3 has deposed that there were no adverse remarks about the integrity of this Committee. Even if the Prosecution was of the opinion that the Committee was incapable, this in itself would not qualify as a criminal offence, all that was required was to reconstitute the Scrutiny Committee on grounds of incompetence. The Prosecution alleged that A1 had specifically directed the Scrutiny Committee to accept the applications of A2, A3 and A4 irrespective of the absence of relevant documents, this is devoid of any proof given that the Prosecution witnesses have not stated that A1 had directed them to accept the applications of A2 to A4.

(x) The Prosecution had also contended that in the advertisement, Hindi as the medium of the typing test was not mentioned nor was any Expert engaged for the typing test nor did the candidates submit Certificate of Typing Speed. In my considered opinion in the absence of proof of criminal intent this cannot tantamount to a criminal offence but would be an irregularity which could well have been rectified by cancelling the entire selection process by the Central Authority who despite being aware of the process being undertaken by the RRI (Ay) and information being communicated to them did not deem it essential to take rectifying steps or consider it criminal or irregular at that relevant point in time. In fact, evidence reveals that the list of selected candidates were forwarded to the CCRAS who granted approval for their appointment. No enquiries pertaining to irregularity or illegality was made by CCRAS. The transparency maintained by the RRI (Ay) with the Central Authority is evident

Central Bureau of Investigation vs. Dr. Pratap Makhija and Others

from communications sent to the Central Authority vide Exhibits "AO", "AN", "AB", Exhibit 61 and evidence of P.W.7 and other Prosecution witnesses.

(xi) Exhibit 3 the advertisement issued mentions *inter alia* that "..... b) Not less than (sic) @ 30 W.P.M. in typing as evident in test." The advertisement made no mention of a Certificate. The Selection Committee evidently made a decision about the medium of the typing test in view of the guidelines issued by the Central Authority. Relevant reference may be made to the evidence of P.W.3 who stated that the RRI (Ay) was adhering to the guidelines issued by the Central Authority, informing them that there ought to be progressive use of Hindi as issued by the Department of Official Language. Exhibit 'T' is the letter identified by P.W.3, dated 06-03-2014, from the Director General, CCRAS to the Subordinate Council of all Institutions/Centres/In-Charge of Units which cautions that the guidelines to follow Hindi in the Institute were being disregarded and the Parliamentary Official Language Committee could inspect the Institution at any time and should it be discovered that the guidelines of the Official Language Department were not complied with then RRI (Ay) would have to face a lot of difficulties. It is clear that A1 did not of his own accord include Hindi as the language for typing, but it was the Selection Committee following the instructions *supra*. Surely following instructions of a higher authority does not constitute a criminal offence nor can it be deduced that the medium of the typing test was kept under wraps to manipulate the process in favour of A2, A3 and A4. The independence of the Selection Committee is proved by the

Central Bureau of Investigation vs. Dr. Pratap Makhija and Others

evidence of P.W.3 who categorically stated that A1 had told him that he could check the entire records including testimonials submitted by the candidates and kept by the Scrutiny Committee. A1 evidently did not scrutinize the documents or influence the Members of the Selection Committee. P.W.2 has admitted that no written instructions were issued for the Special Recruitment Drive and it was up to the Interview Committee to judge the suitability of a candidate for a particular post.

(xii) So far as the statement in Exhibits 59, 67 and 66 being Section 164 Cr.P.C. statements of P.W.6, P.W.7 and one K. K. Rakshit respectively, is of no assistance to the Prosecution case. P.W.6 in his Section 164 Cr.P.C. statement has deposed that he had made his statement before a Judge but that he was told by the CBI Officer what was to be stated before the Judge. On the Court questioning him as to whether he had made a true statement before the Judge, he replied that he had told the Judge what had occurred and what he knew. However, in a subsequent statement he stated that the contents of Exhibit 59 were not read over or explained to him and he was made to affix his signature on Exhibit 59. His vacillating evidence renders his evidence with regard to his Section 164 Cr.P.C. statement unreliable.

(xiii) In the same thread, it is worthwhile noticing that although the Prosecution raised a brouhaha over non-submission of Experience Certificate by A2 when subjected to cross-examine P.W.6 specifically stated that A2 was not required to submit Experience Certificate along with his application and the local candidates also did not submit Experience Certificate. P.W.2

Central Bureau of Investigation vs. Dr. Pratap Makhija and Others

deposed under cross-examination that A2 was not awarded any marks for past experience. That, applications of 43 (forty three) candidates without past experience were also accepted by the Scrutiny Committee, thus A2 was not an exception. According to P.W.6 and P.W.7, A1 did not tell them specifically to accept the application of A2 even without past experience or other documents. Exhibit 37, according to P.W.7, was accepted as per the discussions amongst the Scrutiny Committee Members that the candidate was qualified and the evidence of typing speed could be produced later. Under cross-examination, he admitted that the acceptance of the application of the candidates were correct and not erroneous and the applications had been thoroughly scrutinized by all Members of the Scrutiny Committee before it was accepted. Although his Section 164 Cr.P.C. statement was shown to him wherein he stated that "*the statement made before the Judge was my true statement*", but he was not confronted with any specific statement made by him under Section 164 Cr.P.C. before the Learned Trial Court and in the absence of such corroboration his Section 164 of the Cr.P.C. statement merits no consideration by this Court. It is trite that a statement under Section 164 Cr.P.C. is not substantive evidence but can be used only for corroboration or contradiction, no such circumstance arose in his evidence before the Court. What is telling and has negative import on the Prosecution case is that P.W.5, according to P.W.6, used to threaten him by saying that he would falsely implicate him in the case if he did not depose in accordance with his instructions. Section 164 Cr.P.C. statement of K. K. Rakshit, Exhibit 66, is of no assistance to the Prosecution case as

Central Bureau of Investigation vs. Dr. Pratap Makhija and Others

the said person was not examined as a Prosecution witness to test the veracity of his statement.

(xiv) The Prosecution had contended that A1 did not inform P.W.3 of the procedure and guidelines, however under cross-examination P.W.3 has stated that A1 had told him that he could check the entire records including the testimonials submitted by the candidates and kept by the Scrutiny Committee. This evidence indicates that P.W.3 was at liberty to have examined any of the records including the Rules and convinced himself as to whether there were any procedure and guidelines provided by the Central Authority. A1 evidently did not keep any document concealed for the purposes of giving illegal benefit to A2 to A4. It was also in the evidence of P.W.3 that discussions were held in respect of allocation of marks amongst them to be awarded to the candidates and they themselves decided that the total of 50 (fifty) marks to be allotted by the Members would be in the ratio of 20 : 15 : 15. The Chairman of the Selection Committee was allotted 20 (twenty) marks out of 50 (fifty) and P.W.3 and the other Member of the Committee were allotted 15 (fifteen) marks each, as according to him 50 (fifty) marks could not be equally divided amongst three persons.

(xv) The allegation that different signatures were affixed by A2 in his application form and in his joining report has not been tested during investigation as no forensic examination was carried out to clear this issue. Allegations cannot establish the Prosecution case, forgery if suspected must be established by cogent evidence. In any event, how different signatures indicate the fraudulent

Central Bureau of Investigation vs. Dr. Pratap Makhija and Others

intention of A2 has not been explained or proved by the Prosecution. The Prosecution also sought to make out that the act of A2 in producing Exhibit 39 and Exhibit 40 wherein the name of his mother is given as 'Mina' in the former and "Sunhari Devi" in the second document was an indication of his intention to cheat the Government. However, the Prosecution has made no investigation to find out whether the mother of A2 went by both names, i.e., 'Mina' and "Sunhari", or whether it was wrongly inserted by the concerned authority. Document Z/6 was not exhibited by the Prosecution on this aspect and therefore I desist from examining the document or remarking on its contents. The allegation of the Prosecution is not verified by any investigation or supporting documents nor has it been established by any evidence that by allegedly furnishing two different names of his mother A2 intended to cheat the Government.

(xvi) So far as the evidence of P.W.11, P.W.14, P.W.18 and P.W.29 relied on by the Prosecution and reliance on Exhibits 81, 79, 10, 74, 76, 75, 78 and 77 are concerned, in the context of A2 this Court is not taking these evidence into consideration in view of the fact that these documents and the evidence of these witnesses have already been considered at length in Crl.A. No.29 of 2016 as already mentioned *supra*.

18(i). The argument of the Prosecution against A4 is that the record of birth of A4 is not mentioned in the Birth Register maintained by the Office of the Registrar, Births and Deaths. P.W.21 has stated that the Birth Certificate, Exhibit 87 bears Registration No.5255 dated 10-06-1991. However, in the Register

Central Bureau of Investigation vs. Dr. Pratap Makhija and Others

shown to him Exhibit 86, he found 11 (eleven) entries on 10-06-1991 bearing No.4059 to 4069. The Prosecution failed to establish as to whether there was any other Live Birth Register or whether the births of 1991 truncated on 10-06-1991 with no other births for that year. P.W.21 has admitted that one Dr. Khagendra Neopaney was the In-Charge of the Office of the Births and Deaths. That, in Exhibit 87 the Birth Certificate of A4 the signature appearing in the space meant for the "signature of the Registrar" reads as "K. Neopaney".

(ii) P.W.22 under cross-examination stated that even in delayed cases when the births and deaths were not registered within the stipulated period, the Department has been registering the births and issuing Certificates as per the Rules. The Learned Trial Court was of the opinion that Exhibit 87 was a false document not having been issued by the competent authority as the Register Exhibit 86 started from Serial No.2555 and ended at Serial No.4703 with no entry No.5255 in the said Register. The Learned Trial Court despite such finding was of the opinion that as A4 was only 12 years old at the relevant time, he could not be held liable for obtaining the false Birth Certificate. While disagreeing with the finding of the Learned Trial Court that Exhibit 87 is a false document, it is important at this juncture to consider the admission of P.W.22 that the Birth Register Exhibit 86 pertains to Registration No.2555 onwards up to 4703. That, the records of births after Registration No.4703 were not produced before the Court and the Police did not seize the Birth Register from their Office beginning from registration No.4704 onwards. This admission raises doubts about the efficiency of the Prosecution investigation which appears

Central Bureau of Investigation vs. Dr. Pratap Makhija and Others

to be remiss and perfunctory. P.W.22 also admitted that Exhibit 87 bears the Office seal of the Department and is in the format issued by their Department and indicates that the applicant was 12 years old when the Certificate was prepared. The signature on Exhibit 87 remained unidentified as Dr. Khagendra Neopaney whose signature it purportedly was discharged by an Order of this Court as already extracted *supra*. However, this would not render the document false for reasons enumerated *supra* and in fact prompts the Court to draw an adverse inference against the Prosecution. The benefit of doubt is thus extended to A4 as the Learned Trial Court had no occasion to examine whether an entry pertaining to Exhibit 87 existed in any other Birth Register maintained by the Office of the Births and Deaths, Government of Sikkim. That apart, the argument of the Prosecution pertaining to A4 furnishing a false Birth Certificate cannot be countenanced as he was 12 years old on the date the document was issued and obviously had no inkling about its preparation. On this aspect, while discussing the principle of *ante litem motam*, the Hon'ble Supreme Court in ***Murugan alias Settu v. State of Tamil Nadu***³ held as follows;

"23. In ***Mohd. Ikram Hussain v. State of U.P.*** [AIR 1964 SC 1625] this Court had an occasion to examine a similar issue and held as under: (AIR p. 1631, para 16)

"16. In the present case Kaniz Fatima was stated to be under the age of 18. There were two certified copies from school registers which showed that on 20-6-1960 she was under 17 years of age. There [was] also the affidavit of the father stating the date of her birth and the statement of Kaniz Fatima to the police with regard to her own age. These amounted to evidence under the Evidence Act and the entries in the school registers were made *ante litem motam*. As against this the learned Judges apparently held that Kaniz Fatima was over 18 years of age. They relied upon what was said to have

³ (2011) 6 SCC 111

Central Bureau of Investigation vs. Dr. Pratap Makhija and Others

been mentioned in a report of the doctor who examined Kaniz Fatima,.... The High Court thus reached the conclusion about the majority without any evidence before it in support of it and in the face of direct evidence against it.”

24. The documents made *ante litem motam* can be relied upon safely, when such documents are admissible under Section 35 of the Evidence Act, 1872. (Vide *Umesh Chandra v. State of Rajasthan* [(1982) 2 SCC 202] and *State of Bihar v. Radha Krishna Singh* [(1983) 3 SCC 118].”

[emphasis supplied]

The extract above applies with equal vigour in this matter and thereby lends a quietus to the issue of Exhibit 87.

(iii) It is also the contention of the Prosecution that A4 had furnished a false Typing Certificate stating that he was doing typing course from 23-09-2005 in Palbheu Institute, but the Certificate did not reflect that he had typing speed of 30 words per minute. Firstly, it is relevant to mention that the advertisement did not require furnishing of a Typing Certificate. P.W.27 mentioned that the typing speed of A4 as 21 w.p.m. only and that on account of this circumstance A4 was suspended from the course, but the Prosecution has produced no document to augment this evidence or such suspension. P.W.15 appears to have been the Examiner for the typing test. According to him, the typing speed of A4 was 106/5 which amounted to 21 w.p.m. Exhibit 85 is the typing test sheet of A4 for the test conducted on 07-01-2006. The document as per P.W.15 was prepared by him in his own handwriting but his signature does not find place on the document. According to him, the Principal of the Palbheu Institute signed on Exhibit 85 on 06-12-2006. The test was conducted on 07-01-2006 but the Prosecution has not explained as to why the Principal of the Palbheu Institute who evidently had not conducted the examination signed on Exhibit 85 on 06-12-2006, 11 (eleven) months’ after the examination. That apart, although assuming that A4 could only

Central Bureau of Investigation vs. Dr. Pratap Makhija and Others

type 21 w.p.m. the Prosecution did not furnish the typing test result of any other candidates for a comparative study by the Learned Trial Court to assess whether there was a candidate who had performed better in the typing test than A4 which could have been indicative of special favours, if any, extended to A4. Without such comparison, the Court cannot off hand state that the Selection Committee was in error in selecting A4 despite his speed. The Selection Committee was clothed with discretionary powers as deposed by P.W.2 and has exercised the powers and any irregularity if committed does not tantamount to criminality. Hence, I am not inclined to accept this argument of the Prosecution that A4 ought not to have been selected on the basis of his typing speed.

19. So far as the Charge against A5 is concerned, the origins of Exhibit 75 and Exhibit 81 have already been discussed at length by this Court in Crl.A. No.29 of 2016 filed by A2. As pointed out by Learned Counsel for the Appellant, the Charge framed against A5 is for offences committed between 2005 and 2006 whereas it is proved by the evidence of the Prosecution witnesses that he had retired from service in 2001. It is clear that all that A5 was required to do was to verify as to whether A2 was a resident of Nadbai and belonged to the ST community. He has verified the same and evidence reveals that he is not responsible for signing or issuing of either Exhibit 75 or Exhibit 81 which is issued by Authorities higher than him, thus the ingredients of Section 197 of the IPC remain unfulfilled. Besides the *mens rea* of A5 has not been established by the Prosecution. No person can be prosecuted for having carried out his duties. If the Prosecution alleges that a

Central Bureau of Investigation vs. Dr. Pratap Makhija and Others

person had *mens rea* and consequently *actus reus* in an offence then it is the bounden duty of the Prosecution to join the dots and prove such a circumstance beyond reasonable doubt.

20. In conclusion, no evidence establishes that A1 in conspiracy with A2, A3 and A4 appointed them in various posts knowing that A2 had produced a fake ST Certificate, A3 had furnished a false local address and A4 had filed a false Birth Certificate and inadequate Typing Certificate. To bring home an offence under Section 120B of the IPC, it is necessary to establish that there was an agreement between the parties for doing an unlawful act. Undoubtedly, it is difficult to establish conspiracy by direct evidence, but circumstantial evidence must link the offence unerringly to each of the accused who allegedly enter into a conspiracy. The enigma that presents itself in the matter is the lack of evidence to prove such conspiracy or any motive attributed to A1 to favour A2, A3 and A4. Evidently, no investigation was undertaken to establish any relationship between A1 and A2, A3 & A4 before their appointment to the posts. No evidence was led to establish that they were either related, or that they belonged to the same area/cities/State for A1 to favour them. No material benefits are alleged to have accrued to A1 by appointing A2 to A4 neither has any other altruistic motive been attributed to A1 which would egg him on to sully his own reputation by making such appointments. In the absence of any evidence, whatsoever to indicate meeting of minds between A1, A2, A3 and A4, the offence under Section 120B of the IPC has not been made out by the Prosecution against any of the Respondents charged with the offence. No evidence points to any dishonest intention of A1 and

Central Bureau of Investigation vs. Dr. Pratap Makhija and Others

A5 as required under Section 13(1)(d) of the P.C. Act. The Prosecution failed to establish that A1, A2, A3 and A4 had used as genuine forged documents to make out an offence under Section 471 of the IPC. The conspiracy between A2 and A5 has also not been established by any evidence or any motive imputed on A5 to favour A2. The Prosecution has not denied that A2 belonged to the tribe "Meena" recognised as Scheduled Tribe in Rajasthan, therefore, there was no reason for him to induce A5 to deliver any forged property to him. None of the evidence on record establishes that A2, A3 and A4 cheated and dishonestly induced delivery of property as required under Section 420 of the IPC. A5 was said to have misused his official position and issued and signed a false Scheduled Tribe Certificate for the benefit of A2 this has been demolished by the evidence on record. In conclusion, none of the Charges against the Respondents have been proved by the Prosecution.

21. The Prosecution after making imputations against the Respondents are required to prove its case beyond reasonable doubt. In the absence of any cogent and clinching evidence against any of the Respondents under the offences charged with, I find no infirmity in the conclusion of the Learned Trial Court except for conviction of A2 under Section 471 of the IPC which was however dealt with in Crl.A. No.29 of 2016.

22. Consequently, the Appeal is dismissed.

23. No order as to costs.

Central Bureau of Investigation vs. Dr. Pratap Makhija and Others

24. Copy of this Judgment be transmitted to the Learned Trial Court for information along with records of the Learned Trial Court.

(Justice Meenakshi Madan Rai)
Judge
24-03-2021

Approved for reporting : **Yes**

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