

Reserved



2026:AHC-LKO:21768

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

CRIMINAL APPEAL No. - 1312 of 2013

Prabhu Nath Rai

.....Appellant(s)

Versus

State of U.P. Through C.B.I.A.C.B./Lucknow

.....Respondent(s)

Counsel for Appellant(s)	: Shailendra Misra,
Counsel for Respondent(s)	: Bireshwar Nath,

Court No. - 17

HON'BLE RAJEEV SINGH, J.

1. Heard learned counsel for the appellant and Sri Anurag Kumar Singh, learned Special Counsel for Central Bureau of Investigation.

2. The instant appeal has been filed against the judgment and order dated 20.8.2013 passed by Special Judge, Anti Corruption, C.B.I. (West) Lucknow in Criminal Case No.20 of 1999 (C.B.I. Vs. Mayank Tripathi & Ors.), by which, the appellant has been convicted under Sections 120, 420 I.P.C. for 4 year rigorous imprisonment and a fine of Rs.5,000/- and in default of fine one year additional rigorous imprisonment, Under Section 120/467 I.P.C. Six year rigorous imprisonment and a fine of Rs. 15,000/- and in default of fine one year additional imprisonment, U/S 120/468 I.P.C. four year rigorous imprisonment and a fine of Rs. 10,000/- and in default of

fine one year additional imprisonment, U/S 120/471 I.P.C. two year rigorous imprisonment and a fine of Rs. 1000/- and in default of fine two months' additional imprisonment.

3. Learned counsel for the appellant has submitted that five F.I.R.'s, i.e., R.C. No.14, 15A, 16A, 17A, 18A of 1998 were lodged by C.B.I. against the accused, namely, Mayank Tripathi, Narain Singh, Rakesh Kumar Yadav and Indresh Prasad Yadav with the allegation that they in collusion with some other persons, prepared a forged transfer order as well as service book showing that all these were dispatched by the Divisional Personal Officer, Sialdah mentioning that those persons were transferred from Sialdah to Loco Motive Workshop, Northern Railways, Charbagh, Lucknow on the post of Khalasi. On the basis of aforesaid transfer orders, appellant and other accused persons joined at Lucknow by committing fraud and forgery as they were not in service.

Thereafter, Central Bureau of Investigation conducted an investigation in the matter and after completing the same, filed charge sheet on 14.9.1999 against the appellant alongwith Mayank Tripathi, Narain Singh, Rakesh Kumar Yadav, Indresh Prasad Yadav, Prabhu Nath Rai as well as Bhupendra Nath Rai, O.S.II(E)-II(W), Section G.M. (Personal)/Office, Northern Railway Headquarter, Baroda House, New Delhi and Rajkaran Tiwari (Khalasi), Loco Workshop, Charbagh, Lucknow with the observation that Bhupendra Nath Rai conspired with Rajkaran Tiwari and by using forged transfer orders, the accused persons obtained joining thereby causing financial loss to Railway Department. It is also alleged that appellant and others were also included in the conspiracy of Bhupendra Nath Rai and Rajkaran Tiwari. In the charge sheet, it is also alleged that Bhupendra Nath Rai and Rajkaran Tiwari conspired with each other and manipulated by forwarding the paper showing the transfer of appellant and others from Eastern Railway to Northern Railway, Lucknow by showing that the appellant and others were employed in the Yard Superintendent, Sialdah.

3.1. Learned counsel for the appellant submitted that in the charge sheet, it is alleged that Rajkaran Tiwari had prepared the service book, papers and spare letters in his own hand writing and appellant joined at Lucknow on the basis of said letters. Cognizance was taken by the trial court on the charge sheet for the charges under Sections 420, 467, 468, 471 read with Section 120-B I.P.C. and Section 13(1)d read with 13(2) of P.C. Act and charges were framed against the appellant, Mayank Tripathi, Narain Singh, Rakesh Kumar Yadav, Indresh Prasad Yadav & others. During the course of trial, co-accused Rajkaran Tiwari died, as such, the case was abated against him and order of abatement was passed by the Court on 10.10.2003.

3.2. In support of the prosecution case, prosecution relied on the oral testimony of 22 witnesses, namely, Shambhoo Swaroop Shukla - P.W.1, S.C. Mittal - P.W.2, Arun Sharma - P.W.3, Jagdeesh Chandra - P.W.4, V.D. Pathak - P.W.5, C. Kunvar Singh - P.W.6, Rakesh Singh - P.W.7, Ashok Kumar - P.W.8, Vijay Kumar - P.W.9, Smt. Kanta Rawat - P.W.10, Vidya Sagar Sharma - P.W.11, Kartik Gopal Shaha - P.W.12, Rajesh Kumar Gupta - P.W.13, J.S. Parihar - P.W.14, Jagdeesh Chandra Badhwa - P.W.15, Gopal Krishna Soni - P.W.16, Jagmohan Singh - P.W.17, Varun Bharatwar - P.W.18, Vimal Kumar Ganguly - P.W.19, Sudhakar Pandey - P.W.20, Gopal Sonar - P.W.21, S. Saha - P.W.22.

3.3. Learned counsel for the appellant submitted that from bare perusal of the evidence of prosecution witnesses, it is very much clear that neither there is any evidence to show that the alleged transfer letters or any other documents being relied upon by the prosecution were prepared by the appellant nor there is any evidence to show the conspiracy of the applicant with the co-accused Rajkaran Tiwari and Bhupendra Nath Rai.

3.4. Learned counsel for the appellant further submitted that prosecution is under obligation to prove the charge under Sections 467, 468 of I.P.C. that the alleged documents were prepared by the appellant.

In the instant case, there is no evidence that alleged documents were prepared by the applicant, rather the charge sheet filed against the co-accused Rajkaran Tiwari clearly shows that documents were prepared by him. In order to elaborate his argument in this regard, he placed reliance on the decision of Hon'ble Supreme Court in the cases of **Sheila Sebastian Vs. R. Jawaharaj** reported in **2018 (7) SCC 581** and **Inder Mohan Goswami & Anr. Vs. State of Uttaranchal & Ors.** reported in **AIR 2008 SC 251**, wherein the Hon'ble Supreme Court held that it is essential for commission of offence under Section 467 I.P.C. that it should be proved by the prosecution that the forgery in question has been committed by the accused. However, in the present case, the specific allegation of the prosecution is that transfer orders were prepared by Rajkaran Tiwari and not by the appellant. Neither the allegation of cheating and forgery have been proved by way of any cogent evidence. It has been submitted by learned counsel for the appellant that there is no reliable and cogent evidence that appellant was in collusion with Rajkaran Tiwari and Bhupendra Nath Rai. It has vehemently been submitted that it is necessary to bring a case within the ambit of Section 120-B I.P.C. to show cogent evidence that there was an agreement in between the parties for doing an unlawful act.

3.5. Learned counsel for the applicant also submitted that the similarly situated co-accused persons, namely, Indresh Prasad Yadav, Mayank Tripathi, Rakesh Kumar and Narayan Singh, who were also convicted, preferred Criminal Appeal Nos. 1449 of 2013, 1212 of 2013 and 1369 of 2013 and all the aforesaid appeals were allowed by this Court vide order dated 27.5.2019. He next submitted that as counsel for the applicant was not present, therefore, his appeal was de-linked and could not be decided at the point of time.

3.6. It has lastly been submitted that in such circumstances, present appeal is also liable to be allowed in terms of the judgment dated 27.5.2019 passed in the cases of aforesaid appellants.

4. Sri Anurag Singh, learned special counsel for the C.B.I. vehemently opposed the prayer of the applicant and submitted that sufficient evidences were found against the appellant and other accused persons, thereafter, charge sheet was submitted and they were tried by the learned trial court. He also submitted that accused persons were rightly convicted by the trial Court. However, he did not dispute the fact that case of other accused persons, namely, Indresh Prasad Yadav, Mayank Tripathi, Rakesh Kumar and Narayan Singh (who were also convicted) is same with the appellant herein and their appeals were admitted and allowed vide judgment and order dated 27.5.2019.

5. Considering the submissions of learned counsel for the appellant, learned counsel for the C.B.I. and going through the contents of the appeal as well as other relevant documents including the judgment passed by this Court in Criminal Appeal Nos. 1449 of 2013, 1212 of 2013 and 1369 of 2013, it is evident that appellant and other accused persons, namely, Indresh Prasad Yadav, Mayank Tripathi, Rakesh Kumar and Narayan Singh were charge-sheeted on the basis of same evidence. It is also evident that the appeals of the aforesaid persons were allowed by this Court vide judgment and order dated 27.5.2019.

5.1. The order dated 27.5.2019 passed in Criminal Appeal Nos. 1449 of 2013, 1212 of 2013 & 1369 of 2013, reads as under :-

1. Since common questions of facts are involved in the appeals, therefore, all the appeals have been heard together and are being decided by this common judgment.

2. Heard Sri P.K. Rai, learned Counsel for the appellants appearing on behalf of the appellants- Indresh Prasad Yadav, Mayank Tripathi, Rakesh Kumar and Narain Singh as well as Sri S.B. Pandey, learned Assistant Solicitor General of India appearing on behalf of the respondent.

3. This Criminal Appeal under Section 374(2) Cr.P.C. has been filed against the judgment and order dated 20.08.2013 passed by learned Special Judge, Prevention of Corruption, C.B.I. (west), Lucknow in Criminal Case no. 20 of 1999 (C.B.I. Vs. Mayank Tripathi and others), arising out of R.C. No.14,15(A),16(A), 17(A), 18(A)/98/C.B.I./Lucknow, under Sections

120B/420,467,468 and 471 of the Indian Penal Code and Section 13(1)(d) read with Section 13(2) of Prevention of Corruption Act, 1988, whereby the appellants, namely, Indresh Prasad Yadav, Mayank Tripathi, Rakesh Kumar and Narain Singh have been convicted and sentenced as under:-

- (i) Under Section 120 I.P.C. read with Section 420 I.P.C.- Rigorous imprisonment for a period of four years along with fine of Rs. 5,000/-, with default stipulation.
- (ii) Under Section 120 I.P.C. read with Section 467 I.P.C.- Rigorous imprisonment for a period of six years along with fine of Rs.15,000/-, with default stipulation.
- (iii) Under Section 120 I.P.C. read with Section 468 I.P.C. - Rigorous imprisonment for a period of four years along with fine of Rs.10,000/-, with default stipulation.
- (iv) Under Section 120 I.P.C. read with Section 471 I.P.C.- Rigorous imprisonment for a period of two years along with fine of Rs.1,000/-, with default stipulation.

4. The factual matrix of the present case is that five First Information Reports i.e. R.C. No.14, 15-A, 16-A, 17-A, 18-A/98/C.B.I./Lko, were registered against the accused-appellants in aforementioned sections in which it was alleged that the appellants in collusion with some unknown persons get prepared the fake transfer orders, service book and personal papers showing to have been dispatched from the office of Divisional Personnel Officer, Siyaldah, whereby the appellants were transferred from Siyaldah to Locomotive Workshop, Northern Railway, Charbagh, Lucknow on the post of Khalasi and on the basis of said transfer order to join at Lucknow, whereas they were never been appointed in Eastern Railway Siyaldah. It is also alleged that on the basis of the forged and bogus documents they joined at Lucknow by committing fraud and forgery.

5. The Central Bureau of Investigation conducted an enquiry in the matter and after completing the same filed the charge-sheet on 14.09.1999 against the appellants along with one Prabhu Nath Rai, Raj Karan Tiwari and Bhupendra Nath, O.S. II (E) II (W) Section G.M. (Personnel) Office of Northern Railway, Headquarter, Baroda House, New Delhi. Raj Karan Tiwari s/o Sita Ram Tiwari, Khalasi, posted at Loco Workshop, Charbagh, Lucknow, in collusion with Bhupendra Nath conspired with each other and by misusing their post and by committing fraud and forgery prepared transfer orders and thereby caused financial loss to the railway department. It is further alleged that appellants were also included in the conspiracy of Bhupendra Nath and Raj Karan Tiwari. In the charge-sheet, it was further alleged that Bhupendra Nath and Raj Karan Tiwari conspired with each other and manipulated the forwarding of papers showing the transfers of the appellants from the Eastern Railways to Northern Railways, Lucknow, showing that the appellants were employed in the office of Yard Superintendent, Siyaldah.

6. It is also mentioned in the charge-sheet that Raj Karan Tiwari had prepared the service book and the papers including spare letters in his own handwriting and the appellants joined at Lucknow on the basis of said spare letters.

7. On the basis of the charge-sheet, the cognizance was taken by the learned Trial Court and charges under Section 420, 467, 468, 471 of the Indian Penal Code read with Section 120 of the Indian Penal Code were framed against the appellants.

8. During the course of trial, co-accused Raj Karan Tiwari died as such, the case was abated against him and the order of abatement was passed by learned trial Court on 10.10.2003.

9. In support of its case, prosecution has examined Shambhu Swarup Shukla P.W.1, S.C. Mittal P.W.2, Arun Sharma P.W.3, Jagdish Chandra P.W.4, V.D. Pathak P.W.5, C. Kunwar Singh P.W.6, Rakesh Singh P.W.7, Ashok Kumar P.W.8, Vijay Kumar P.W.9, Kanta Rawat P.W.10, Vidya Sagar Sharma P.W.11, Kartik Gopal Saha P.W.12, Rajesh Kumar Gupta P.W.13, J.S. Parihar P.W.14, Jagdish Chand Baadhwa P.W.15, Gopal Krishna Soni P.W.16, Jagmohan Singh P.W.17, Varun Bharatwar P.W.18, Vimal Kumar Ganguly P.W.19, Sudhakar Pandey P.W.20, Gopal Sonar P.W.21 and S. Saha P.W.22.

10. Learned counsel for the appellants has stated that a bare perusal of the evidence of all prosecution witnesses including the witnesses mentioned herein clearly indicates that there is no evidence to show that transfer letters or any other documents being relied upon the prosecution were prepared by the appellants nor there is any evidence to show and establish the conspiracy of the appellants with the co-accused Raj Karan and Bhupendra Nath.

11. It has further been stated that for bringing the charge under Section 467 and 468 of I.P.C. against the appellants the prosecution is under obligation to establish that the documents were prepared by the accused persons. In the instant case, it is not proved by the prosecution through evidence that any of the documents being alleged by the prosecution were prepared by the appellants rather; the charge-sheet filed against the co-accused Raj Karan clearly shows that the documents were prepared by him.

12. In order to elaborate his arguments in this regard, he placed reliance in the case of Inder Mohan Goswami and others Vs. State of Uttaranchal and others, reported in A.I.R. 2008 SC 251 wherein Hon'ble Apex Court has held that it is essential for commission of the offence under Section 467 I.P.C. that it should be proved by the prosecution that the forgery in question has been committed by the accused. In the instant case, the specific allegations of the prosecution are that the supportive documents as well as transfer orders, on the basis of which, appellants had joined at Lucknow, had been prepared by Raj Karan Tiwari and not by accused-appellants. The allegations of cheating and forgery have not been proved by the prosecution by any cogent evidence. The prosecution has not even been able to establish that the appellants were aware of the fact that the supportive documents relating to service of the appellants were forged and fabricated. In view of the aforesaid, the offence under Section 420, 468 and 471 of the Indian Penal Code are not made out against the present accused appellants.

13. Learned counsel for the appellants has further relied in the case of Smt. Manju Gupta Vs. Lt. Colonel M.S. Paintal, reported in 1982 (2) SCC 412, wherein the Hon'ble Supreme Court has held that mere benefit to the accused appellant by the alleged forgery is inadequate for conviction of the accused under Section 467 and 471 I.P.C.

14. So far as the offence under Section 120-B I.P.C. is concerned, in this regard, it has been submitted by learned counsel for the appellants that there is no reliable and cogent evidence to prove that the appellants were in collusion with the co-accused Bhupendra Nath and Raj Karan Tiwari. It has further been pointed out that to bring home the charges of conspiracy within the ambit of section 120-B I.P.C., it is necessary to establish by cogent evidence that there was an agreement between the parties for doing an unlawful act. In this regard, he placed reliance in the case of Hardev Singh Vs. State of Bihar reported in A.I.R. 2000 SC 2245. In this case, it has been held by the Hon'ble Apex Court that in absence of any reasonable evidence that at least two brains had consulted the offence, a charge of conspiracy cannot be sustained. So, it is thus clear that there must be evidence on record to establish that the appellants had any prior consultation with the co-accused Raj Karan Tiwari in preparation of the

fake and bogus transfer papers. In the present case, it is not on record to show that the appellants knew that the transfer papers which have been given to them by Raj Karan Tiwari were forged and fabricated as such, the joining of the appellants on the basis of those papers at Lucknow cannot be said to be a result of conspiracy. Taking into consideration the aforesaid, the accused appellants cannot be convicted under Section 120 I.P.C.

15. Per contra, Sri S.B. Pandey, learned Assistant Solicitor General of India has submitted that charges have rightly been framed by the trial court against the appellant and no interference is called for. It has further been submitted that the accused appellants were neither employed in the office of Yard Superintendent, Siyaldah nor any bonafide transfer orders were issued from the office of Yard Superintendent, Siyaldah. The next submission is to effect that the accused appellants had joined at Lucknow knowing the fact that they were never employed in the office of Yard Superintendent, Siyaldah nor their transfer orders were authentic. Hence, case under aforementioned sections are made out against the appellants.

16. I have considered the submissions made by learned counsel for the parties and gone through the record.

17. On close scrutiny of the entire evidence available on record in consonance with the submissions raised by the learned counsel for the parties along with the findings recorded by the trial court, substance is found in the submission advanced by the learned counsel for the appellants as in the instant case, the categorical allegations of the prosecution are that the transfer papers and its supportive documents on the basis of which, the accused appellants are said to had joined at Lucknow were prepared by Raj Karan and not by the accused appellants. The law laid down in the case of Inder Mohan Goswami (supra) is to the effect that it is essential for commission of the offence under Section 467 I.P.C., the following three ingredients are necessary for bringing charge of section 467 of the I.P.C. The most important ingredient is that the forgery was done by the accused appellant should be proved beyond all reasonable doubts. In the case in hand, the basic ingredient of offence under Section 467 I.P.C. is missing in the F.I.R. as well as in the charge -sheet, therefore, it can be said that conviction of the appellants under Section 467 I.P.C. is not sustainable.

18. Further, the allegations of cheating and forgery has not been proved by the prosecution by any cogent evidence as accused appellants are illiterate and down-trodden people of society and are not acquainted with the procedural formalities of the railway department. The technicalities of procedure of the railway department are very difficult to understand for the accused-appellants. It cannot be presumed that they have such knowledge. The appellants have joined on the basis of documents provided by the officers of the railway department considering the documents to be validly issued and provided by the concerned officers. The documents were considered by the appellants to be a genuine one as the same were given by the official of the railway at Baroda House, New Delhi. Further, taking into consideration the law as laid down in the case of Smt. Manju Gupta (supra) to the effect that a conviction for the offences of forgery cannot be based only the ground that the accused appellant is a beneficiary of the forgery. Therefore, taking into consideration the above said facts, it cannot be said that the offences under Section 420, 468 and 471 are made out against the accused appellants.

19. So far as the charges under Section 120-B I.P.C. is concerned, there is no cogent evidence to prove the fact that the accused appellants were in collusion with the railway officials. To bring the charge of conspiracy within the ambit of section 120-B of I.P.C., it is essential to establish by cogent evidence that there

is an agreement between the parties for doing an unlawful act. In the instant case, prosecution has failed to establish the fact that the appellants had any prior consultation with the co accused Raj Karan Tiwari in order to prepare the alleged fake and bogus transfer papers. It is nowhere on record to show that the appellants knew that the transfer papers which have been given to them by Raj Karan Tiwari were forged and fabricated as such, the joining of the appellants on the basis of those papers at Lucknow cannot be said to be a result of conspiracy. Hence, the case under section 120-B of I.P.C. is not made out against the accused appellants.

20. In view of the aforesaid discussions held hereinabove, the allegations levelled against the accused appellants are not proved and prosecution has failed to prove its case beyond all reasonable doubts. Hence, accused appellants, namely, Indresh Prasad Yadav, Mayank Tripathi, Rakesh Kumar and Narain Singh, are liable to be acquitted under Sections 420, 467, 468 and 471 of the Indian Penal Code read with Section 120 B of the Indian Penal Code and are hereby acquitted on all counts.

21. Consequently, the appeals are allowed and the judgment and order dated 20.08.2013 passed by the learned Special Judge, Prevention of Corruption (West), Lucknow in Criminal Case No. 20 of 1999 is hereby set aside and appellants - Indresh Prasad Yadav, Mayank Tripathi, Rakesh Kumar and Narain Singh are acquitted on all counts. The fine, if realized, be refunded to them forthwith. If the appellants are in jail, they are liable to be set at liberty at once if not wanted in any other criminal case and, in case, they are on bail, they need not surrender to their bail and the bail bonds are discharged.

22. Office is directed to de-link the Criminal Appeal No.1209 of 2013 and Criminal Appeal No.1312 of 2013 from the present appeal.

23. Let a copy of this judgment be sent to lower court for compliance.

5.2. After examining the judgment of trial court as well as going through the judgment of this Court passed in Criminal Appeal No.1449 of 2013, it is evident that on the same evidence, aforesaid persons were convicted along with the appellant herein and vide order dated 27.05.2019, Indresh Prasad Yadav, Mayank Tripathi, Rakesh Kumar and Narayan Singh, having identical role, have been acquitted by this Court. The Hon'ble Supreme Court in the case of **Yogarani Vs. State by the Inspector of Police** reported in **2024 SCC Online SC 2609** held that the when similar or identical evidence is pitted against two accused persons, court cannot convict one accused and acquit another.

5.3. In view of the above facts and circumstances, this Court is of the view that observations made in the case of aforesaid appeals are also applicable in the present case. Therefore, the instant appeal is **allowed**.

The order dated 20.8.2013 passed by the Special Judge, Anti Corruption, C.B.I. (West) Lucknow in Criminal Case No.20 of 1999 (C.B.I. Vs. Mayank Tripathi & Ors.) is hereby **set aside**.

5.4. Office is directed to communicate this order to the trial Court, forthwith.

(Rajeev Singh,J.)

March 26, 2026.

Gaurav