

FIR No. 582/2006  
PS: I.P.Estate  
U/s 420/468/471 IPC  
State Vs Akhil Kumar

IN THE COURT OF SH. VIPLAV DABAS ACMM (Special Acts)  
CENTRAL TIS HAZARI COURTS DELHI

CIS No. 293520/2016  
FIR No. 582/2006  
PS: I.P.Estate  
U/s 420/468/471 IPC  
State Vs Akhil Kumar

Date of Institution of case : 20.03.2020  
Date of Judgment : 30.05.2020

JUDGMENT:

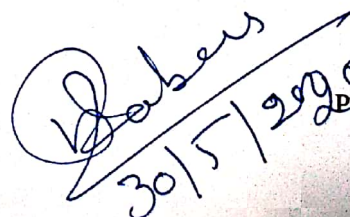
- a) Date of offence : 04.08.1997  
b) Offence complained of : U/s 420/468/471 IPC  
c) Name of Accused, his parentage & residence : Akhil Kumar  
S/o Sh. Raisa Chandra  
R/o C-441A, Sector-19,  
Noida, U.P.  
d) Plea of Accused : Pleaded not guilty  
e) Final order : Acquitted

*Dabas*  
30/5/2020

**BRIEF FACTS AND REASONS FOR DECISION:-**

Case of the prosecution in brief is as follows:-

1. In the present case, the allegations of prosecution are that on 04.08.1997 accused Akhil Kumar had applied in Central Excise Department, I.P.Estate, New Delhi for the post of Sepoy as daily wages (T.S) as S.T Candidate and also submitted Schedule Tribe Certificate issued by the Executive Magistrate, Alipore, West Bengal and on 14.08.1997 accused was appointed as Sepoy in Central Excise Department on the basis of Schedule Tribe Certificate issued by Executive Magistrate, Alipore, West Bengal and was also promoted from Sepoy to Havaldar on the basis of above S.T Certificate which was found fake on verification. Thus, the accused was selected and promoted in Central Excise Department by misrepresenting himself as S.T Candidate and indulging in forgery of S.T Certificate which was used by him as genuine despite knowing it to be a fake document. On the basis of aforesaid facts, the present FIR was registered for offences punishable under Section 420/468/471 IPC against the accused and after usual investigation, present chargesheet was filed.
2. The Court took cognizance of the above-said offence u/s 420/468/471 IPC and provisions of Section 207 Cr.P.C were complied. After hearing arguments, as a prime facie case was made out against the accused for offences punishable u/s 420 & 471 IPC, charge was accordingly framed against him to which accused pleaded not guilty and claimed trail.

  
30/5/2006  
Page 2 of 17

3. During the course of the trial prosecution has examined nine witnesses to substantiate the accusation.

4. PW-1 Sh. G.S.Chauhan Superintendent Service Tax deposed that on 27.12.2005 as per the direction given by the then Sh. Suresh Kishanani, Additional Commissioner (P & V) Central Excise Commissionerate, Delhi-01, New Delhi, he gave his complaint to the SHO PS I.P.Estate against accused Akhil Kumar who was working in Central Excise Department as Havaldar being appointed as Constable (Sepoy) by using a fake / forged S.T Certificate, that accused Akhil Kumar had submitted a copy of S.T Certificate at the time of his appointment as Havaldar / Sepoy in Central Excise Department and on verification from Executive Magistrate, Alipore, 24 Parganas, West Bengal, the Sub Divisional Officer, Sadar, Alipore, 24 Pargans vide memo no. 802/SC/ST/OBC dated 31.10.2015 had informed that the said certificate was not issued by their office, that after inquiry accused was suspended on 26.12.2015 and that his detailed report is Ex. PW-1/A bearing his signature at point A.

During cross examination conducted on behalf of accused, the witness deposed that the complaint Ex. PW-1/A was prepared by then Additional Commissioner Sh. Suresh Krishnani and he has signed the same on his direction, that he has no knowledge whether the accused was appointed as sepoy (constable) in their department in a general category, that he has no knowledge when the accused

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was promoted as Havaldar from the post of constable, that he has no knowledge whether the accused was promoted in routine and SC /ST certificate was not used for promotion, that personally he did not conduct any investigation / inquiry against the accused with regard to his appointment and promotion in their department, that he also did not get verification of annexed ST/SC certificate from the office of Executive Magistrate, Alipore, 24 Parganas, West Bengal, that he has no knowledge that accused had never used SC/ST certificate at the time of appointment and promotion, that he had no knowledge whether the accused Akhil Kumar had given any statement before Superintendent (Vigilance) on 26.12.2005 or not, that he had also no knowledge whether the accused was suspended vide letter no. 2435-43 dated 26.12.2005, that he has no knowledge that alleged SC/ST certificate is not a certificate and is an application performa, that he had no personal knowledge of this case and he has simply signed the complaint Ex. PW-1/A on the direction of Additional Commissioner, Central Excise (P & V), Central Excise Commissioner, Delhi-1, New Delhi and that he can not say whether the contents of the complaint Ex. PW-1/A are false or true.

5. PW-2 ASI Bijender Singh deposed that on 12.11.2007, he was posted as constable at police station I.P.Estate and on that day he was involved in the investigation of the present case with IO, that on that day, accused Akhil Kumar appeared at police station in pursuance of notice issued to him by the IO and on interrogation, accused stated

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that he is aware about this case, that after interrogation IO recorded his disclosure statement Ex. PW-2/A, that in his disclosure statement accused stated he submitted the ST certificate in question in present case in his office where he was performing his duty as sepoy and this certificate was got prepared by his father, that thereafter accused was arrested by the IO vide arrest memo Ex. PW-2/B, that he conducted his personal search Ex. PW-2/C, that IO informed the son of the accused regarding his arrest and that after medical examination, accused was put behind the bar and IO recorded his statement.

During cross examination conducted on behalf of accused, the witness deposed that on that day his duty hours were from 8:00 a.m to 8:00 p.m, that he did not go through the contents of the FIR, that he can not tell exact time of arrest of accused, that he does not remember the time of the arrival of the accused in the police station, that he does not remember the total time of interrogation of the accused by the IO, that he does not remember at what time the personal search of accused was conducted by him, that the personal search of accused was conducted after arresting the accused and that he has signed all the above documents after understanding their nature. The witness denied the suggestion that he has signed all the exhibits i.e Ex. PW-2/A to Ex. PW-2/C without going through their contents and on the insistence of the IO in order to implicate the accused in this case, that he did not participate in the investigation with the IO, that neither the accused was arrested nor his confessional statement was recorded by the IO in his presence and

  
30/5/20

that all the paper work / documents were prepared by the IO while sitting at the police station.

6. PW-3 Inspector Mahesh Narayan proved the factum of registration of FIR Ex. PW-1/A through duty officer.

This witness was not cross examined by or on behalf of accused despite opportunity.

7. PW-4 Sh. Pradeep Kumar Manderna, Assistant Director DGHRM, CBIC, Gol Market, Delhi deposed that he handed over nine documents pertaining to the accused Akhil Kumar to the IO Sh. Rajender Singh vide seizure memo Ex. PW-4/A.

This witness was not cross examined by or on behalf of accused despite opportunity.

8. PW-5 ASI Chandermohan deposed that on 18.11.2006 he was posted as duty officer at police station I.P.Estate, that on that day he received one rukka from SI Mahesh Narayan and that on the basis of said rukka he registered the FIR Ex. PW-5/C in the present case.

This witness was not cross examined by or on behalf of accused despite opportunity.

9. PW-6 Inspector Subhankar Roy, Backward Classes Welfare Department deposed that he has brought the record of issuance of letter bearing memo no. 549/SC/ST/OBC dated 31.03.2009

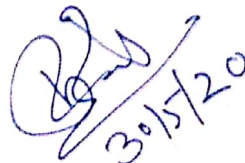
  
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pertaining to the accused Akhil Kumar in connection with the present FIR, that as per the service record of SC/ST/OBC certificate cell, Alipore, the verification details of SC/ST/OBC certificate of Akhil Kumar has already been provided to Inspector Naresh Khanka, PS I.P.Estate and that it was received by hand by ASI Ashok Kumar, PS I.P.Estate. PW-6 Inspector Subhankar Roy further deposed that the record reflecting the handing over of the report pertaining to the abovestated memo is Ex. PW-6/A.

This witness was not cross examined by or on behalf of accused despite opportunity.

10. PW-7 Sh. Naresh Khanka, ACP, PCR, PHQ, New Delhi deposed that on 30.03.09 he was posted as Insp.(Investigation) at PS I.P. Estate and further investigation of the present case was marked to him vide order of concerned SHO, that during the course of investigation he had sent one letter to the SDO, Sadar, 24, Parganna, Alipur, West Bengal, for verification of one Schedule Tribe certificate of Akhil Kumar, that he had also annexed the xerox copy of the ST certificate of accused Akhil Kumar, that the letter was sent through ASI Ashok and that it was dispatched on the same day with dispatch no. 796. The letter is Ex. PW-7/A bearing my signature at point A.

PW-7 Statement of Sh. Naresh Khanka further deposed that on 31.03.09, vide memo no. 549 issued by the office of DM, South, 24 Pargana, Kolkatta, one letter was sent to him wherein he was informed that the xerox copy sent with the above mentioned letter is

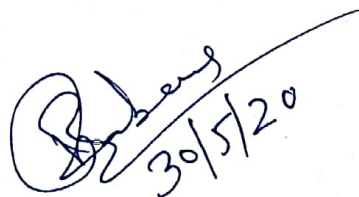
  
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not ST certificate but is only a performa, that he was further informed that the concerned office is unable to confirm the genuineness of the said certificate which is Ex. PW-7/B, that during the course of investigation, he had also obtained the specimen signature of accused Akhil Kumar and given them serial number S5 to S10, the same are Ex. PW-7/C (colly), that he had also endorsed the documents on which the signature of A.K. Chakravorty was obtained by the other I.O which bears his signatures at point A on S1 to S4 which are Ex. PW-7/D (colly), that alongwith the admitted signatures of the accused, same were sent to FSL Rohini for necessary examination and that he had also recorded the statement of ASI Ashok and Asstt. Commissioner Sh. N.K.Saxena.

The witness correctly identified the accused present in the Court today.

This witness was not cross examined by or on behalf of accused despite opportunity.

11. PW-8 Sh. Subhankar Roy, IBCW, presently posted at Alipore (Sadar Sub Division), West Bengal deposed that he has been authorized by the Sub Division officer, Alipore, West Bengal to appear before this Court alongwith the memo no. 132/SC/ST/OBC dt. 27.02.07 pertaining to accused Akhil Kumar, the said authorization is Ex. PW-8/A, that on 27.02.07 one memo no. 132/SC/ST/OBC was sent to the SHO, I.P. Estate with regard to the verification of ST certificate of accused Akhil Kumar S/o. Raisa

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Chandra, the said letter is Ex. PW-8/B bearing the seal of the Office of SDO at point A, that vide this letter, it was informed that caste certificate of the above said accused was not issued from the office of SDO, Alipore, South-24 Parganas, West Bengal, that it was further mentioned in the said communication that Executive Magistrate has no power to issue caste certificate as per letter dt. 27.02.2007 and that the same information regarding non issuance of certificate by the said office was also communicated vide memo no. 802/SC/ST/OBC dated 31.01.05, the said letter is Ex. PW-8/C.

During the cross examination conducted on behalf of accused, the witness deposed that he has no personal knowledge regarding the present case.

12. PW-9 Sh. Rakesh Mohan Saxena, S/o. Late Sh. Krishna Murari Saxena, deposed that he was posted in the Office of Commissioner of Central Excise, Delhi-01 from July 2006 to August 2008, that he had received one letter from Assistant Commissioner (legal) Central Excise, Delhi-01 wherein he was asked to reply about the 9 questions mentioned in the said letter, that he had replied to the said letter on 04.12.07 which is Ex. PW-9/A, that the queries were raised with regard to one Akhil Kumar who had obtained benefits of promotion through caste certificate which was found to be a forged certificate and that he had replied to each question separately in his reply to Assistant Commissioner (legal) Central Excise, Delhi-01.

Ld. APP for the State was permitted to put leading question to



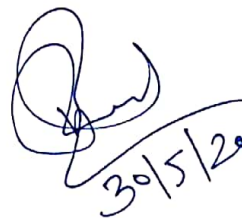
the witness and the witness deposed that in the statement recorded U/s 161 Cr.P.C his name has been mentioned as N.K. Saxena instead of R.M. Saxena, that the mobile number, the office address, the designation mentioned subsequent to the name belongs to him, that the content of the statement is also correct as he got retired as Assistant Commissioner (P&V), Central Excise in January 2009 and that the statement is Mark-A.

During the cross examination conducted on behalf of accused, the witness deposed that he does not remember that the post in question was unreserved or not, that accused was regularized from daily wager under general category and not under ST category and that at the time of regularization of the accused, there was no vacancy under ST category.

13. Thereafter, Prosecution Evidence was closed as all the material witnesses were examined. The Statement of accused was recorded U/Sec 313 Cr.P.C on 29.01.2020 and all the incriminating circumstances appearing in evidence were put to the accused to which accused replied that he is innocent and he has been falsely implicated in the present case as he was appointed as Havaldar in general category only and that he never gave any document of SC/ST to be appointed a Havaldar. The accused did not choose to lead evidence in his defence and accordingly, the defence evidence was closed.

  
30/5/20

14. At the time of final arguments it is submitted by Ld. APP for the State that prosecution has proved its case beyond reasonable doubts and all the ingredients of relevant section are completed. In reply to this it is argued by Ld. Defence Counsel that accused is innocent and he has been falsely implicated in the present case as he was appointed as Havaldar in general category only and that he never gave any document of SC/ST to be appointed a Havaldar. It is further argued that prosecution failed to bring any material connecting the accused with filling and submission of alleged application form as well as S.T Certificate.
15. This Court heard the arguments advanced by the Ld. APP for the State and Ld. Counsel for the accused and has perused the record of the case as well as written submissions filed on behalf of accused.
16. The case of the prosecution is that accused applied for the post of sepoy as daily wager as S.T Candidate with Central Excise department on 04.08.1997 and submitted a fake S.T certificate on the basis of which he was selected and was further promoted as Havaldar on the basis of said fake certificate. The defence version is that accused was selected /promoted as a general candidate and he has not committed any cheating or other offence.
17. In order to bring home the guilt of the accused for the offence punishable u/s 420 & 471 IPC, prosecution is bound to establish the

  
30/5/20

fact that central excise department had conducted recruitment of the candidates as sepoy on daily wages in the year 1997, that seats were also reserved for S.T Candidates in the recruitment, that accused had applied as S.T Candidate and submitted S.T Certificate, that accused was selected and promoted as S.T Candidate on basis of S.T Certificate and that the S.T Certificate was fake.

18. Persual of the record and the testimonies of the witnesses shows that neither any record like advertisement, notification nor any other material indicating that any recruitment of sepoy on daily wages was notified and that applications were called from S.T Candidates as they were also eligible for the said posts, has been filed and proved as per law. It is further evident that the witnesses (PW-1, PW-4 and PW-9) from Central Excise department did not utter anything about conducting of the said recruitment process in the year 1997 and the factum of S.T Candidate being eligible for the post so advertised. So, it is clear that factum of candidates of S.T Category being eligible for the said recruitment as well as the factum of conducting the recruitment itself is not established. It shows that prosecution has failed to establish that there was any occasion for the accused to apply in the recruitment as S.T Candidate and to submit any S.T Certificate which was found fake later on.

19. It is further evident from the testimonies of PW-1, PW-4 and PW-9, the witnesses from department of Central Excise, that they did

  
30/5/20

not utter anything suggesting that the accused had filled and submitted the application form alongwith S.T Certificate in their presence. No other witness from the said department or otherwise was examined to establish the factum of submission of the alleged application form alongwith the S.T Certificate by the accused at the time of his recruitment. So there is no material available on record connecting the accused with the application form and S.T certificate.

20. It is further important to mention that nothing has been brought on record suggesting that the writing on the application form and S.T Certificate belongs to accused. Record shows that neither any handwriting expert has been examined nor any other evidence connecting the accused with the factum of filing the form in his handwriting or preparing the fake S.T Certificate or presence of his signatures on the application form and S.T Certificate, has been brought by prosecution. It thus follows that there is no incriminating material suggesting the involvement of accused in filling the application form, mentioning of S.T Category in form and preparation of fake S.T Certificate.

21. Perusal of testimony of PW-1 from Central Excise Department shows that he deposed that he has no knowledge whether the accused was appointed as sepoy (constable) in their department in a general category, that he has no knowledge when the accused was promoted as Havaldar from the post of constable, that he has no



knowledge whether the accused was promoted in routine and SC /ST certificate was not used for promotion, that personally he did not conduct any investigation / inquiry against the accused with regard to his appointment and promotion in their department, that he also did not get verification of annexed ST/SC certificate from the office of Executive Magistrate, Alipore, 24 Parganas, West Bengal and that he has no knowledge that accused had never used SC/ST certificate at the time of appointment and promotion. Similarly, PW-9 from the department of Central Excise deposed in his cross examination that he does not remember that the post in question was unreserved or not. He admitted that accused was regularized from daily wager under general category and not under S.T Category and there was no vacancy under S.T Category, at the time of regularization of accused. This testimonies show that the possibility of post being a general category post can not be ruled out, that accused was regularized under general <sup>category</sup> and that question of use of S.T Category Certificate does not arise as there was no vacancy under S.T Category.

22. It is clear from the aforestated testimonies that no consistent, cogent and creditworthy witness has been examined to establish the factum of filling and submission of application form and S.T Certificate by accused at the time of his appointment and promotion. It is further apparent from the deposition of these witnesses that there was no need for the accused to apply as S.T Candidate and furnish S.T Certificate as possibility of post being for general category


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only can not be ruled out. Furthermore, in view of the fact that nothing new and relevant was discovered or recovered at the instance of accused pursuant to his disclosure statement, the said statement is also inadmissible and can not come to the rescue of prosecution.

23. It thus emerges from the afore-discussed analysis of testimonies and the omissions as well as observations that no admissible and clinching evidence or circumstance has been established by the prosecution to prove beyond the reasonable doubts that central excise department had conducted recruitment of the candidates as sepoy on daily wages in the year 1997, that seats were also reserved for S.T Candidates in the recruitment, that accused had applied as S.T Candidate and submitted S.T Certificate and that accused was selected and promoted as S.T Candidate on basis of S.T Certificate which are essential fact to bring home the guilt of the accused for alleged offences.

24. Regarding the burden of proving the prosecution version it is pertinent to mention the case law reported as “ Sadhu Singh Vs. State of Punjab : 1997 (3) Crime 55, wherein the Punjab & Haryana High Court had observed that-

*“ In a criminal trial it is for the prosecution to establish its case beyond reasonable doubts. It is for the prosecution to travel the entire distance from 'may have' to 'must have'. If the prosecution appears to*

  
30/5/20

*be improbable or lacks credibility the benefit of doubt necessarily has to go to the accused".* Following the aforesaid observations and considering the inconsistencies and incoherent testimonies, this Court is of the view that prosecution has not been able to travel the entire distance from 'may have' to 'must have' and thus it can not be said that prosecution has been able to prove its case beyond reasonable doubts.

25. It is a settled proposition of criminal law that in order to prove its case on judicial file, prosecution is supposed to stand on its own legs and it cannot derive any benefit whatsoever from the weaknesses, if any, of the defence of the accused. Further, it is a settled proposition of criminal law that burden of proof of the version of the prosecution in a criminal trial throughout the trial is on the prosecution and it never shifts on to the accused. Also, it is a settled proposition of criminal law that accused is entitled to the benefit of reasonable doubt in the prosecution story and such reasonable doubt entitles the accused to acquittal.

26. Considering the afore-discussed testimonies, this Court is of the view that arguments advanced by the Ld. APP for the State that the prosecution has proved all the ingredients necessary for completion of the alleged offences do not have any force whereas the arguments made on behalf of defence that the accused has been falsely implicated are found to be justified.

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27. In view of the aforesaid discussion and analysis of testimonies, it is clear that prosecution has not been able to prove its case against the accused beyond reasonable doubts. Accordingly, accused Akhil Kumar, S/o Sh. Raisa Chandra is acquitted of the charge leveled against him. Bail bond stands cancelled and Surety be discharged, if any. Documents, if any, be returned to the rightful person against receiving and after cancellation of endorsement, if any.

28. Keeping in view the lockdown imposed to prevent the spread of Covid-19, fresh bail bonds and surety bonds in compliance of Section 437(A) Cr.P.C be furnished on opening of Courts.

File be consigned to record room after due compliance with direction to the Ahlmad to file a separate parcha qua compliance of Section 437 (A) Cr.P.C upon resumption of regular working of Courts.

**Announced in open court  
on 30.05.2020**

  
**(VIPLAV DABAS)  
ACMM (Special Acts)  
Tis Hazari Courts, Delhi  
30.05.2020**