

**(2011) 04 JH CK 0034**

**Jharkhand High Court**

**Case No:** Criminal Revision No. 308 of 2011

Santosh Kumar Kuswaha @  
Santosh Kr. Kushwaha and  
Others

APPELLANT

Vs

The State

RESPONDENT

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**Date of Decision:** April 19, 2011

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 239
- Penal Code, 1860 (IPC) - Section 120B, 420, 45, 467, 468
- Prevention of Corruption Act, 1988 - Section 13(1), 13(2)

**Citation:** (2011) 3 JCR 43

**Hon'ble Judges:** Jaya Roy, J

**Bench:** Single Bench

**Final Decision:** Dismissed

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**Judgement**

@JUDGMENTTAG-ORDER

Jaya Roy, J.

Heard the learned Counsel for the Petitioner and the learned Counsel of the C.B.I.

2. The instant revision application is for setting aside the order dated 3.3.2011 passed by Shri S.K. Dubey, the Special Judge C.B.I, at Ranchi in C.B.I/SPE/Ranchi Case No. RC 06A/04-R dated 5.3.2004 registered for offences under Sections 420/467/468/471/120-B of the Indian Penal Code and u/s 13(2) read with 13(1)(d) of Prevention of Corruption Act, whereby, the petition for discharge filed u/s 239, Code of Criminal Procedure was rejected and the Petitioners and other accused were directed to remain present for framing of the charge and the case is pending in the Court of Shri S.K. Dubey, Special Judge-CBI at Ranchi.

3. The prosecution case registered by the C.B.I. on 5.3.2004, in brief, is that from a reliable source of information it has come that these Petitioners including others and unknown officials of Bihar Intermediate Education Council, Patna entered into a criminal conspiracy among themselves and in pursuance of the said criminal conspiracy, the unknown officials of Bihar Intermediate Education Council, Patna tampered with the records of BIEC, Patna and inflated the marks obtained by the Petitioners and Ors. at the Intermediate Examination conducted by the said council and on the strength of such forged mark sheet the Petitioners and Ors. got them appointed in Postal Department, Jharkhand Circle, Ranchi as Postal Assistants/Sorting Assistants by using these forged documents as genuine. It is further alleged that an advertisement for appointment to the post of Postal Assistants/ Sorting Assistants was issued by the office of the Post Master General, South Bihar Region, Ranchi in the month of February, 1995 and the prescribed minimum Educational Qualification for the advertised post was intermediate pass. The Selection was to be done only according to the merit of marks secured by the candidates in the Intermediate and higher qualification examination. No. separate written examination/test was taken by the Postal Department for selection. It is further alleged that the Petitioners and Ors. entered into a conspiracy with unknown officials of BIEC, Patna and got the records, tampered within as much as they got their marks inflated and managed to obtain mark-sheets showing inflated marks awarded to them by the council of the Intermediate Examination. The Petitioners and Ors. by virtue of inflated marks got themselves appointed as Postal Assistant/Sorting Assistant in Postal Department, Jharkhand Circle, Ranchi. Hence the present F.I.R. was lodged against the Petitioners and Ors. for cognizable offences. After investigation, the charge sheet was submitted against the Petitioners and other accused.

4. Mr. B.M. Tripathy senior counsel, appearing for the Petitioners submits that the Petitioners got their appointment in the postal department about 12 years back and they have discharged their duties with all diligence and also qualified the departmental examination. It is further submitted that at the time of their appointment, their mark sheets were thoroughly scrutinized and the same were further got cross checked from the office of BIEC, Patna and only thereafter they issued appointment letters. It is further submitted that the investigating agency did not verify the actual answer books and the hard disc of the computer maintained there in the office of BIEC, Patna. It is further submitted that the investigating agency also did not investigate the fact that how the marks sheet as well as the TR registers could be manipulated without the tacit and active connivance of the officials of the BIEC, Patna and why those officials were not made an accused in the case.

5. Mr. Tripathy has further submitted that No. offence under Sections 467, 468, 420 I.P.C. is made out as it has been held in catena of decisions that mark sheet is not a valuable security and No. pecuniary loss was caused to the public exchequer as the

Petitioners had received salary in lieu of rendering service to the department. In this regard Mr. Tripathy has cited a decision reported in [Bhausaheb Kalu Patil Vs. The State of Maharashtra](#), in which the Hon"ble Apex Court has held:

Penal Code (45 of 1860), Sections 30, 465, 467, 471 -Valuable security-Certificates which the accused was found to have forged to get admission in a college could not be described as valuable security- Conviction u/s 471 read with Section 467 changed to one u/s 471 read with Section 465.

6. Mr. Tripathy has further contended that even assuming the Petitioners managed to obtain the mark-sheet showing inflated mark awarded to them by the council of the Intermediate examination but at that time as they were not in service, they do not come under the definition of the public servant, therefore, the Prevention of Corruption Act is not at all applicable to them.

7. Mr. Md. Mokhtar Khan appearing for the C.B.I., submits that there is sufficient evidence and material on record to show that the accused/Petitioners in criminal conspiracy with each other had manipulated the marks in the tabulation register and also replaced the original tabulation sheet kept in the Reserved T.R. Section in order to show inflated marks to the Petitioner who got appointed on the basis of forged and fabricated marks sheet in the postal department. He further submits that the Petitioners on the basis of the forged and fabricated mark sheets got themselves illegally appointed in the Postal Dept. and on that basis drew salary from the Postal Department and thus wrongfully gained by their illegal acts and so offences u/s 420, 467, 468, 471, 120B of I.P.C. and 13(2) read with 13(1)(d) of the P.C. Act are made out against them.

8. Mr. Khan has further submitted that it is alleged in the F.I.R lodged on the basis of source information that accused/Petitioners Mohan Yadav, Santosh Kumar Kuswaha, Firoz Ahamad, Jitendra Kumar Singh, Sanjay Kumar (the Petitioner No. 2), Uma Shankar Prasad and Krishna Choudhary and unknown officials of BIEC, Patna entered into a criminal conspiracy amongst themselves and tampered with the record of BIEC, Patna and inflated the marks obtained by the accused persons in the Intermediate Examination conducted by BIEC, Patna in the year 1989 and on the strength of such forged mark sheets they got themselves appointed in Postal Dept, Jharkhand Circle, Ranchi as Postal Assistant/Sorting Assistant. It is further alleged that in pursuance to the advertisement issued in the year 1985 for appointment for the post of postal Assistant/Sorting Assistant accused Firoz Ahamad, Jitendra Kumar Singh, Uma Shankar Pd, Santosh Kr. Kishwaha (the Petitioner No. 1), Sanjay Kr (the Petitioner No. 2), Mohan Yadav (the Petitioner No. 3) and Krishna Choudhary submitted their applications along with required testimonials including the mark-sheets. The selection for the post was to be done only on the basis of marks secured by the candidates in the intermediate and higher education qualification. The minimum educational qualification was Intermediate pass. No. separate written examination was to be taken. The accused persons by-tampering with their original

marks and showing inflated marks managed to obtain mark-sheets showing inflated marks by a criminal conspiracy with the officials of BIEC, Patna and got themselves appointed.

9. Mr. Khan further submits that during investigation it is found that the BIEC, Patna conducted examination of Intermediate 1989 and prepared Tabulation sheets in triplicate. First copy of the Tabulation sheet remains in Reserve T.R. Section, second copy is kept in general T.R. Section and the third copy is sent to the concerned colleges. The Tabulation sheet was kept in the Reserved T.R. Section under Lock and key in the safe custody of accused Awadesh, Kumar Upadhyay to safeguard this copy of tabulation sheet from eraser, manipulation etc. and if at all any manipulation in the tabulation sheet kept in Reserved T.R. Section is done that would only be in connivance with its custodian i.e. accused A.K. Upadhyaya. During investigation it is found that the mark sheets shown to have been issued by BIEC, Patna in favour of the accused Firoz Ahmad, Jitendra Kr. Singh, Uma Shankar Pd, Santosh Kr. Kushwaha (the Petitioner No. 1), Sanjay Kr (the Petitioner No. 2), Mohan Yadav (the Petitioner No. 3) and Krishna Choudhary were not issued by the BIEC, Patna. It is further found that original marks in respect of accused Mohan Yadav, Santosh Kumar Kushwaha, Firoz Ahmad and Jitendra Kumar Singh were erased by the blade and subsequently inflated marks were written in the tabulation sheet kept in the Reserved T.R. Section. It is further found that the Tabulation sheet in respect of accused Sanjay Kumar, Uma Shankar Prasad and Krishna Choudhary were replaced and manipulated as the format/printing as well as writings/ signatures of tabulator in respect of tabulation sheet differ from the other tabulation sheet of the same tabulator and college kept in Reserved T.R. Section.

10. Mr. Khan further submits that it has been found during investigation that a merit list was also prepared by the BIEC, Patna of I.A. & I.S.C. Examination 1989 and students securing 668 marks in I.A. and 709 marks in I.S.C. Examination found a place in the said merit list. The names of accused Mohan Yadav, Santosh Kumar Kushwaha, Firoz Ahmad, Jitendra Kumar Singh and Krishna Choudhary, who had submitted mark-sheets showing securing marks more than the marks of 668 in the I.A. Examination but did not find place in the merit list. Similarly, the names of accused Sanjay Kumar and Uma Shankar Prasad, who had submitted mark-sheets showing securing of marks more than the marks of 709 in I.S.C. Examination also, did not find place in the merit list. It has further been found during investigation that after the selection of the accused Firoz Ahamad, Jitendra Kumar Singh, Uma Shankar Prasad, Santosh Kr. Kushwaha, Sanjay Kr, Mohan Yadav and Krishan Choudhary by way of abundant precaution their mark-sheets (photocopy) were sent to the Secretary, BIEC, Patna for verification and accused Awadhesh Kumar Upadhyay, the then Statistical Officer falsely certified on the photocopies of mark sheets of Intermediate Examination of the said accused namely Uma Shankar Pd, Sanjay Kumar and Krishna Choudhary and accused Mithilesh Kumar Choudhary, Asst. BIEC, Patna falsely certified the photostate copies of mark sheets of the

accused Firoz Ahmad, Jitendra Kumar Singh, Santosh Kr. Kushwaha and Mohan Yadav and submitted a false report that the mark sheets are correct and genuine and those have been verified from the records of the Council. The witness Ashwani Kumar Pathak and Anil Kumar Singh, Officials working in the BIEC, Patna during investigation have stated that original marks in respect of accused Santosh Kumar Kushwaha, Firoz Ahmad, Jitendra Kumar Singh and Sanjay Kumar were erased by the blade and subsequently, inflated marks were written. The witness Ashwani Kumar Pathak has further stated that original tabulation sheet in respect of accused -Petitioners were replaced.

11. In the aforesaid decision which is cited by Mr. Tripathy, two certificates of the Appellant have been found to have forged to get admission in the Arts and Commerce College affiliated to Pune University but in the present case, the Petitioners have forged the mark-sheet only to get appointment in the postal department as the appointments were only on the basis of the marksheet, No. separate written examination was to be taken. Utter surprise, the Petitioners have increased their marks even more than the persons who were in the merit list of the said examination.

12. The submission advanced by the learned Counsel as to whether the Petitioners are public servant or not, according to me, this submission is not at all tenable because the Petitioners adopted a fraudulent and dishonest means for getting the job and became a public servant. Therefore, they had guilty mind from the very beginning to get into the job as such the logic of the learned Counsel of the Petitioners cannot be accepted. Further more, when the offence committed by the Petitioners is detected, admittedly, they were public servant.

13. After considering the submissions made by both the parties, I find that admittedly the Petitioners managed to obtain a forged mark-sheet and on the basis of the said forged mark-sheet, they dishonestly and fraudulently secured employment in the postal department as Postal Assistant. Furthermore, from the materials collected during investigation against the Petitioners a prima- facie case is made out for framing the aforesaid the charges against them. Considering all these aspects as discussed above, I do not find any reason to interfere with the order impugned. Accordingly, this revision application is dismissed.