

FIR No. 165/2002
PS: I.P.Estate
U/s 420/468/471 IPC
State Vs Binai Kumar

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

CIS No. 296548/2016
FIR No. 165/2002
PS: I.P.Estate
U/s 420/468/471 IPC
State Vs Binai Kumar

Date of Institution of case : 18.02.2009
Date of Judgment : 30.05.2020

JUDGMENT:

- a) Date of offence : Unknown
b) Offence complained of : U/s 420/468/471 IPC
c) Name of Accused, his parentage & residence : Binai Kumar
S/o Sh. Dukhi Ram
R/o VPO Mohania, Station Road,
District Kaimur, Bihar.
d) Plea of Accused : Pleaded not guilty
e) Final order : Acquitted


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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 unknown time at Medical Council of India within the jurisdiction of PS I.P.Estate, accused Binai Kumar submitted a M.D.Physician Diploma bearing no. DIS 0006822 registration no. 345 dated 14.06.2000 issued from Russian State Medical University, in order to obtain registration for permission to practice as Doctor in India and induced MCI to deliver certificate of registration but on verification the said diploma was found fake. On the basis of aforesaid facts, the present FIR was registered for offence 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 provision 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 read with Section 511 IPC & 465/471 IPC, charge was accordingly framed against him to which accused pleaded not guilty and claimed trial.
3. During the course of the trial prosecution has examined twelve witnesses to substantiate the accusation.
4. PW-1 Sh. Ramesh Chand deposed that he was working as head clerk/Superintendent and that on the request of IO he handed over the

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certified copies of documents i.e. application form, verification letter and verification report to the IO required in various FIR and the said documents are Ex. P1, P2 and P3 respectively.

During cross examination conducted on behalf of accused, the witness stated that he had not received the Ex. P3 directly in his office, that he cannot say from where this letter was received by the department, that he had supplied the same by taking out from the record, that he cannot say what is the designation of Mr. Satbir Singh who signed Ex. P3, that he cannot say how this letter Ex. PW3 was received in MCI, that he cannot say whether any specimen of the emblem of said University was with the MCI or not, that he cannot say as to who sent the certificate to Moscow for getting the verification of the same, that he had no personal knowledge regarding the handing over the documents to the IO by him and that he handed over the documents on his asking.

5. PW-2 Sh. G. Ravindran, Second Secretary, Indian High Commission, London deposed that he was serving as Attache (counsellor) in Embassy of India, Moscow in the year 2000, that he was authorized to attest the signature of the authorized persons of the Russian foreign office who used to put their signatures on the documents issued by the Russian Authority, that on 02.11.2000, in the official capacity, he attested the signature of Sh. Sklovskaya N. A. and the said document was on record in both languages Russian as well as English translation and that English translation of the document is Ex.


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PW2/A and Russian copy of the said document is Ex. PW2/B.

During cross-examination conducted on behalf of accused, the witness stated that his role was restricted to countersigning the signature of the authorized persons of the Russian Foreign office who would have already attested the original Russian Educational document, that they tally the specimen signature of the authorized Russian Foreign Officers who first attests the same, that during the process they cannot verify the authenticity of the document and that before he attested the signature of the authorized the persons, he tallied the specimen signature of the authorized person.

6. PW-3 Inspector Mahavir Prasad, deposed that during the year 2001-2002 he was posted at DIU Central District and complaint from MCI dated 17.08.2001 was marked to him and on 23.04.2002 and he made endorsement on complaint at point A to A1 Ex. PW3/A, that FIR was registered, that he met the complainant in MCI and made request to provide the original documents required in present case, that he also gave notice u/s 91 Cr.PC to the complainant to provide certain documents and that on 02.07.2002 he had provided certified copies of some of the documents required in present case. He further stated that he took the possession of the same, that the documents are already Ex. P1, P2, P3 and P4, that he tried to search the accused person but could not trace him and that on 22.10.2002 the investigation was transferred to another IO.

During cross-examination conducted on behalf of accused, the


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witness deposed that he did not remember the date when the complaint was marked to him, that he cannot say where the present complaint was pending between 17.08.2001 and the day till it was marked to him, that he had not made any preliminary enquiry before making the endorsement for registration of the case, that he recorded the statement of concerned person namely Ramesh from MCI who handed him over the certified copies and that he himself tallied the photocopies with the original in his presence at the time of handing him over the same but he personally did not compare.

7. PW-4 Sh.A.S.Rahi Retired Deputy Secretary deposed that on 25.05.2001 he was working as Dy. Secretary in MCI, that on that day he had sent a letter no. 6287 Ex. P (OSR) to the Ambassador Embassy of India, Moscow through MEA to verify the authenticity of documents already Ex. P4 and document Mark PW=4/A. He further stated that said documents related with Dr. Binay Kumar. He proved the letter Ex. P-2.

During cross examination conducted on behalf of accused, he deposed that during the course of his duty, he had sent letter Ex. P2 to the concerned authority as per rules and that till date since he sent the letter Ex. P2 no complaint was received in their office.

8. PW-5 HC Yogesh Kumar deposed that on 15.04.2006 he was posted at PS IP Estate and on that day he received sealed sample/documents from the inspector/IO vide RC No. 12/21 and deposited the same in GEQD, Kolkata and receipt of the same was


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handed over the IO. He further stated that till the time sealed sample/documents were in his possession, it was not tampered with.

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

9. PW-6 ASI Pushpa deposed that on 23.04.2002 she was posted at PS IP Estate as Duty Officer from 8:am to 4:00 pm, that on that day SI Mahavir Prasad presented her a complaint at about 11:40 am for registration of FIR, that she registered the FIR no. 165/2002 under section 420/471 IPC which was in her handwriting, that today she had brought original FIR and carbon copy of same is Ex. PW6/A and that in this respect she made an endorsement on complaint.

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

10. PW-7 W Inspector Shashi Bala deposed that on 26.07.2005 she was posted at DIU, Central District, Darya Ganj and on the said date investigation of the present case was marked to her and file of the present case was also received by her, that she perused the file, that anticipatory bail of accused Binay Kumar was fixed for 06.08.2005 and he was granted bail on the said day, that she several times gave notice to accused to join investigation but he did not join, that on 07.03.2006, accused Binai Kumar came to DIU Central District alongwith his surety and joined the investigation, that he was formally arrested vide arrest memo Ex. PW7/A and accused was released on bail as he was granted


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anticipatory bail, that she interrogated the accused regarding the document forged by him, that on 10.03.2006, in his presence and vide order of the court of Sh.P. Parmachla, Ld. MM, THC, Delhi, she took the specimen signatures of the accused which are on the file from S1 to S8 and same is Ex. PW7/B, that she sent the letter to get the priority letter issued for sending the exhibit to GEQD and after that she was transferred.

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

11. PW-8 Retired ACP Sh. Ganga Sahai deposed that on 15.04.2006 he was posted as Inspector DIU Central, District, that on that day, he had received the case file and on the same date, he handed over the application form for registration filed by accused, specimen copy of handwriting and signatures of accused to Reader, ACP, DIU for sending to Kolkata for handwriting expert opinion and that on 07.08.2006, he handed over the file to Reader, ACP as he was transferred.

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


12. PW-9 SI Chander Shekhar deposed that on 03.07.2003, he was posted as SI at DIU Central and on that day, he had received the case file from the Reader ACP DIU, Central District for further investigation, that he had sent notice to accused Binai Kumar on Delhi address which was received back unserved, that thereafter he sent a letter to passport


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office, Patna and received a reply from superintendent, Passport Office, Patna in which permanent address of accused Binai Kumar is mentioned, that the said reply is Ex. PW-9/A, that thereafter, he sent several notices at permanent address of accused which were received back unserved, that thereafter he got issued NBWs against the accused from Court on 13.05.2005 through his application, carbon copy of which is Ex. PW-9/B, that NBWs against the accused were also received back unexecuted on 13.07.2005 and that thereafter he got transferred from DIU to Special Branch and handed over the case file to Reader ACP, DIU.

During the cross examination conducted on behalf of accused, the witness deposed that he had seen the Court file wherein no application moved to the passport department at Patna is found, that the reply was received by the department, that he can not say by which mode it was received by department, that it was handed over to him by Reader ACP, DIU, that there is no seal of the person signing on the same and that he did not personally visit the place of permanent address of the accused.

13. PW-10 Sh. Lakhan Singh, Assistant MCI deposed that he has been authorized by Ms. Reena Nayyar, Secretary MCI, New Delhi to depose today in the Court vide noting Ex. PW-10/A, that as per the official record Dr. A.S.Nayyar, Deputy Secretary MCI worked from 25.04.2001 to 25.11.2005, that during that time he was also working in the MCI and has seen Dr. A.S.Nayyar working during the course of official duties and can identify his handwriting and signature, that Dr. A.S.Nayyar /


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complainant had made a complaint dated 17.08.2001 to the DCP Crime, I.P.Estate which is Ex. PW-10/B for taking actions against Dr. Binai Kumar and that he can identify the signatures of Dr. A.S.Nayyar which is depicted at point A of the complaint.

During the cross examination conducted on behalf of accused, the witness deposed that earlier he was working as UDC and after promotion he was working as Assistant, that his nature of work was administrative where he put files before seniors and that he does not have any personal knowledge about the present case. The witness denied the suggestion that as per noting Ex. PW-10/A earlier Sh. Bhagwan Das Assistant Secretary was authorized to attend the Court proceeding today and he was not authorized to do so. He deposed that Dr. A.S.Nayyar / complainant has signed before him and he has seen him while signing during the course of official duties and denied the suggestion that he is able to identify the signature of Dr. A.S.Nayyar only because of his name and designation mentioned with his signature.

14. PW-11 Sh. S.Saha Deputy Director and Scientist D at CFSL Kolkata deposed that he has passed his M.Sc, Physics in First Class from BU University in the year 1989, that he had undergone initial in service training in the field of documents examination and allied subject during the year 1989-1996 at Central Forensic institute, Kolkata, that he has acquired experience of more than 25 years in the subject of documents examination, that he also appeared as expert witness in more than 250 cases in the various courts in India, in which he has expressed his expert


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opinion, that on 28.11.2006, he was posted as Asstt. Govt. Examiner of questioned documents, that the questioned documents in the present case was received on 13.09.2006 in his office at Kolkata, that the questioned documents were marked in Q series (Q1 to Q5) and signatures/writings were marked in S series (S1 to S20) and A1, that after thoroughly and carefully examining the documents and comparing questioned documents with specimen signature with the writing, he with the help of scientific instrument available in his government lab at Kolkata, opined that it has not been possible to fix the authorship of writings marked Q1 to Q5 in comparison with the writings marked S1 to S20 and A1, that his opinion is based on significant similarity observed among questioned and specific writings/signature among detailed formation of various characters, that the opinion was typed in his report on his instructions on 28.11.2006, that his detailed report No. DXC-147/2006 dt. 28.11.2006 is exhibited as Ex. PW-11/A, bearing his signature at point A, that it also bears the signature of Sh. Vinod Kumar who was Asstt. Govt. Examiner of Questioned Documents at that time, that he can identify his signature and writing as he had worked with him and has also examined the documents in this case independently and arrived at the same conclusion, that the signature of Vinod Kumar is at point B in the report exhibited as Ex. PW-11/A, that the report exhibited as Ex. PW- 11/A was forwarded to the DCP, Central District, Delhi by Sh.V.G.S Bhatnagar who was then Head of the Office and Govt. Examiner at GEQD, Kolkata, that he can identify the signature of Sh. V. G. Bhatnagar as he had worked with him, that the forwarding


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letter No. DXC-147/2006/1902 in the report Ex. PW11/B bears his signature at point A and that thereafter further documents were sent to their office to obtain the opinion in the present case for the supplementary report.

PW-11 Sh. S.Saha further deposed that on 23.08.2007, he was posted as Asstt. Govt. Examiner of questioned documents, that the questioned documents in the present case was received on 13.06.2007 in his office at Kolkata, that the questioned documents were marked in Q series (Q6 and Q7) and signatures/writings were marked in S series (S5 to S11) and A1, that after thoroughly and carefully examining the documents and comparing questioned documents with specimen signature with the writing, he with the help of scientific instrument available in his government lab at Kolkata, opined that the person who wrote the blue enclosed signatures stamped and marked S5 to S11 and A1 also wrote the blue enclosed signatures similarly stamped and marked Q6 and Q7, that his opinion is based on significant similarity observed among questioned and specific writings/signature among detailed formation of various characters, that the opinion was typed in his report on his instructions on 23.08.2007, that his detailed report No. DXC-147/2006 dt. 23.08.2007 is exhibited as Ex. PW-11/C, bearing his signature at point A, that it also bears the signature of Sh. Vinod Kumar who was Dy. Govt. Examiner of Questioned Documents at that time, that he can identify his signature and writing as he had worked with him and has also examined the documents in this case independently and arrived at the same conclusion, that the signature of Vinod Kumar


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is at point B in the report exhibited as Ex. PW-11/C, that the report exhibited as Ex. PW- 11/C was forwarded to the DCP, Central District, Delhi by Sh.V. G. S. Bhatnagar who was then Head of the Office and Govt. Examiner at GEQD, Kolkata, that he can identify the signature of Sh. V. G. S. Bhatnagar as he had worked with him and that he forwarding letter no. DXC-147/2006/1348 in the report Ex. PW11/D bears his signature at point A.

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

15. PW-12 Sh. Satbir Singh, Passport No. D1133287, Ambassador, Indian Embassy Algeria (through video conferencing) deposed that he received a letter addressed to the Ambassador of India from the Deputy Secretary of the Medical Council of India dated 23.05.2001 forwarding a set of documents relating to Dr.Binai Kumar to be verified whether these documents have been issued by Russian Medical Institute, that thereafter, they had sent a letter to the Russian Medical Institute (it was called Russian State Medical University) forwarding the copies of these documents alongwith other candidate's documents requesting them to confirm authenticity of the documents, that they received a letter in Russian Language from Mr. A.G.Mustfeen, Dean of the Foreign Students and professor at Russian State Medical University dated 02.07.2001 stating that Mr.Binai Kumar, an Indian National has never studied in Russian State Medical University and Diploma No. DIS 0006822, registration no. 345 of 14.06.2000 does not belong to the University,


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that this communication was received by them on 02.07.2001, that after translation, they have communicated the same information on 02.08.2001 under his signature to Dr. A.S.Nayyar, Deputy Secretary, Medical Council of India stating the facts that the letter reads with reference to their letter bearing no. MCI 201 (32) (89)/2001-Regn/6287 dated 25.05.2001 forwarding them copies of the documents presented by Dr. Binai Kumar to verify the authenticity of the concerned documents, they have been informed by the Dean of the Foreign Students Department, Russian State Medical University Moscow that Diploma No. DIS 0006822, registration no. 345 was never issued by the university, that this was the communication done under his signature and that this is the fact of the case as on date and then also communicated to the medical council of India.

The witness was shown letter Ex. P-3 sent to Dr. A.S.Nayyar Deputy Secretary bearing his signature and the witness correctly identified his signature on the same at point A.


During cross examination conducted on behalf of accused, the witness deposed that this letter was written by Mr. A.S.Rahi Deputy Secretary, Medical Council of India dated 25.05.2001 and was addressed to Ambassador, Embassy of India, Moscow, Ministry of External Affairs Ministry, South Block, New Delhi, that it came from diplomatic bag and through the internal procedure & as he was councilor Incharge of Education, this letter was marked to him, that it was not addressed to him and that the letter was addressed to Ambassador, Embassy of India, Moscow.


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The witness was shown letter Ex. P-2 written by Sh. A.S.Rahi, Deputy Secretary to the Ambassador, Embassy of India Moscow dated 25.05.2001 and the witness confirmed that it is the same letter.

The witness further deposed that in embassy, the procedure followed when he was working as councilor education was that Ambassador's office used to receive all the communication addressed to Ambassador through diplomatic bag and the papers related to education matter were then sent to his office, that they were located in two adjacent buildings so from Ambassador's office, the diplomatic bag was taken on the record by mentioning in the logbook that this communication has been received and then from Ambassador's office it was sent to his office for action and thereafter he took them and that he does not have any record of the logbook because that logbook has to be in Ambassador's possession and not in his office.

The witness further deposed that there is no mention of the noting / official channel / mode through which the said letter was received by him, that he had written letter only once to Professor A.G.Mustfeen, Dean of Foreign students at the Russian State Medical University who had written to him on 02.07.2001 in Russian Language and this is available on record in Embassy of India, Moscow till now, that he does not recollect whether it was attached or not but it is available on record with Embassy of India, Moscow alongwith the English Translation and that he does not remember whether it was attached with the true translation or not, that in embassy, as per the allocation of work, he had two responsibilities, that he was incharge /


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Director of Jawahar Lal Nehru Cultural Centre and given his rank in the embassy, that as he was a councilor so he was also designated as councilor of education, that this is the internal work allocation which is done by deputy chief of mission with the approval of Ambassador and he was assigned this responsibility in the mission as a councilor education to look after the education institutions, that he does not have presently any record or any office order to show that he was designated as counselor of education, that he has not annexed any document alongwith this reply suggesting his deployment for this particular inquiry, that he does not maintain some record on his own qua the duties performed by him, that was called education wing of the embassy, that there was a local/ Russian English speaking employee who was deployed to look after this work and she was working with him so once he received the papers, she was entrusted to take two actions, one to write a communication to the concerned medical or educational institution regarding verification of the thing and then receive the response from the concerned institution, translate this work and put it before him to inform to the Indian Authority whoever has written the letter and that this is the work basically done in the Education Wing regarding verification.

The witness further deposed that he does not have any such record, that in the Education wing it is there and that he has a copy of the letter which has gone to Mr. Mustfeen because they have written a letter to Mr. Mustfeen forwarding these documents.

The witness was shown a document that was sent to the witness


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by Professor A.G.Mustfeen, Dean of Foreign Students which is correctly identified by the witness is exhibited as Ex. P-4A. The witness further deposed that it was official communication because it had gone from embassy on embassy's letter head under his signature to Mr.A.G.Mustfeen and Mr. A.G.Mustfeen had written official communication under his signature with the Russian State Medical University's stamp on it and that this has been an official communication between Education Wing of Embassy of India, Moscow and Russian State of Medical University.

The witness was shown document dated 02.07.2001 i.e the translated copy sent by Professor A.G.Mustfeen Ex. P-4A reflecting information pertaining to Binay Kumar at point no.2. The witness was further shown the letter which mentions that Binay Kumar is an Indian National and has never studied in R.S.M.U and earned a Diploma DIS no.0006822, registration no. 345 of 14.06.200 and that diploma does not belong to the university and the witness is asked whether he recognizes the translation. The witness stated that he recognize the translation.

The witness further deposed that the translated version was not got tallyed by Professor A.G Mustfeen by him after the translation, that they have received only Russian copy from Professor A.G Mustfeen and it was translated in the Embassy, that translated copy is Ex. PW-4A and that the true translation in English was not again verified or tallyed with the original information by sending it to Professor A.G.Mustfeen.

The witness was put a question that "in the English translation Ex.


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P-4A that is being shown to him, one phrase "it is unofficial transaction" is written over there, then. Is it correct to say that, as the word unofficial translation is written over there, which implies that it was not done in due discharge of your duties and it was all done beyond the purview of your duty, so it is not an authenticated document?

The witness replied in negative and deposed that the position is that the translation was done by an employee of the embassy i.e the translator who was employed in the Embassy, that the translation was not got confirmed by any judicial notary or any judicial process, that they have not got translation done through any legal entity in Russia to authenticate the documents, that it is the case of communication between the embassy and the Medical Council of India and that it is an authenticated document as far as the Embassy of India is concerned through the Medical Counsellor.

The witness denied the suggestion that since it is an unofficial document, so it is neither related to the inquiry made by him nor it is an authenticated document or can be relied upon, that no inquiry was made by him and the information furnished by him to A.S.Nayyar / IO has been fabricated and that the inquiry made by him was in respect of Dr. Binay Kumar and not Dr. Binai Kumar and the witness volunteered that the inquiry was conducted qua accused for DIS 0006822 registration no. 345 of 14.06.2000. The witness further deposed that he was working in Moscow, that he had visited Russian State Medical University but not to inquire each and every case because he used to receive many letters so he wrote official communications letters, that


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there is set mode of sending communication to the Dean of Foreign students regarding verification of documents, that accordingly, he sent him a letter and on the basis of which he had responded to him, that he had not gone personally for each and every case and that he wrote a letter of official communication to the Dean of foreign students Mr. A.G.Mustfeen and received a copy of communication from him in July.

The witness was put a Court Question:- Did you ever receive the documents which may have been relied by the Dean of the Russian University alongwith his reply to opine that the candidate was not a student of their university or the Diploma issued to him was never issued by that university?

The witness deposed that deputy Secretary Sh. A.S.Rahi in his letter dated 25.05.2001 has enclosed a copy of diploma no. 0006822 no. 345 dated 14.06.2000, that it was attested by Senior Resident of Hindu Rao College, Delhi and that this was the copy of the Diploma alongwith its marks which was received by the Embassy from medical council of India and this copy was sent to Dean of the Russian State Medical University. The witness further deposed that he received only a letter from Dean of Russian State Medical University on 02.07.2001 whereby he stated that Sh. Binay Kumar, Indian National has never studied in Russian State of Medical University and Diploma No. DIS 0006822 registration no. 345 of 14.06.2000 which they received from the medical Council of India & sent it to Russian State of Medical University, does not belong to the university & so, university has not issued it and that no other document was annexed by the dean alongwith the said letter.


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16. Thereafter, on 30.01.2020, the prosecution evidence was closed and matter was fixed for recording of statement of accused as the efforts made to trace the prosecution witness A.G.Mustfeen turned futile and the other material witnesses had been examined.

17. Ld. Counsel for accused submitted that there is no material or incriminating circumstance against the accused as the prosecution failed to secure the presence of PW Professor A.G.Mustfeen who is the only witness capable of proving beyond reasonable doubts that the accused had never been a student of Russian State Medical University and thus the alleged Diploma is fake. It is further stated that recording of statement of accused be dispensed with and accused be acquitted. Ld. Counsel for accused further stated that as a matter of abundant caution, he has also moved an application u/s 313 (5) Cr.P.C to file statement of accused in writing upon supply of questionnaire by the Court.

18. Submission made by Ld. APP for the State and Ld. Defence Counsel are heard. Record perused.

19. Perusal of record shows that the gist of allegation against the accused is that he submitted forged / fake M.D.Diploma issued from Russian State Medical University with the Medical Council of India for being registered as Medical Practitioner in India. So, for establishing the guilt of the accused for offence punishable u/s 420/511 & 465/471 IPC,


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prosecution should prove that the accused had applied with MCI and submitted the alleged false diploma and that he used diploma as genuine, knowing it to be fake, for inducing the MCI to register him.

20. Considering the facts to be proved by prosecution, it is important to mention that none of witnesses like MCI staff who may have witnessed the filing or submission of application form alongwith alleged diploma by the accused has been examined either during investigation or trial. Furthermore, the testimony of the handwriting expert PW-11 S.Saha shows that he failed to give any specific opinion qua authorship of handwriting on application form at the very first instance based on (Q1 to Q5), (S1 to S5) and A1 while on second instance, based on supplementary specimen (S5 to S11) & A11, he opined that author of the questioned and specimen signatures / writing is same. Record shows that none of the witnesses who were involved in the investigation stated about the factum of taking of subsequent specimen handwriting/ signatures of the accused which being a material omission creates grave doubt upon authenticity and genuineness of this specimen sent for examination. It further implies that the subsequent opinion of handwriting expert can not be treated as trustworthy. It follows that in the absence of any eye witness or trustworthy expert opinion, the factum of submission of application form Ex. P1 alongwith the alleged fake Medical diploma Ex. P-2 by the accused is not substantiated.

21. Regarding the allegations of forged / fake M.D Diploma, the most



important documents, are reply Ex. P-3 sent by PW-12, Sh. Satbir Singh, the then Counsellor of Education, Embassy of India in Moscow, to MCI wherein it was informed by Mr. A.G.Mustfeen, the Dean of Foreign Students Department, Russian State Medical University, Moscow that diploma no. DIS0006822 at registration no. 345 of 14.06.2000 was never issued by the University and the document Ex. PW-4/A issued by Mr. A.G.Mustfeen, Russian State Medical University based on which aforesaid reply was sent by Sh. Satbir Singh, the then Counsellor of Education, Embassy of India in Moscow to MCI.

22. Perusal of the entire record would show that no one Russian State Medical University, Moscow was examined to prove the basis of contents of reply Ex. PW-3 and report Ex. ^{R.S.} PW-4/A.

23. Perusal of testimony of PW-12 shows that he intimated the Indian Authorities after obtaining the information from Russian Authorities that the Diploma was never issued by the concerned University. The cross examination of PW-12 shows that his report is based only upon the basis of the inputs / reply Ex. PW-4/A received from Mr. A.G.Mustfeen from the Russian State Medical University and not from any other source. It is further clear from cross examination of PW-12 that he had not personally gone to the Russian State Medical University to check / verify the diploma in question. The testimony of this witness further reveals that he sent his reply Ex. P-3 based on the English translation of report received in Russian language from Mr.


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A.G.Muftseen, Dean of Russian State Medical University. It is also admitted by PW-12 that the translation was neither got authenticated by any legal authority nor the same was sent to Mr. A.G.Muftseen for acknowledgement of its correctness. It is clear from the testimony of PW-12 that his reply is based on inputs from Russian State Medical University and he had not personally verified the authenticity of the document of accused by comparing it with relevant records maintained in Russian State Medical University. Considering the nature of documents and present facts the translator / duly certified copy of translation as per law would have been the best person/document to authenticate the correctness of the English translation Ex. P-3 as the reply of PW-12 is based on the translation made by her Russian employee. PW-12 did not even tell the name of the local Russian employee who translated the same in English.

24. Record shows that neither the original report in Russian language authored by Mr. A.G.Muftseen, Russian State Medical University was sent to MCI nor the same is available on judicial file. PW-12 further clarified in response to Court question that the dean Russian State Medical University did not annexe any other document alongwith the said report / letter which shows that no other document except the report of Mr. A.G.Muftseen was relied for sending the reply Ex. P-3. It follows that the reply based on translation which is not proved by calling the translator and which was not got authenticated by referring it back to the original author i.e Mr. A.G.Muftseen, can not be relied. It


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implies that the said reply is not sufficient to fasten criminal liability upon the accused as its correctness and authenticity is itself not established.

25. Perusal of the record reveals that Ex. PW-4/A is the document purported to be issued by Mr. A.G.Mustfeen, Dean of Russian State Medical University and the same is not an original document but it merely a English translated copy of Russian document original of which has not been brought on record and the same has not been proved by calling its translator and author for ascertaining its truthfulness as the author is stated to be not traceable. It is further observed that neither any contemporary record of the Russian University maintained in usual course showing the list of students enrolled at relevant time when the accused may have studied there ,has been brought or proved nor any other witness from Russian State Medical University has been examined to establish the basis of issuing the document Ex. PW-4/A indicating that the best and most relevant evidence is missing.

26. Keeping in view the documentary evidence led by prosecution, it is pertinent to refer to Section 67 of Indian Evidence Act which lays down that if a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting of so much of the document as is alleged to be in that person's handwriting must be proved to be in his handwriting.


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27. Furthermore, as per the scheme of Indian Evidence Act, there are three stages of proving the document, i.e (i) production of document in original in compliance of Section 65 of Indian Evidence Act, ii) in case of signed and / or handwritten document, proving the signature and / or handwriting of the author of the document as per the provisions of Section 67 of Evidence Act, iii) in case reliance is placed upon the contents of the document, then the truthfulness and correctness of the contents of such documents shall be proved separately by examining the author of such document.

28. In the present case, prosecution has failed to prove the signature and / or handwriting of the author of the document Ex. PW-4/A issued by Russian State Medical University and its translation and even the contents of the same were not proved in accordance with law. Accordingly, it is held that Ex. PW-4/A which is very foundation for the entire case of the prosecution was not proved in accordance with law. Moreover, no person/ official from Russian State Medical University, Moscow could be brought for deposition that copy of degree / diploma furnished by the accused before MCI was fake which is a material omission suggesting that there is no evidence or basis to say that diploma of the accused is fake / forged. Hence, it is concluded that prosecution has miserably failed to bring any incriminating material / circumstance suggesting that accused has used any forged document as genuine document or that accused has committed forgery for the purpose of cheating or that accused has attempted to cheat the Medical


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Council of India by applying for registration on the basis of fake / forged diploma.

29. It follows from the aforesaid discussion, omissions and analysis of testimonies that recording of statement of accused would be a futile exercise in the absence of any incriminating material / circumstance. So, recording of statement of accused is dispensed with and application u/s 313(5) Cr.P.C stands dismissed being infructuous. Accordingly, accused Binai Kumar, S/o Dukhi Ram is hereby acquitted of the charge u/s 420/511 & 471/465 IPC levelled 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.

30. 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


30.5.2020
(VIPLAV DABAS)
ACMM (Special Acts)
Tis Hazari Courts, Delhi