

Reserved

AFR

Case :- Criminal Appeal No.1588 of 2021

Appellant :- Indra Pratap Tiwari

Respondent :- State of U.P.

Counsel for Appellant :- Dharendra Kumar Mishra, Ishan

Baghel, Manoj Kumar Mishra, Salil Kumar Srivastava

Counsel for Respondent :- G.A., Anuj Pandey, Asok Pande, Sushil

Kumar Singh

connected with

Case :- Criminal Appeal No.1761 of 2021

Appellant :- Kripa Nidhan Tiwari

Respondent :- State of U.P.

Counsel for Appellant :- Rama Niwas Pathak

Counsel for Respondent :- G.A.

Case :- Criminal Appeal No.1837 of 2021

Appellant :- Phool Chandra Yadav

Respondent :- State of U.P.

Counsel for Appellant :- Diwakar Singh, Alka Singh

Counsel for Respondent :- G.A.

Hon'ble Dinesh Kumar Singh, J.

1. The present three appeals under Section 374(2) Cr.P.C. have been instituted against the common judgement and order dated 18.10.2021 passed by the learned Special Judge (MP/MLA)/Additional Sessions Judge, Court No.3, Faizabad in Special Case No.3012 of 2018 (State Vs. Phool Chandra Yadav and others), arising out of Case Crime No.24 of 1992, Police Station Ram Janam Bhumi, District Faizabad, whereby the learned trial court has convicted and sentenced the accused-appellants as under:-

U/s 420 I.P.C. three years imprisonment and fine of Rs.6,000/- each and in default of payment of fine, eighteen days additional simple imprisonment; and

U/s 468 I.P.C. five years imprisonment and fine of Rs.8,000/- each and in default of payment of fine, twenty days additional simple imprisonment.

U/s 471 I.P.C. two years imprisonment and fine of Rs.5,000/- each and in default of payment of fine, fifteen days additional simple imprisonment.

Facts:-

2. The prosecution case, in brief, is that the Principal of K.S. Saket Postgraduate College, Faizabad, Sri Yaduvansh Ram Tripathi gave a complaint to the Senior Superintendent of Police, Faizabad on 16.2.1992 alleging that in his previous letter dated 14.2.1992 in respect of the accused-appellants, he informed that they had taken admission on the basis of the forged mark-sheets. It was alleged that accused-appellant Phool Chandra Yadav S/o Tilakdhari Yadav had failed in B.Sc Part-I examination in 1986 having Roll No.60999 and despite writing back papers, he could not clear the examination of the B.Sc Part-I and, therefore, he was not eligible to take admission in B.Sc Part-II, but by forging the mark-sheet and fabricating the documents in criminal conspiracy, he had obtained a forged mark-sheet of clearing B.Sc Part-I. Copy of the result of back paper of 1986 examination, of which the accused Phool Chandra Yadav had fabricated his marks to declare himself passed, was also annexed with the letter. On the basis of this forged and fabricated mark-sheet, he got admission in B.Sc Part-II for the academic session 1986-87, and the then Principal of the College had approved the admission form of the said accused-appellant. A copy of the admission form verified by the then Principal of the College was also attached with the said letter.

3. Accused-appellant, Indra Pratap Tiwari had appeared in B.Sc Part-II examination in the year 1990 as ex-student with Roll No.4263. He

failed in the said examination. Despite having got failed in B.SC Part-II examination, the accused-appellant, Indra Pratap Tiwari submitted a forged mark-sheet allegedly issued by the University dated 8.12.1990 and took admission in B.Sc Part-III for the academic session 1990-91. Copy of the said forged mark-sheet was annexed with the letter. He was given a show cause notice by the College, but no reply was given to the said notice and, thereafter, his admission in B.Sc Part-III was cancelled and his election to the post of Secretary of the student union was also declared as illegal. Copy of the said order of cancelling admission in B.Sc Part-III and his election to the post of Secretary of the student union of accused-appellant, Indra Pratap Tiwari was also annexed with the letter of the Principal of the College.

4. In the said letter, it was further alleged that the accused-appellant, Kripa Nidhan Tiwari had given examination of LLB Part-I in the year 1989 with Roll No.51570, but he was unsuccessful. Despite having got failed in LLB Part-I examination, he on the basis of the forged mark-sheet allegedly issued by the University, took admission in LLB Part-II for the academic session 1989-90 on 11.3.1991. Copy of the forged mark-sheet and the admission form were annexed with the letter. When the Principal got to know about this forgery, he gave a show cause notice to Kripa Nidhan Tiwari, but he did not give any reply to the said notice and, thereafter, his admission in LLB Part-II was cancelled.

5. On the basis of the above-mentioned facts, the Principal requested the Senior Superintendent of Police, Faizabad to take appropriate legal action against these three accused-appellants, who had taken admission on the basis of the forged and fabricated mark-sheets/documents and played fraud with the college administration and the University.

6. On this letter, the Senior Superintendent of Police, Faizabad on 18.2.1992 directed the Station House Officer, Police Station Ram Janam Bhumi, Ayodhya to register a case and investigate the offence.

In pursuance to the said direction, FIR at Case Crime No.24 of 1992, under Sections 420, 467, 468, 471 IPC against the three accused-appellants came to be registered at Police Station Ram Jhanam Bhumi, Ayodhya.

7. The Investigating Officer after completing the investigation, filed the charge sheet against the three accused-appellants under Sections 468, 471 and 420 IPC on 19.7.1996. After taking cognizance, the accused-appellants were summoned on 4.9.1996. However, the charges could be framed only on 9.12.2019 by the learned Special Judge (MP/MLA), Court No.1, Faizabad, which would read as under :-

“(i) That before 18.2.1992 on different occasions Phool Chandra Yadav despite having got failed in B.Sc Part-I examination in 1986 from K.C. Saket Postgraduate College, Accused Indra Pratap Tiwari having got failed in B.Sc Part-II examination in 1990 and accused Kripa Nidhan Tiwari having got failed in LLB Part-I examination in 1989, by playing fraud, prepared forged mark-sheets to have passed in these examinations. Thus, the said act of the accused is an offence punishable under Section 468 IPC, for which the cognizance has been taken by the court.

(ii) That despite knowing the fact that these mark-sheets were forged, the accused Phool Chandra Yadav, on the basis of the forged mark-sheet, took admission in B.Sc Part-II, Indra Pratap Tiwari in B.Sc Part-III and Kripa Nidhan Tiwari in LLB Part-II and, this act of the accused-appellants was an offence punishable under Section 471 IPC and the court has taken cognizance for the said offence.

(iii) That on the basis of the forged mark-sheets, the accused-appellants had taken admission in the next class

by cheating the college and such offence is punishable under Section 420 IPC, for which the court has taken cognizance.”

8. The accused denied the charges and claimed trial.

Evidence:-

9. The prosecution to prove its case, examined three witnesses. P.W.-1 Mahendra Kumar Agarwal, P.W.-2, Ram Bahadur Singh and P.W.-3 Srikant Pathak.

10. P.W.-1 Mahendra Kumar Agarwal in his examination-in-chief said that he was appointed in the college on 1.10.1966. In the year 1992, Sri Yaduvansh Ram Tripathi was the Principal of the K.S. Saket Postgraduate College. At the relevant time, the witness was working as Office Superintendent of the College. The accused-appellant, Kripa Nidhan Tiwari was the student of LLB Part-I and, as per the tabulation register of the college, he could secure only 120 marks in all the seven papers and was failed. Similarly, Accused-appellant, Indra Pratap Tiwari and Phool Chandra Yadav had also failed in B.Sc Part-II and B.Sc Part-I examinations in 1990 and 1986 respectively. He further said that the Investigating Officer came to the college for the purposes of the investigation and he showed him the tabulation register. He also said that he knew the hand writing and signature of the then Principal, Dr. Yaduvansh Ram Tripathi. He proved Paper Nos.4A/6 and 6A/1, 6A/3 and 6A/5 and 6A/7, on which there were signatures of Dr. Yaduvansh Ram Tripathi, the then Principal. These papers were marked as Ext.Ka-1 to Ext. Ka-7. The witness said that all the three accused-appellants had taken admission on the basis of forged mark-sheets in the next class. He further said that the Office Assistant, Guru Charan Yadav working with him, had died. He gave the information to the Investigating Officer on the basis of the tabulation register of the college.

11. P.W.-2, Ram Bahadur Singh in his examination-in-chief said that in the year 1992, he was working as Senior Assistant (Confidential) in

Awadh University, Faizabad. Dr. Yaduvansh Ram Tripathi, the then Principal of K.S. Saket Postgraduate College, Faizabad had requested him for furnishing information regarding the results of the examination of the three students, Phool Chandra Yadav, Indra Pratap Tiwari and Kripa Nidhan Tiwari, accused-appellants. He said that after examining the record of the University, he sent verification of the results of the three students. Certified copy of the papers sent by him to the College i.e. 6A/1, 6A/3, 6A/6 and 6A/7 were verified by the witness.

12. P.W.-3, Srikant Pathak in his examination-in-chief said that Head Moharrir Shivaji Mishra was posted with him in Districts Faizabad and Barabanki. He had seen the hand writing and signatures of the Head Moharrir Shivaji and he was fully aware of his hand writing and signature. He further said that Paper Nos.4A/1 and 4A/2 were in the hand writing and signature of Head Moharrir Shivaji Mishra and he verified his signatures. These papers were marked as Ext.Ka-8. He further said that Sub-Inspector Ram Chandra Singh was posted with him in District Gonda, and he had seen him writing and he knew the signatures of Sri Ram Chandra Singh. He was fully aware of the hand writing and signature. He further said that Paper No.3A/1, Charge Sheet No.11 dated 20.1.1996 was in the hand writing and signature of Sub-Inspector, Ram Chandra Singh and he verified the same and marked as Ext.Ka-9.

13. After the evidence of the prosecution got over, statements of the accused-appellants under Section 313 Cr.P.C. were recorded. They denied the evidence and circumstances against them and said that they had been falsely implicated because of enmity. They were innocent. However, the accused-appellants did not lead any defence evidence oral or documentary.

14. The trial court after analyzing the evidence on record and considering the entire facts and circumstances of the case, convicted and sentenced the accused-appellants as mentioned above.

Submissions:-

15. Sri I.B. Singh, learned Senior Advocate, assisted by Sri Ishan Baghel, Dr. Salil Kumar Srivastava and Sri Diwakar Singh, for the accused-appellants has submitted that a common FIR was lodged in respect of the three different incidents and in respect of the three different accused, and a common charge sheet was filed against the three accused, on which the common charges were framed. He has further submitted that there was no allegation of criminal conspiracy and abetment among the three appellants. Accused-appellants are the three individuals and as per Section 154 Cr.P.C., the FIR should relate to one offence and not many offences, which are not part of the one transaction and not related to each other. It is submitted that under Sections 221 and 223 Cr.P.C. separate charges should be framed against separate persons and the trial should be conducted separately. However, the accused-appellants were tried jointly in violation of the said procedure. It has further been submitted that conviction of the accused-appellants is based upon using the forged mark-sheets to get admission in the next class. Only photocopies of the mark-sheets allegedly forged by the accused-appellants were produced before the trial court. The originals were never produced before the trial court. The documents produced before the trial court were not proved in accordance with the provisions of the Indian Evidence Act. The learned trial court had convicted the accused-appellants on the basis of the secondary evidence in gross violation of Section 65 of the Indian Evidence Act. The accused-appellants had been tried and convicted together in violation of the procedure established by law, which vitiated the entire trial proceedings.

16. On the other hand, Sri U.C. Verma, learned AGA, assisted by Sri Rao Narendra Singh, learned AGA, has submitted that the accused-appellants had never taken objection regarding the admissibility of the documentary evidence, which was produced by the prosecution and proved by the witnesses. No objection whatsoever was taken by the accused-appellants during trial. They have never denied that these

were not the mark-sheets and admission forms submitted by them for taking admission in the next class. When the accused-appellants have never denied the existence of the documents on the basis of which they took admission in the next class, and they never took objection, it is not open for them to take this objection at this stage of the appeal. It is further submitted that the accused-appellants have also not taken any objection in respect of their trial together or lodging of one FIR or framing of common charge for the offence under Sections 468, 471 and 420 IPC.

17. Learned AGA has further submitted that the accused-appellants may be different, but they had committed identical offence by taking admission in the next class on the basis of the forged and fabricated documents and by cheating the College. It is also submitted that three witnesses have fully proved the prosecution case against the accused-appellants. When the accused-appellants had not taken the objection which they are taking here, their objections are to be rejected. It is further submitted that the documents have been duly proved by the witnesses as they knew the authors of the documents. The Principal himself was no more when the trial commenced and other witnesses had also died. It is also submitted that accused-appellant, Indra Pratap Tiwari is a Mafia, gangster and dreaded criminal and his character is also important while deciding the appeal. The prosecution has brought on record the criminal history of the accused-appellant, Indra Pratap Tiwari, which would read as under:-

“1. Case Crime No.258 of 1991, under Sections 1478, 148, 149 and 307 IPC, Police Station Ram Janam Bhumi, Ayodhya;

2. Case Crime No.20 of 1992, under Sections 379, 427, 436, 454, 451, 504 and 186 IPC, Police Station Ram Janam Bhumi, Ayodhya;

3. Case Crime No.24 of 1992, under Sections 420, 467, 468 and 471 IPC, Police Station Ram Janam Bhumi, Ayodhya;

4. Case Crime No.68 of 2012, under Sections 147, 148, 323, 504, 506 and 427 IPC, Police Station Maharajganj, Ayodhya;

5. Case Crime No.1352 of 1991, under Sections 147, 148, 323 and 504 IPC, Police Station Kotwali Nagar, Ayodhya;

6. *Case Crime No.397 of 1993, under Sections 147, 148, 149 and 302 IPC, Police Station Kotwali Nagar, Ayodhya;*
7. *Case Crime No.776 of 1995, under Section 3 Goonda Act, Police Station Kotwali Nagar, Ayodhya;*
8. *Case Crime No.618 of 1995, under Sections 147, 148, 149 and 307 IPC, Police Station Kotwali Nagar, Ayodhya;*
9. *Case Crime No.286 of 1997, under Section 302 IPC, Police Station Kotwali Nagar, Ayodhya;*
10. *Case Crime No.1684 of 1997, under Section 3(1) of U.P. Gangster Act, Police Station Kotwali Nagar, Ayodhya;*
11. *Case Crime No.771 of 1996, under Sections 392, 411 and 504 IPC, Police Station Kotwali Nagar, Ayodhya;*
12. *Case Crime No.981 of 1999, under Sections 147, 148, 149, 120-B and 302 IPC, Police Station Kotwali Nagar, Ayodhya;*
13. *Case Crime No.1150 of 1999, under Sections 504 and 506 IPC, Police Station Kotwali Nagar, Ayodhya;*
14. *Case Crime No.1593 of 1999, under Section 3(1) of U.P. Gangster Act, Police Station Kotwali Nagar, Ayodhya;*
15. *Case Crime No.824 of 1997, under Section ¾ Goonda Act, Police Station Kotwali Nagar, Ayodhya;*
16. *Case Crime No.2157 of 2001, under Sections 143, 504, 427, 386 IPC and Section 3(1) of U.P. Gangster Act, Police Station Kotwali Nagar, Ayodhya;*
17. *Case Crime No.2234 of 2001, under Sections 353, 504 and 506 IPC, Police Station Kotwali Nagar, Ayodhya;*
18. *Case Crime No.814 of 2002, under Sections 147, 323, 386 IPC and Section 3(1) U.P. Gangster Act, Police Station Kotwali Nagar, Ayodhya;*
19. *Case Crime No.1658 of 2002, under Sections 386, 504 and 506 IPC, Police Station Kotwali Nagar, Ayodhya;*
20. *Case Crime No.2256 of 2002, under Sections 323 and 506 IPC, Police Station Kotwali Nagar, Ayodhya;*
21. *Case Crime No.2724 of 2002, under Sections ¾ Goonda Act, Police Station Kotwali Nagar, Ayodhya;*
22. *Case Crime No.240 of 2005, under Section 298 Nagar Palika Act and Sections 341 and 506 IPC, Police Station Kotwali Nagar, Ayodhya;*
23. *Case Crime No.220 of 1994, under Sections 147, 148, 149 and 307 IPC, Police Station Kotwali Nagar, Ayodhya;*
24. *Case Crime No.828 of 1997, under Section ¾ Goonda Act, Police Station Kotwali Nagar, Ayodhya;*
25. *Case Crime No.417 of 1993, under Sections 307 and 506 IPC, Police Station Kotwali Ayodhya, Ayodhya;*
26. *Case Crime No.418 of 1993, under Sections 147, 148, 149 and 307 IPC, Police Station Kotwali Ayodhya, Ayodhya;*

27. *Case Crime No.419 of 1993, under Section 25 Arms Act, Police Station Kotwali Ayodhya, Ayodhya;*
28. *Case Crime No.6 of 1997, under Sections 147, 148, 149, 120-B and 302 IPC, Police Station Khandasa, Ayodhya;*
29. *Case Crime No.9 of 1997, under Sections 504 and 506 IPC, Police Station Khandasa, Ayodhya;*
30. *Case Crime No.19 of 2002, under Sections 110-G Cr.P.C., Police Station Poorakalander, Ayodhya;*
31. *Case Crime No.431 of 2001, under Section 3(1) U.P. Gangster Act, Police Station Poorakalander, Ayodhya;*
32. *Case Crime No.131 of 2005, under Sections 147, 148, 308, 323, 504 and 506 IPC and Section 7 Criminal Law Amendment Act, Police Station Poorakalander, Ayodhya;*
33. *Case Crime No.105 of 1996, under Sections 323, 504 and 506 Police Station Gosainganj, Ayodhya;*
34. *Case Crime No.387 of 1986, under Sections 324, 323, 504 and 506 IPC, Police Station Gosainganj, Ayodhya; and*
35. *Case Crime No.620 of 2005, under Sections 147, 323, 504 and 506 IPC, Police Station Gosainganj, Ayodhya.”*

18. Similarly other two accused-appellants, Phool Chandra Yadav and Kripa Nidhan Tiwari also had some other cases to their credit, which would read as under:-

- “1. *Case Crime No.16 of 1991, under Sections 323, 504 and 506 IPC, Police Station Ram Janam Bhumi, Ayodhya;*
2. *1. Case Crime No.20 of 1992, under Sections 379, 427, 436, 454, 451, 504 and 186 IPC, Police Station Ram Janam Bhumi, Ayodhya; and*
3. *Case Crime No.24 of 1992, under Sections 420, 467, 468 and 471 IPC, Police Station Ram Janam Bhumi, Ayodhya. And*
1. *Case Crime No.104 of 1992, under Section 323 IPC and Sections 145 and 146 R.A. Act, Police Station G.R.P. Faizabad, Ayodhya.”*

19. Except for raising technical grounds, no argument has been advanced that the offences under Sections 468, 471 and 420 IPC are not attracted against the accused-appellants. Therefore, these technical arguments are liable to be rejected.

20. I have considered the arguments advanced by the learned counsel for the parties as well as perused the judgement and order of the learned trial court and the evidence on record.

21. P.W.-1 Mahendra Kumar Agarwal and P.W.-2 Ram Bahadur Singh have proved the forged mark-sheets and admission forms of the accused-appellants, on the basis of which they had taken admission. There is nothing in their testimony which would suggest that they have any axe to grind against the accused-appellants or they were falsely deposing. P.W.-1 Mahendra Kumar Agarwal, who was working as Office Superintendent in the college, had specifically deposed that from the tabulation register of the college and the marks obtained by the students, it was evident the three accused-appellants had failed in B.Sc Part-I, B.Sc Part-II and LLB Part-I respectively. However, they had taken admission in the next class on the basis of the forged and fabricated mark sheets. There is no suggestion put by the defence to the said witness that these accused had not submitted these mark-sheets (forged one) for taking admission in the next class. The evidence of the prosecution witnesses had gone un-rebutted and, this Court finds that their testimony was cogent and credible to bring home the charge against the accused-appellants. When the accused-appellants had not taken any objection with respect to the admissibility of the documents during trial and the documents were proved by the witnesses, at this stage it is not open for them to take such objection in the appeal.

22. The cross-examination of the three witnesses would show that the accused-appellants had not put their version in cross-examination of the witnesses.

Case Laws:-

23. The Supreme Court in the case of *Muddasani Venkata Narasaiah (Dead) through Legal Representatives Vs. Muddasani Sarojana*, (2016) 12 SCC 288 has held that the cross-examination is a matter of substance and not of procedure. One is required to put one's own

version in cross-examination of opponent. Paragraph 15 of the judgment which is relevant, would read as under:-

“15. Moreover, there was no effective cross-examination made on the plaintiff's witnesses with respect to factum of execution of sale deed, PW 1 and PW 2 have not been cross-examined as to factum of execution of sale deed. The cross-examination is a matter of substance not of procedure one is required to put one's own version in cross-examination of opponent. The effect of non-cross-examination is that the statement of witness has not been disputed. The effect of not cross-examining the witnesses has been considered by this Court in Bhoju Mandal v. Debnath Bhagat [Bhoju Mandal v. Debnath Bhagat, AIR 1963 SC 1906] . This Court repelled a submission on the ground that the same was not put either to the witnesses or suggested before the courts below. Party is required to put his version to the witness. If no such questions are put the Court would presume that the witness account has been accepted as held in Chuni Lal Dwarka Nath v. Hartford Fire Insurance Co. Ltd. [Chuni Lal Dwarka Nath v. Hartford Fire Insurance Co. Ltd., 1957 SCC OnLine P&H 177 : AIR 1958 P&H 440]”

24. The Supreme Court in the case of ***R.V.E. Venkatachala Gounder Vs. Arulmigu Viswesaraswami and V.P. Temple and another***, (2003) 8 SCC 752: AIR 2003 SC 4548 in paragraph 20 has held that ordinarily, an objection to the admissibility of evidence should be taken when it is tendered and not subsequently. Once the document has been admitted in evidence and marked as an exhibit, the objection that it should not have been admitted in evidence or that the mode adopted for proving the document is irregular cannot be allowed to be raised at any stage subsequent to the marking of the document as an exhibit. Paragraph 20 of the judgment which is relevant, would read as under:-

“20. The learned counsel for the defendant-respondent has relied on Roman Catholic Mission v. State of Madras [AIR 1966 SC 1457] in support of his submission that a document not admissible in evidence, though brought on record, has to be excluded from consideration. We do not have any dispute with the proposition of law so laid down in the abovesaid case. However, the present one is a case which calls for the correct position of law being made precise. Ordinarily, an objection to the admissibility of evidence should be taken when it is tendered and not subsequently. The objections as to admissibility of documents in evidence may be classified

into two classes: (i) an objection that the document which is sought to be proved is itself inadmissible in evidence; and (ii) where the objection does not dispute the admissibility of the document in evidence but is directed towards the mode of proof alleging the same to be irregular or insufficient. In the first case, merely because a document has been marked as "an exhibit", an objection as to its admissibility is not excluded and is available to be raised even at a later stage or even in appeal or revision. In the latter case, the objection should be taken when the evidence is tendered and once the document has been admitted in evidence and marked as an exhibit, the objection that it should not have been admitted in evidence or that the mode adopted for proving the document is irregular cannot be allowed to be raised at any stage subsequent to the marking of the document as an exhibit. The latter proposition is a rule of fair play. The crucial test is whether an objection, if taken at the appropriate point of time, would have enabled the party tendering the evidence to cure the defect and resort to such mode of proof as would be regular. The omission to object becomes fatal because by his failure the party entitled to object allows the party tendering the evidence to act on an assumption that the opposite party is not serious about the mode of proof. On the other hand, a prompt objection does not prejudice the party tendering the evidence, for two reasons: firstly, it enables the court to apply its mind and pronounce its decision on the question of admissibility then and there; and secondly, in the event of finding of the court on the mode of proof sought to be adopted going against the party tendering the evidence, the opportunity of seeking indulgence of the court for permitting a regular mode or method of proof and thereby removing the objection raised by the opposite party, is available to the party leading the evidence. Such practice and procedure is fair to both the parties. Out of the two types of objections, referred to hereinabove, in the latter case, failure to raise a prompt and timely objection amounts to waiver of the necessity for insisting on formal proof of a document, the document itself which is sought to be proved being admissible in evidence. In the first case, acquiescence would be no bar to raising the objection in a superior court.'

25. Similarly, the Supreme Court in the case of ***P.C. Purushotham Reddiar Vs. V.S. Perumal*** (1972) 1 SCC 9: AIR 1972 SC 608 has held that if the documents are marked without any objection, it would not be open to the other party to object their admissibility. Paragraphs 18 and 19 of the said judgment is extracted hereunder:-

"18. Now coming to the question as to the expenditure incurred in connection with those meetings, it is no doubt for the appellant to prove the same. According to the respondent he had not maintained any accounts in connection with his election. The expenditure incurred for his election is specially within the knowledge of the respondent. He has not adduced any evidence in that connection. He has totally denied having held those meetings. That denial for the reasons already

mentioned cannot be accepted. Therefore we have now to find out what would have been the reasonable expenditure incurred in connection with those meetings. Even according to the respondent for the seven meetings held by him, he incurred an expenditure of more than Rs 225. That means on an average he had incurred an expense of about Rs 32 per meeting. This is clearly an underestimate. But even if we accept that to be correct, for the four meetings referred to earlier, he would have incurred an expenditure of Rs 128. If this expense is added to the sum of Rs 1886/9 p. referred to earlier, the total expenditure incurred exceeds the prescribed limit of Rs 2000. Hence the respondent is clearly guilty of the corrupt practice mentioned in Section 123(6).

*19. Before leaving this case it is necessary to refer to one of the contentions taken by Mr Ramamurthi, learned Counsel for the respondent. He contended that the police reports referred to earlier are inadmissible in evidence as the Head Constables who covered those meetings have not been examined in the case. Those reports were marked without any objection. Hence it is not open to the respondent now to object to their admissibility see *Bhagat Ram v. Khatu Ram* [AIR 1929 PC 110 : 116 IC 394].”*

26. This Court also in the case of ***Smt. Sudha Agarwal Vs. VIth Additional District Judge, Ghaziabad***, 2006 (3) ADJ 429 has held that if any party wants to raise an objection in respect of the admissibility of secondary evidence, then such objection should positively be raised at the trial stage so that the other side should have an opportunity to remove the deficiency. Once the document has been admitted in evidence and marked as an exhibit, the objection that it should not have been admitted in evidence or that the mode adopted for proving the document is irregular cannot be allowed to be raised at any stage subsequent to the marking of the document as an exhibit.

27. It is well settled law that non-examination of the Investigating Officer is not fatal to the prosecution case if the prosecution case is otherwise proved by the evidence, and the evidence is in conformity with case made out in the FIR. Mere non-examination of the Investigating Officer, the prosecution case should not fail if it is otherwise proved by other evidence brought on record.

28. The Supreme Court in the case of ***Behari Prasad and others Vs. State of Bihar*** (1996) SCC (Cri) 271 in paragraphs 21 and 23 held as under:-

“21. After considering the facts and circumstances of the case and the judgments of the learned Additional Sessions Judge and of the High Court and the evidences adduced in the case through which we have been taken by the learned counsel for the parties and considering the submissions made by the learned counsel for the parties, it appears to us that the prosecution case has been proved by the eyewitnesses in this case. Over the shop room, a long-drawn battle was fought by the deceased up to this Court. Ultimately, the delivery of possession of the shop through court was fixed on the date of incident. It was, therefore, quite natural that the said eyewitnesses being close relations of the deceased were present at the place and at the time of the incident. In our view, the learned counsel for the State is also justified that in the facts of the case the presence of the daughter of the accused aged 14 years in the company of elderly relations was also not unusual. Accused 2 to 4 and deceased-accused Rameswar though related to the deceased had been harbouring ill feeling and grudge against the deceased. As a matter of fact, suit for eviction was also filed by the deceased against Rameswar. It was, therefore, quite likely that they took side of Sheoji Prasad in frustrating the execution of the eviction decree against Sheoji Prasad. Although, the accused managed for the time being to frustrate execution of decree through court by influencing the Naib Nazir to accept the case of independent tenancy in favour of a third party on the face value of the statement of such tenant without ascertaining relevant facts and thereby sending him back without executing the decree, the accused were fully aware that the decree for eviction affirmed up to this Court was staring on their face. They were, therefore, quite agitated and it is not at all unlikely that they became revengeful against the decree-holder deceased Ram Babu.

23. It, however, appears to us that the entire case diary should not have been allowed to be exhibited by the learned Additional Sessions Judge. In the facts of the case, it appears to us that the involvement of the accused in committing the murder has been clearly established by the evidences of the eyewitnesses. Such evidences are in conformity with the case made out in FIR and also with the medical evidence. Hence, for non-examination of Investigating Officer, the prosecution case should not fail. We may also indicate here that it will not be correct to contend that if an Investigating Officer is not examined in a case, such case should fail on the ground that the accused were deprived of the opportunity to effectively cross-examine the witnesses for the prosecution and to bring out contradictions in their statements before the police. A case of prejudice likely to be suffered by an accused must depend

on the facts of the case and no universal strait-jacket formula should be laid down that non-examination of Investigating Officer per se vitiates a criminal trial. These appeals, therefore, fail and are dismissed. The appellants who have been released on bail should be taken into custody to serve out the sentence.”

Conclusion:-

29. A document in terms of Section 65 of the Indian Evidence Act is to be proved by a person, who is acquainted with the hand writing of the author thereof. P.W.1 Mahendra Kumar Agarwal, P.W.-2 Ram Bahadur Singh and P.W.-3 Srikant Pathak have proved the documents i.e. Paper Nos.4A/6 and 6A/1, 6A/3 and 6A/5 and 6A/6 and 6A/7 as they were acquainted with the hand writing and signatures of the then Principal Yaduvansh Ram Tripathi and the Sub-Inspector Ram Bahadur Singh.

30. In view thereof, I do not find no substance in the submission of learned counsel for the accused-appellants that the documents were not proved in accordance with the provisions of Section 65 of the Indian Evidence Act.

31. The technical objections taken at this stage have no relevance. The accused-appellants have forged their mark-sheets and took admission in the next class knowing it to be forged and thus, they have committed the offences under Sections 420, 468 and 471 IPC. The forgery was done with obvious purposes of utilizing the mark-sheets to secure admission. The accused-appellants are not in a position to say that they were prejudiced in any manner by common FIR, one charge sheet and same charge for all three accused-appellants and one trial. The allegations are identical. Witnesses were common, who had proved the documents and deposed in support of the charge. Therefore, I am of the considered view that technical plea in this regard has no substance and is rejected.

32. Essentially, the offence under Section 468 IPC is the commission of forgery with an intention to use the forged document for the purposes of cheating, whereas the essential ingredients of Section 471

IPC are fraudulently or dishonestly using as genuine any document or electronic record which the accused knows or has reason to believe to be a forged.

33. From the evidence lead by the prosecution, the offences under Sections 420, 468 and 471 IPC are fully made out and proved against the accused-appellants and, the learned trial court has rightly convicted and sentenced the accused-appellants for the aforesaid offences.

34. In view thereof, I find no substance in these appeals, which are hereby *dismissed*. The accused-appellants are on bail. Their bail bonds are cancelled and sureties are discharged. They shall be taken into custody forthwith to serve out the sentence as awarded by the learned trial court. The trial court record be returned back forthwith.

(Dinesh Kumar Singh, J.)

Order Date: 16th March, 2023
Rao/-