

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/CRIMINAL REVISION APPLICATION (AGAINST CONVICTION) NO. 277
of 2019

FOR APPROVAL AND SIGNATURE:

HONOURABLE MS. JUSTICE NISHA M. THAKORE

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Approved for Reporting	Yes	No

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RAMESH GAGU SAAMATBHAI BAKUTRA & ANR.
Versus
STATE OF GUJARAT

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Appearance:
NISARG S SHAH(8886) for the Applicant(s) No. 1,2
MS.KRINA CALLA ADDL. PUBLIC PROSECUTOR for the Respondent(s) No.
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CORAM: HONOURABLE MS. JUSTICE NISHA M. THAKORE

Date : 31/07/2026

ORAL JUDGMENT

1. The present Revision Application is filed at the instance of the original accused under Section 397 read with section 401 of the Criminal Procedure Code, 1973.

2. The applicant original accused have challenged the judgment and order dated 28.02.2019, passed by the Court of learned 4th Additional Sessions Judge, Bhuj in Criminal Appeal No. 7 of 2018, whereby the learned judge has concurred with the judgment and order 09.02.2018 passed by

the learned 3rd Addl. Chief Judicial Magistrate, Bhuj, Kutch in Criminal Case No. 1777 of 2015, whereby convicting the present applicants for the offence punishable under Section 419 read with Section 114 of the Indian Penal Code and imposing sentence of one year simple imprisonment with fine of Rs. 2000/- each. Hence, the present Revision Application assailing the aforesaid orders of conviction.

3. Considering the grounds raised in the Revision memo and submissions made by learned advocate for the applicant, the learned Single Judge of this Court vide oral order dated 19.03.2019, had admitted the Revision Application and by interim relief had suspended the sentence imposed pending the hearing and final disposal of the present application. The learned judge noticing the age of the applicants as well as the fact that no antecedents have been brought on record, considering the sentence of one year, has enlarged the applicants on bail subject to conditions.

4. The matter was notified under special assignment of old targeted cases. With the able assistance of learned advocates appearing on record the matter was heard.

5. Learned advocate Mr. Nisarg Shah, appearing for the applicants has vehemently assailed the impugned judgment

and order of conviction by submitting that the essential ingredient of cheating is not satisfied. It was submitted that even if the prosecution case is taken as it is, the offence under Section 419 is not proved as at the most it can be said to be an attempt to commit the alleged offence since it was not successful. It was further submitted that in the facts of the case, the alleged deceit was not made to the supervisor. At the time of exam, it would be the supervisor who will be in control of the process of conducting the examination in the hall. Reliance was placed on the judgment of the Kerala High Court in the case of **Nilesh Ramchandra Japthap Vs. State of Kerala**, reported in **2024 SCC on line Ker 1627**. Inviting my attention to the relevant observations, the learned advocate had pointed out the essential ingredients of the term cheating as defined under Section 415 of the Indian Penal Code. It was further pointed out that the Court has referred to the decision of the Hon'ble Supreme Court in the case of **Ram Jas Vs. State of U.P reported in (1970) 2 SCC 740**. In the said case, the oath Commissioner was induced to attest the affidavit by wrong identification of affiant by the accused. The Hon'ble Supreme Court upon appreciation of the evidence and in light of the ingredients of the offence alleged arrived at a conclusion that the High Court lost sight of the fact that the persons who were cheated or attempted to be cheated as

referred to in the charges framed against the accused were the office bearers of relief and rehabilitation. There was no charge at all relating to any cheating or attempt to cheat the Oath Commissioner who had otherwise administered the oath. It was submitted that considering the facts of the case as projected by the prosecution, it is not even the case of the prosecution that the accused No. 2 had returned the answer sheet on behalf of the accused No.1. Indisputably, no answer sheets written by the accused No. 2 have been recovered. It was when the verification with regard to identity of the candidates were in process, that the applicant No.2 was caught. He has, therefore, submitted that no offence actually was committed by the applicants. It was at the most a failed attempt to commit the offence. The reliance was placed on Section 501 of the Indian Penal Code to contend that by virtue of aforesaid provision the offence in such case of attempt being failed to commit an offence would be half of the sentence of the actual offence if it would have been committed. It was, therefore, submitted that if the case of the applicants are to be treated covered under Section 511 of the Indian Penal Code, they shall be entitled to benefit of probation. The attention of this Court was also invited to Section 3 of Probation of Offenders Act. Reliance was placed on the recent judgment of the Hon'ble Supreme Court in the

case of **Lakhvir Singh Etc. Vs. State of Punjab and Anr., Neutral Citation 2021 SC 27**. It was further argued that the offence had taken place inside the examination hall where except for student/candidates appearing for exam, no other persons were permitted to enter the examination hall. It is an undisputed fact that the applicant No.1 was not even present in the examination hall so as to attract the offence of abatement under Section 114 of the Indian Penal Code. Even otherwise, there is no evidence brought on record to suggest in what way he has abated the offence, except the implied permission being inferred by the Court given to accused No. 2 to appear in exam on his behalf. In order to substantiate this aforesaid argument, learned advocate has placed reliance upon the judgment of the Division Bench of this Court in the case of **State of Gujarat Vs. Khatubhai Limbabbhai Pagi and Ors. Reported in 2014 SCC Online 15849 equivalent to (2014) 55(3) GLR 1919**. The attention of this Court was invited to the relevant observations made in para 39 of the said judgment. It was, therefore, submitted that alternatively Section 109 of the Indian Penal Code would be made applicable unless his main argument that offence under Section 419 is not proved, is rejected.

6. On conduct, learned advocate had pointed out that the conditions on which the present applicants were enlarged on

bail by this Court, had been strictly adhered to. In absence of any other antecedents reported against the present applicants and considering the nature of offence, they are entitled to seek probation in view of Section 4 of Probation of Offenders Act. It was further submitted that the applicants are settled in their respective lives. They are small scale labourers and are also sole bread winners of their families. Referring to the judgment of the Hon'ble Supreme Court in the case of **Lakhvir Singh (supra)**, it was pointed out that the age of the applicants were around 19 years at the time of the incident and were 23 years when convicted. Learned advocate had therefore, fairly submitted that the benefit envisaged under Section 6 of the Act would not be applicable in the facts of the case. He has therefore urged this Court to consider Section 4 in view of section 11 of the Probation of Offenders Act, even at the Revisional stage, as this Court is conferred with jurisdiction to correct any palpable error, infirmity or illegality committed by the Courts below.

7. On the other hand, learned APP Ms. Krina Calla, appearing for the respondent State has at the outset pointed out that since the essential ingredients of Section 420 of the Indian Penal Code are not satisfied to the facts of the case, though being initially charged for the offence punishable under Section 420 of the Code, the applicants were acquitted for the

same. She has further submitted that considering the distinguishing features so far as offence under Section 419 of the Code is concerned, the prosecution has successfully established the element of cheating which is the core ingredient of the said offence. It was pointed out that the applicant No. 2 was trying to cheat not only the supervisor of the examination hall but his act had large implications inasmuch as the fact remains that exams were held at the instance of State Board where the students appearing in the exam compete with each other to qualify to secure their position on merits and to get admission as per their respective rankings. Considering the above aspect, the act of the applicants cannot be confined to the supervisor of the examination hall but masses at large. The end result in case if the applicant has succeeded would have been that he would have secured a higher position compared to meritorious students and the person who was otherwise not competent to get admitted in a reputed institution would have earned merit against the other candidates. She has, therefore, submitted that the argument made by learned advocate for the applicants that the end result of cheating the supervisor of the examination hall being not committed and was merely an attempt is misconceived and is irrelevant. As regards the judgment relied upon by learned advocate for the applicant on

the aforesaid aspect, would therefore be not applicable in the distinguished facts of the case. She has, therefore, submitted that it was not merely an attempt of an offence. The offence was actually committed once the applicant under the fake identity impersonating as the accused No.1 has entered into the examination hall. Learned APP has relied upon Section 114 of the Indian Penal Code to contend that the Court can always draw inference to presume certain facts even in absence of any proof of evidence being brought on record the very moment when the applicant No.2 by impersonating himself as applicant No.1 entered the examination hall. It is to be interpreted that as if the person if present would have abated the offence. She has, therefore, submitted that Section 109 of the Code would not be applicable in the facts of the case. She has therefore submitted that the core argument raised by learned advocate that it was merely an attempt, and therefore, for the purposes of sentence of Section 419 has to be read with Section 511 of the Code is concerned is required to be rejected.

8. In rejoinder, learned advocate for the applicant had submitted that indisputably the attempt made was not successful. He has further submitted that the State Board is represented by the person who is in charge of conducting the examination. According to the learned advocate the

supervisor of the examination hall is in charge of the process. As a conductor he has to ensure that proper mode and modality as instructed by the Board is followed. He is considered as the head of the concerned Center where the exam is conducted. Once he enters the examination hall, it can be said that the intention of the accused to commit an offence is made out. However, the very fact that he was not permitted to give the exam at the threshold, in absence of any answer sheet being recovered, the offence of cheating was not translated. It was further submitted that at the time of hall ticket verification the accused was caught. Though in the FIR it is averred that exam was scheduled between 10.00 to 13.20 hours, once the candidate enters into the examination hall the protocol demands that before starting of the actual exam, the initial time slot would be utilised for the purpose of verification of identity of the candidates and it is only when the identity of the candidate are verified, the process of examination starts. In this regard, learned advocate had pointed out that indisputably the prosecution has failed to plead that the footage of CCTV cameras were collected to find out as to whether the applicant No.2 had actually signed across the answer sheet. It was submitted that not an iota of evidence in this regard has been brought on record. He has therefore, once again urged this Court to reduce the sentence

period by treating it as an attempt to commit an offence by bearing in mind the provisions of Section 511 of the Code. Learned advocate has once again prayed for considering their case for probation by considering their reduced sentence of less than 7 years.

9. Considering the arguments of learned advocates for the respective parties and noticing the nature of offence and the surrounding circumstances, this Court vide order dated 25.06.2026, has directed the Probation Officer to submit report as about current status of the applicants as to how they are settled in society, their social background, about adhering to the conditions of bail and any involvement in other offences, in order to appreciate the aspect of reduced sentence or grant of probation.

10. In order to appreciate the arguments advanced by learned advocates appearing for the respective parties, it would be appropriate to consider the essential ingredients of Section 419 of the Indian Penal Code. Section 419 of the Indian Penal Code is a charging Section, providing punishment for cheating by personation. Thus, in order to bring home the charge of offence under Section 419, the necessary elements of Section 416 of the Indian Penal Code are required to be proved and established by the prosecution. Apart from the aforesaid

elements, it is also necessary for the prosecution to prove that the person who was deceived has been cheated by such personation.

11. The ingredients for cheating in view of Section 416 of the Indian Penal Code are that there should be deception or intentionally inducing the victim to do or omit to do anything which he would not do or omit if he were not so deceived. Thus, in the facts of the case, the prosecution was required to establish that the person conducting the examination was cheated by the applicant No. 2, who pretended to be some other person or had represented that he is a person other than him, then such person can be charged with the allegation of cheating by personation for which punishment under Section 419 of the Code is provided of imprisonment of either description for a term which may extend to three years, or with fine, or with both.

12. Bearing in mind the aforesaid provision, I have carefully considered the findings and reasons assigned by the learned Sessions Judge in light of the evidence on record. Having appreciated the aforesaid findings recorded by the learned Sessions Judge, it is evident that most of the witnesses have supported the case of the prosecution except for the panch witness. Considering the limited arguments advanced by

learned advocate for the applicants, the presence of the applicant No. 1 at the time of the incident is not in dispute. As against that, the original informant (P.W.No.5) Prakash Chhaganlal Thakkar (Exhibit 17) has been examined by the prosecution. He was assigned the charge of building conductor at the time of incident. Considering his entire evidence on record, he has supported the case of the prosecution. As against that, no contradictory facts have been brought on record by the defence. The other witness viz. Rajkumar Champaklal Pandya, has been examined by the prosecution as PW No. 6. He was Block Supervisor of the examination hall at the time of incident. Appreciating his evidence, the prosecution has brought on record the evidence with regard to involvement of present applicants inasmuch as he has clearly identified the applicant No. 2 before the trial Court. He has categorically stated on oath that on suspicion he had informed Building Conductor Prakashbhai and in turn, Prakashbhai had immediately approached the examination hall, whereby the applicant No. 2 was inquired about his identity. He has further stated that he has disclosed himself as Uttam Prabhu Bakutra a, whereas the actual name of the student was Ramesh Bakutra. Thus, the applicant No. 2 was found to have impersonated himself as another person.

13. Having appreciated the aforesaid evidence, the argument advanced by learned advocate for the applicants that it was merely a failed attempt to commit the offence under Section 419 of Indian Penal Code does not merit. Considering the necessary ingredients of Section 416 of the IPC which defines cheating by personation, the very fact that the applicant No. 2 pretended to be someone else, knowingly had substituted himself for another person and by making such representation while carrying admit card with him and having entered the examination hall, he had completed his task of representing the other person. In the opinion of this Court, the moment the applicant No. 2 had entered the examination hall carrying admit card by pretending to be the candidate of admit card, the act of personation was achieved. Merely because prior to the holding of actual examination, the applicant was caught from the spot by the block supervisor and Building Conductor i.e. before entering any word in the answer sheet would make no difference.

14. As regards the contention raised by learned advocate for the applicants about not having cheated the Building Conductor as being caught by the Block Supervisor is concerned, the same is also without any merits. It is required to be noted that it has transpired from the evidence of Block Supervisor that on suspicion he had informed the Building

Conductor Prakashbhai, and thereafter, the Building Conductor Prakashbhai had approached his examination hall and had inquired from the applicant No. 1 about his identity. It is at this stage, the act of personation of applicant No. 1 was disclosed. It is also required to be noted that the core task of Block Supervisor is to ensure a fair and honest environment in the examination hall for which he is assigned a task to collect material related to exam, to verify identity of students and their admit cards as well as to distribute papers, answer sheets on time. One of the requirements of the aforesaid exercise to be undertaken by the Block Supervisor is to ensure that the incident of cheating is prevented. Considering the aforesaid aspect, merely because no answer sheets were handed over to the applicant or there was no recovery of any answer sheet from the applicant would have no bearing insofar as the chain of events suggesting completion of the offence of cheating by personation.

15. As regards charge of abetment against applicant no.1 is concerned, it is required to be noted that the applicant no.1 has handed over the admit card to the applicant no.1, which reflects the active participation of the applicant no.1 in conspiracy and instigation to commit act of personation by applicant no.2. However, it is not in dispute that the applicant no.1 was not present at the time of actual offence when

implemented. In view thereof, applying the principles laid down in the case of **Khatubhai Limbabbhai Pagi (supra)**, in my view, the essential element of abettor's presence at such commission of offence being absent, the applicant no.2 is convicted under section 109 instead of section 114 of the Indian Penal Code, as there was abetment by applicant no.1 previous to commitment of the actual offence.

16. For the foregoing reason, the revision application is partly allowed. The impugned judgment and order dated 28.02.2019, passed by the learned Additional Sessions Judge, in Criminal Appeal no.7 of 2018 confirming the judgment and order dated 17.08.2015, passed by the learned Additional Chief Judicial Magistrate in criminal case no. 1777 of 2015 is modified . The applicant no.1 Ramesh Gagu Bakutra is hereby convicted for the offence punishable under section 109 of Indian Penal Code whereas the applicant no.2 Uttam Gagu Bakutra is convicted for the offence punishable under section 419 of the Indian Penal Code.

17. This brings me to the aspect of sentence and fine as imposed by the courts below while convicting the applicants for the offence charged. Having found the applicants guilty of offence punishable under section 109 and section 419 of Indian Penal Code, the next question which arises for

consideration is the sentence to be imposed or alternatively to consider their case for probation in view of section 3 and 4 of the Probation of Offenders Act, 1959.

18. Considering the provisions of section 4 of the Probation of Offenders Act as well as the sentence of either description for a term which may extend to three years being prescribed under the aforesaid charge of section 419 read with section 109 of Indian Penal Code, in my view the applicants can be extended benefit of probation. The report dated 30.07.2026, submitted by the Probation Officer, Kutch, suggests that the applicants are not involved in other offences. The conduct of the applicants in the society during these years is reported to be good. The certificates in this regard issued by their employers and sarpanch of their native village are forming part of such a report. Considering the nature of offence, their age at the time of incident and their subsequent approach towards society, I am inclined to take a lenient view bearing in mind the guiding principles laid down by the Hon'ble Supreme Court in the case of Lakhvir Singh (supra).

19. For the foregoing reasons, the following directions of grant of probation instead of sentence and fine, are issued :

19.1 The applicants are directed to remain under supervision

of the Probation Officer, Kutch during a period of one year from today. The applicants shall not get involved in any kind of illegal activities and shall furnish the details of their permanent abode. The applicants shall furnish bonds without sureties thereby specifying to abide by the conditions so imposed.

20. With these observations, the present revision application stands disposed in aforesaid terms.

21. Registry is directed to send back the record and proceedings to the concerned courts along with writ of this order. Copy of the order may also be furnished to the Probation Officer, Kutch for observing compliance of directions issued.

MARY VADAKKAN

(NISHA M. THAKORE,J)