

**IN THE HIGH COURT OF BOMBAY AT GOA.**

**CRIMINAL MISC. APPLICATION(MAIN) NO. 194 OF 2019.**

State of Goa,  
thr. Public Prosecutor, Panaji ... Applicant.

Versus

Romeo Cardozo., ... Respondent.

Mr. S. R. Rivankar, Public Prosecutor for the applicant.  
Mr. M. Teles, Advocate for the respondent.

**Coram:- PRITHVIRAJ K. CHAVAN, J.**  
**Reserved on:- 24<sup>th</sup> September, 2019.**  
**Pronounced on:- 26<sup>th</sup> September, 2019.**

**ORDER**

The State of Goa has sought leave to appeal under Section 378(3) of Cr.P.C. impugning a judgment and order of acquittal dated 14.12.2018 passed by the Sessions Judge Panaji, whereby the respondent came to be acquitted of the offence punishable under Section 471 of IPC.

2. The impugned judgment and order of acquittal came to be passed pursuant to an appeal preferred by the respondent against the judgment and order of conviction and sentence dated 12.1.2018 and

6.3.2018 respectively passed by the Judicial Magistrate, First Class, Panaji by which the he was sentenced to undergo simple imprisonment for three months with fine of ₹1000/-(Rupees one thousand only), in default to undergo simple imprisonment for one week.

3. The facts germane for decision of the present application are that the respondent was charge-sheeted by the applicant under Sections 468, 471 of IPC. On 2.7.2007, the applicant approached the passport office situated at EDC complex, Patto Plaza, Panaji. The respondent had fraudulently and dishonestly prepared his forged leaving certificate of Pope John XXIII High School, Premnagar, Quepem Goa, Marksheet and Passing Certificate of Board of Secondary and Higher Secondary Education of Alto Betim which he intended to be used for the purpose of obtaining ECNR endorsement. It is alleged that the respondent had knowingly and intentionally used the aforesaid forged documents and thereby committed the offences alleged.

4. After investigation a chargesheet came to be filed in the

Court of Judicial Magistrate, First Class, Panaji. After recording the evidence of the witnesses and the statement of respondent under Section 313 of Cr.P.C., the learned Magistrate, by her judgment and order dated 6.3.2018 sentenced the respondent as above. The respondent came to be acquitted of the offence punishable under Section 468 of IPC. In an appeal, the learned Sessions Judge acquitted him of the offence under Section 471 of IPC. Therefore, the State has sought leave to appeal against the impugned judgment of acquittal.

5. I heard Mr. S. R. Rivankar, learned Public Prosecutor the applicant and Mr. M. Teles, learned Counsel for the respondent.

6. At the outset, it is evident from the record that though the prosecution has succeeded in proving that the documents in question were forged, but it failed in establishing a link between the alleged act of forgery qua the respondent. The prosecution has failed to produce sufficient evidence on record to show that the respondent had made the false documents to support his claim in the office of passport. Even there

is no evidence, much less sufficient evidence to prove the complicity of the respondent in dishonestly or fraudulently making false documents in question. The only factor which remains to be considered is as to whether the respondent used those documents as genuine which were, in fact, forged. In order to establish using as a genuine forged documents, the prosecution will have to establish that use of forged documents is with fraudulent or dishonest intent. The prosecution is also required to show that the respondent knew or had reason to believe that those documents were forged.

7. PW2 Balkrishna Rokde, is a Passport Officer, whose evidence reveals that the respondent had applied ECNR service on his passport number B0686805. He approached passport office on 2.7.2007 alongwith an application which he had personally submitted alongwith forged documents. While scrutinizing the documents PW2 Balkrishna Rokde suspected that those were not genuine. Reference was made to the concern school as well as Goa Board from which it revealed that those documents were not genuine.

8. PW2 Balkrishna Rokde testified that the respondent had been to the office personally with the documents and after verifying he found that the documents were not genuine. The evidence of this witness is to be accepted with the pinch of salt for the reason that the fact that he had no occasion to see the respondent approaching the office in the light of his admission in cross that on a given point of time minimum 100 applicants approach the passport office everyday. He further admits that acceptance of the form of application for passport or any other services is done by the Clerk and not by him personally. Therefore, there was no special reason for him to identify the respondent.

9. PW2 Balkrishna Rokde kept the documents Exhibits 30 and 32 in his custody and thereafter he submitted a report to the police on 20.8.2007 i.e. almost for one and half months. He admits that neither any panchanama nor any attachment panchanama was conducted by the police while taking custody of the said documents which creates doubt as to whether the Investigating Agency had, in fact, seized the documents

which were alleged to be forged one. There is no evidence to show that those documents were kept in safe custody or in a sealed cover in order to avoid any manipulation.

10. So far as identity of the respondent is concerned, the learned Counsel for the respondent submits that the prosecution has miserably failed as there is no evidence except the bare words of PW2 Balkrishna Rokde that the respondent had approached the passport office. The prosecution has not examined the clerk who is said to have accepted the form, for the reason best known to it. Admission of PW2 Balkrishna Rokde that there are several touts sitting outside the office helping in filling up the forms to the Public by charging fees, further damages the case of the prosecution as to whether the documents were in fact tendered by the respondent or by any one of the touts. Interestingly, even the letter dated 2.7.2007 was not signed by PW2 Balkrishna Rokde but it was signed by concerned clerk one Mrs. Sawant. The said clerk has also not been examined by the prosecution.

11. PW4 Krishna Nadkarni, who was working as a Secretary of the Goa Board testified that pursuant to a letter from Panaji Police for verification of the documents in question, he replied that the marksheet and the passing certificate were not correct and that seat number was allotted to some different student of Guardian High School. Interestingly, this witness has not produced any official record in support of his oral testimony which is insufficient to draw a conclusion that the documents were incorrect. It is not clear to whom the seat number was allotted.

12. Last but not the least is the evidence of the handwriting expert. PW5 Y. Surya Prasad, who is a Government Examiner of Questioned Documents in CFSL testified that Investigating Agency had referred the questioned documents as well as specimen signatures of the respondent which are marked as "S1 to S6" and the disputed signatures as "Q-1 and Q-2". By following the procedure, he opined that the writer of "S1 to S6" and "Q-1 and Q-2" are one and the same. He adopted the principle such as "Like is to be compared with Like" This is an opinion

of an expert which cannot be the conclusive proof of use of forged documents by the respondent. His evidence can be considered to the extent of forging the documents by the same person but not beyond that in the light of the fact that the respondent has only been charged under Section 471 of IPC.

13. In view of the aforesaid observations, I do not deem it expedient to grant leave to the State to prefer an appeal as there is no perversity or illegality in the impugned judgment of acquittal delivered by the learned Sessions Judge.

14. Consequently, there is no merit in the application, which stands dismissed.

**PRITHVIRAJ K. CHAVAN, J.**