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Crl.R.C.No.452 of 2019

IN THE HIGH Court OF JUDICATURE AT MADRAS

Reserved on : 08.08.2022

Pronounced on : **.08.2022**

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Crl.R.C.No.452 of 2019

1.Ramachandran, M/58

2.Malarkodi, F/50

3.Govindarajulu, M/61

... Petitioners

Versus

1.Suganthi

2.The State Rep.by,

The Sub-Inspector of Police,

District Crime Branch, Cuddalore,

Cuddalore District.

... Respondents

Prayer: Criminal Revision Case is filed under Section 397 read with 401 of the Code of Criminal Procedure, to call for the records and set aside the conviction Judgment passed by the Learned II-Additional District and Sessions Judge, Chidambaram in Crl.A.No.78 of 2018, dated 23.04.2019 by reversing the Judgment made in C.C.No.78 of 2012, dated 22.11.2017 passed by the Learned District Munsif-cum-Judicial Magistrate, Parangipettai and set the petitioners at liberty.

For Petitioners : Mr. C. Ramesh, Senior Counsel
for Mr.G.Pugazhenthithi.

For Respondents : Mr.S.Vinothkumar, (for R2)
Govt.Advocate (Crl.side)

: Mrs.Suganthi, (for R1)
Party-in-Person



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ORDER

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A. Brief Facts Leading to the Revision :

On 29.10.2010, when P.W.16, was on duty at the District Crime Branch, *Cuddalore*, P.W.1/*Suganthi*, appeared before her and lodged a complaint, to the effect that her grand-father/*R.B.Govindasamy Naidu*, had purchased and registered in her name, the property being 5 Acre and 5 Cents in *Alamelumangapuram* Village, vide Document No.403 of 1970 and Document No.1345 of 1974. While so, her brother, *R.Ramachandran* had falsely registered a Power of Attorney as if she gave power to him by forging her signature, as well as the thumb impression and registering the same as Document No.52 of 2003 and have dealt with the same including obtaining of EB connection, etc.

2.On the strength of the said complaint a case was registered in Crime No.26 of 2010 for the offenses under Sections 420, 465, and 468 of Indian Penal Code. The case was taken up for Investigation initially by P.W.18. Thereafter, P.W.21 continued the Investigation and completed the same and filed a final report, proposing all the three accused guilty of the offences under Sections 120B, 465, 468, 471, and 420 of the Indian Penal



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Code. The case was taken on file by the Learned District Munsif-cum-Judicial Magistrate, *Parangipettai*, in C.C.No.78 of 2012, and after the appearance of the accused and furnishing of copies as per Section 207 of the Code of Criminal Procedure, the accused was questioned and upon questioning, the accused denied the allegations and stood trial.

3. Thereupon, to bring home the charges, on behalf of the prosecution P.W.1 to P.W.21 were examined and ***Exs.P-1*** to ***P-26*** were marked. Upon being questioned about the material evidence and the incriminating circumstances on record under Section 313 of Cr.P.C., the accused denied the same as false. Thereafter, no evidence was let in on behalf of the accused.

4. The Trial Court, after hearing the Learned Assistant Public Prosecutor, on behalf of the prosecution and the Learned Counsel for the accused, by Judgment dated 22.11.2017 found the accused not guilty of the charges and acquitted all three of them.

5. Aggrieved by the same P.W.1, namely *Suganthi*, filed an appeal in C.A.No.78 of 2018, on the file of the II-Additional District Sessions



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Court, *Chidambaram*, and by a Judgment dated 23.04.2019, the Learned Session Judge, upturned the finding of acquittal into one of guilt and found:

(i) The first accused guilty, of the offence punishable under Section 465 of Indian Penal Code, and imposed Rigorous Imprisonment for a period of one year and a fine of Rs.1,000 and in default to undergo three months Simple Imprisonment; Of the offence punishable under Section 468 of the Indian Penal Code, to undergo three years Rigorous Imprisonment, and to pay a fine of Rs.1,000/-, and in default to undergo three months Simple Imprisonment; Of the offence punishable under Section 471 of the Indian Penal Code, to undergo one year Rigorous Imprisonment, and to pay a fine of Rs.1,000/-, and in default to undergo three months Simple Imprisonment; Of the offence punishable under Section 420 of the Indian Penal Code, to undergo three months Rigorous Imprisonment, and to pay a fine of Rs.2,000/-, and in default to undergo three months Simple Imprisonment.

(ii) The second accused was found guilty, of the offence punishable under Section 471 of the Indian Penal Code, and to undergo Rigorous Imprisonment for a period of one year, and to pay a fine of Rs.1,000/-, and in default in payment of fine to undergo Simple Imprisonment for three months; Of the offence punishable under Section



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420 of Indian Penal Code, to undergo three years Rigorous Imprisonment, and to pay a fine of Rs.2,000/-, and in default of payment of fine, to undergo Simple Imprisonment for three months.

(iii) The third accused was found guilty, of the offence punishable under Section 471 of the Indian Penal Code, and to undergo Rigorous Imprisonment for a period of one year and to pay a fine of Rs.1,000/- and in default to undergo three months Simple Imprisonment.

Aggrieved by the same, the present Criminal Revision Case is filed before this Court.

B. The Contentions in the Revision :

6.Heard, *Mr.A.Ramesh*, Learned Senior Counsel appearing on behalf of the petitioners, and *Mr. S.Vinod Kumar*, Learned Government Advocate (Criminal side), on behalf of the second respondent, and *Mrs.Suganthi*, the first respondent in person.

7.*Mr.A.Ramesh*, the Learned Senior Counsel, after taking this Court through the evidence on record would firstly submit that in this case, the prosecution has not made any attempt to prove the offence of forgery in as much as, it did not investigate as to who was the person who



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impersonated as the first respondent /P.W.1, before the Sub-Registrar.

Therefore, when the maker of the alleged false document, that is the Power of Attorney, was not even Investigated or prosecuted, and straight away the conviction for the offences under Sections 465 and 468 of IPC, cannot stand.

8.As far as the offence under Section 471 is concerned, the Learned Senior Counsel would submit that in this case, both the attesting witnesses, who were examined as P.W.2 and P.W.3 have categorically spoken about the fact that P.W.1 was present at the Sub-Registrar's Office, on the relevant date. Therefore, it cannot be said that the accused used the Power of Attorney with the knowledge that it was forged. In any event, the said incriminating circumstance, which is necessary to prosecute the accused for the offence under Section 471, was not at all put to the accused, while questioning under Section 313 of the Code of Criminal Procedure.

9.The Learned Senior Counsel would submit that a reading of Section 313 of Cr.P.C. questioning in this case would reveal that verbatim the evidence was quoted and the questioning was done and absolutely the incriminating circumstances, which are necessary for bringing home the said charges against the accused were not at all culled out and put to the accused



and the accused was not questioned on the same, so that they could have explained the same in their 313 statement. Therefore, he would submit that in this case the conviction under Section 471 of IPC is also not sustainable. Once their conviction for the offences under Sections 465, 468, and 471 of IPC, are not sustainable, then the charges of cheating which is alleged based on the said forgery will automatically fall.

10.The Learned Senior Counsel would further submit that in this case, the Trial Court had given its reasoning to acquit the accused. Except for one erroneous reasoning of relying upon the 161 statement of the witness who was not examined, and the other reasons are based on evidence, the conclusions are drawn by the Trial Court, on the basis of the appraisal of the evidence on record. Therefore, the Lower Appellate Court, could not have upturned the finding of the acquittal into one of guilt, when the view of the Trial Court is a possible view.

11.In support of the proposition that a charge of forgery cannot be sustained against the accused person who is not the author of the false document in question, the Learned Senior Counsel relied upon the Judgment of the Hon'ble Supreme Court of India, in ***Sheila Sebastian Vs. Jawharaj***



and another¹, more specifically relying on paragraphs Nos.21 to 26 and paragraph No.30. The Learned Senior Counsel also relied upon the Judgment, in ***Md. Ibrahim and another Vs. State of Bihar and Another²***, more specifically relying on paragraphs Nos.10 to 14, 16 and 17 of the said Judgment. For the same proposition, he relied upon the Judgment, in ***Randheer Singh Vs. State of U.P., and others³***, more specifically paragraphs Nos.19 to 23.

12.For the proposition that the Appellate Court must be slow in disturbing and/or reversing the finding unless the view recorded by the Trial Court is perverse, the Learned Senior Counsel relied upon the Judgment of the Hon'ble Supreme Court of India, in ***Samsul Haque Vs. The State of Assam⁴***, more specifically, paragraphs Nos.13, 14, and 24 of the Judgment. For the very same proposition, the Judgment, in ***N. Vijayakumar Vs. State of Tamil Nadu⁵***, was also relied upon. The Learned Senior Counsel would rely upon paragraphs Nos.6, 7, 20 to 22 of the said Judgment.

1 2018 (7) SCC page, 581

2 2009 (8) SCC Page 751

3 2021 (4) RCR (Criminal) 496

4 2019 (18) SCC 161

5 2021 (3) SCC 687



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13. For the proposition that the questioning under Section 313 of the Code of Criminal Procedure, should be specifically and distinctly addressed to the accused. The Learned Senior Counsel relied upon the Judgment of the Hon'ble Supreme Court of India, in ***Jai Prakash Tiwari Vs. The State of Madhya Pradesh***⁶, more specifically relying upon paragraphs Nos.18 to 20, 25 to 27, and 31 of the said Judgment. The Learned Senior Counsel also pressed into service the Judgment, in ***Latu Mauto and another Vs. State of Bihar***⁷, more specifically relying upon paragraphs Nos.7, 8, 13, 15, and 19, of the Judgment. The Learned Senior Counsel would rely upon the Judgment, in ***Sheorati Vs. State of Bihar***⁸, to press home the point that the Section 313 of Cr.P.C., the question should be specified in relation to the particular offence alleged against the accused, more specifically relying on paragraphs Nos.15 and 16 of the said Judgment.

14. The Learned Senior Counsel relied upon the Judgment, in ***State of MP Vs. Mukesh and others***⁹, for the proposition that a common

⁶ Crl.A.No.704 of 2018, dated 04.08.2022 of Supreme Court of India.

⁷ 2008 (8) SCC 395

⁸ 2001 CriLJ, 2750

⁹ (2006) 13 SCC 197



questionnaire cannot be addressed to all the accused and the questions, have to be put to different accused in accordance with the respective role played by them, by relying paragraph No.21 of the said Judgment. The Learned Senior Counsel would rely upon the Judgment of the Madhya Pradesh High Court, in ***State of Madhya Pradesh Vs. Ramprakash and Ors.***¹⁰, for the same proposition, more fully relied upon paragraph No.12 of the said Judgment. The Learned Senior Counsel has also relied upon the Judgment, in ***Balwant Kaur Vs. Union Teritory of Chandigarh***¹¹, more specifically relying on paragraph No.38 to press home the point that the incriminating circumstances have to be necessarily put to the accused for their explanation.

15.The Learned Senior Counsel relied upon the Judgment of the Hon'ble Supreme Court of India, in ***Sou. Vijaya alias baby Vs. State of Matharashtra***¹², for the proposition, that the essential ingredients for the offence, have to be put to the accused in the absence of which, there will be prejudice to the accused. He would rely upon the Judgment in ***Willie (William) Slaney Vs. State of MP***¹³, for the proposition that appropriate and proper charges have to be framed and if any error or omission has

10 1989 Criminal Law Journal, 1585

11 (1988) 1 SCC 1

12 (2003) 8 SCC 296

13 AIR 1956 SC 116



occasioned in failure of justice and then the same, would be irreparable and the benefit has to be given to the accused. For the proposition that if the prosecution charges the accused had conspired and committed the offence and if the prosecution fails to prove the charge under Section 120-B, the accused ought to be acquitted of the other offences also, the Learned Senior Counsel relied upon the Judgment, in ***Smt. Chintambamma and Another Vs. State of Karnataka***¹⁴. For the proposition that the prosecution has to distinctly prove the agreement and meeting of minds between the accused, so as to prove the offence under Section 120-B, he relied upon the Judgment, in ***K.R.Purushothaman Vs. State of Karela***¹⁵. Further, he relied upon the Judgment, in ***Life Insurance Corporation of India and Another Vs. Ram Pal Singh Bisen***¹⁶, for the proposition that merely because of the prosecution had marked certain documents, it does not necessarily mean the proof of the documents or their contents thereof.

16.The Learned Senior Counsel would therefore press home the point that the prosecution should have further proved the factum that the Power of Attorney was forged. The Learned Senior Counsel would submit that in this case, neither the maker of the Power of Attorney that is the

14 AIR 2019, Supreme Court, 3998

15 2005 (12) SCC 631

16 (2010) 4 SCC 491



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person, who was said to have impersonated as *Suganthi*/P.W.1, was identified or prosecuted nor the signature of *Suganthi*/P.W.1 was sent for examination of any Forensic Expert for comparison with the admitted signatures. He would submit that it could have so happened that the first respondent/*Suganthi*, herself executed the document, but by mistake, somebody else's left thumb impression alone was made in the document by way of administrative error in the Sub-Registrar Office. This doubt is fortified by the fact that both the attesting witnesses viz., P.W.2 on P.W.3 had categorically spoken about the fact that the first respondent/*Suganthi* was presented at the Sub-Registrar Office. Therefore, when the case of the prosecution gives room to plausible doubt, the verdict of the Trial Court, acquitting the petitioners/accused by granting the benefit of the doubt ought not to have been interfered with by the Lower Appellate Court.

17.Per Contra, *Mr. S.Vinoth Kumar*, Learned Government Advocate (Criminal side) would submit that in this case, the evidence of P.W.6 clearly demonstrated that it is the first accused, who requested him to prepare the document and at his instance, he has made the Power of Attorney ready. He is the beneficiary of the Power of Attorney. Therefore, the argument of the Learned Senior Counsel, that the prosecution is not



alleging the accused to be the maker of the false document, is factually incorrect. In this case, it is the first accused, who is the maker of the false document and the prosecution has categorically alleged the same and proved the same. Therefore, the offences under Sections 465 and 468 of IPC, are categorically proved. This is an open and shut case, where he has set up some unknown person to impersonate as his own sister and by forging her signature and the left thumb impression, the false document of Power of Attorney was created.

18. On the strength of the same, he has obtained a loan in the name of his sister. This apart by using the Power of Attorney, the property has also been sold in the name of the second accused his own wife and the third accused who is the other brother. Therefore, it is crystal clear that to defraud and cheat P.W.1/the first respondent herein, all the three accused have indulged in the offences and the prosecution has categorically proven all the offences. He would submit that on perusal of the Judgment of the Trial Court, it would be clear that none of the findings are sustainable and therefore, the Lower Appellate Court had rightly interfered in the appeal against acquittal.



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19. *Mrs.Suganthi*, the first respondent herein appearing in person, would submit that she was never present in the office of the Sub-Registrar Office and she did not know about the Power of Attorney being registered in her name. As for as the further transactions of the first accused in borrowing loan in her name, etc., only belatedly, when she came to know of the same, she had filed the encumbrance certificate and obtained information one after the other, and thereafter the complaint was given.

20. It is a clear case of the accused, cheating her and registering the false document. She would submit that during the investigation, the higher officials felt that it was unnecessary to compare both the signature as well as the left thumb impression, and once it was proved that the thumb impression does not belong to her, the case is automatically proved and even in the absence of the prosecution of the concerned Impersonator, still, the accused No.1 to 3, are guilty of the offences, therefore, they are rightly punished. She would also submit that her father wanted to depose the truth. But was whisked away by the accused at the last minute from the Court and the same can be ascertained from the Court proceedings. She would submit that this is a clear case of high-handed practice by the accused. In spite of repeated opportunities by the Lower Appellate Court as well as before this Court, the



accused have not shown any remorse and they have not come forward to correct the grave mistakes done by them and to settle the issue. She submit that when this Court requested on an earlier occasion, considering that the matter is between the brothers and sister, she had not asked for anything extra except her own property by way of the proposal and there was absolutely no response whatsoever by the petitioners/accused as they are still attempting to somehow cheat her of her property. Therefore, she would pray this Court to dismiss the revision.

C. The Points for Consideration :

21.On consideration of the rival submissions made on either side and perusal of the material records of this case the following questions arise for consideration:-

Q.1. Whether or not the accused can be prosecuted for the offences under Sections 465 and 468 of IPC, when the concerned person, who had impersonated as P.W.1/*Suganthi*, and signed and affixed the left thumb impression was not even identified and prosecuted?

Q.2. Whether the Section 313 of Cr.P.C., questioned in this case, is proper and causes serious prejudice, so as to render the conviction under Section 471 of the Indian Penal Code, unfair?



Q.3. Whether the accused can be convicted for the offence under

Section 420 of Indian Penal Code?

Q.4. Whether or not the Lower Appellate Court erred in up

turning the findings of the Trial Court in the appeal against acquittal?

Question No.1:

22.The primary argument of the Learned Senior Counsel is that the prosecution has not alleged the accused herein as the maker of the alleged false document. Therefore, placing strong reliance on the Judgment of the Hon'ble Supreme Court of India, in *Sheila Sebastian (cited supra)* and other Judgments, he would submit that *per se* the conviction under Sections 465 and 468 of IPC., are unsustainable.

23.In this regard, it has to be decided whether the first accused/*Ramachandran* can be alleged to be the maker of the false document. In this case, the false document is the Power of Attorney. The Power of Attorney was typed in the appropriate stamp paper, the signatures of P.W.1 were forged, the signature of the person, who drafted the Power of Attorney was made, the attesting witnesses signatures were made, and the Power of Attorney was presented before the Sub-Registrar and the left



thumb impression was affixed at the rear side of the stamp paper by the third party impersonating as P.W.1/*Suganthi*. Therefore, the question is whether the said third party, who is alleged to have signed and affixed the left thumb impression alone is the maker of the document or the first accused, who had arranged for typing of the document, attestation, signature of the drafting person, presenting the document before the Sub-Registrar Office and claiming the document back, can be alleged as the maker.

24. In this regard, the phrase 'maker' of the document was originally considered in the case of *Empress versus Riasat Ali*¹⁷, and it is relevant to quote paragraph No.5 of the said Judgment.

“5. I consider that the "making" of a document, or part of a document, does not mean "writing" or "printing" it, but signing or otherwise executing it; as in legal phrase we speak of "making an indenture" or "making a promissory note," by which is not meant the writing out of the form of the instrument, but the sealing or signing it as a deed or note. The fact that the word "makes" is used in the section in conjunction with the words "signs," "seals" or "executes," or makes any mark "denoting the execution&c., "seems to me very clearly to denote that this is its true meaning. What constitutes a false document, or part of a document, is not the writing of any number of words which in themselves are innocent, but the affixing the seal or signature of some person to the document, or part of a document,

¹⁷ 1881 Vol. VII, ILR Calcutta 352 : Manu/WB/001151881
<https://www.mhc.tn.gov.in/judis>



knowing that the seal or signature is not his, and that he gave no authority to affix it. In other words, the falsity consists in the document, or part of a document, being signed or sealed with the name or seal of a person who did not in fact sign or seal it.”

25. But, however, the said Judgment was distinguished in ***The Province of Bihar Vs. Surendra Prasad Ojha***¹⁸, wherein it was held that the authority of the above said case is so weak and in that case, even the person, who filled up the forms, even though did not sign, was also be held to be the “maker” of the document. It is useful to extract the entire paragraph No.10 of the said Judgment, which reads as follows:-

“10. Mr. Nageshwar Prasad stressed the argument that even if the resp. had filled up the columns of the Store Issue Order there was no evidence to the effect that the resp. had forged the signature of R. Prasad therein, that therefore as a matter of law the Ct. ought not to hold that the offence of forgery was committed by the resp. Learned counsel held . upon In the matter of the petn. of Riasat Ali 7 cal. 352 : 8 C. L. R. 572) in which Garth C. J. stated :

"The 'making' of a document, or part of a document, does not mean 'writing' or 'printing' it, but signing or otherwise executing it; as in legal phrase we speak of 'making an indenture' or 'making a promissory note,' by which is not meant the writing out of the form of the instrument but the sealing or signing it as a deed or note. The fact that the word 'makes' is used in the section in conjunction with the

¹⁸ AIR 1951, Pat 86 : MANU/BH/0157/1950
<https://www.mhc.tn.gov.in/judis>



words 'signs,' or 'seals' 'executes,' or makes any mark 'denoting the execution, & C.' seems to me very clearly to denote that this is its true meaning. What constitutes a false document, or part of a document, is not the writing of any number of words which in themselves are innocent, but the affixing the seal or signature of some person to the document, or part of a document, knowing that the seal or signature is not his, & that he gave no authority to affix it. In other words, the falsity consists in the document, or part of a document, being signed or sealed with the name or seal of a person who did not in fact sign or seal it."

But the authority of this case is weak. It has been dissented from in Emperor v. Krishtappa Khandappa 27 Bom. L. R. 599 : A. I. R.1825 Bom. 327 : 26 Cr. L. J. 1014) in which a reference was made by the learned Chief Justice to the definition of a document in Section 29 of the Code which has not been considered in the Calcutta case. In my opinion, the word 'makes' in Section 464 does not mean anything other than 'makes,' that is to say, creates or brings into existence. This opinion is consistent with illustration (c) to Section 464 which is to the following effect :

"A picks up a cheque on a banker signed by B, payable to bearer, but without any sum having been inserted in the cheque. A fraudulently fills up the cheque by inserting the sum of ten thousand rupees . A commits forgery."

Reference may also be made to the English case Queen v. Batmar (1845) 1 COX. C. C. 186 in which a party received a blank cheque signed, with directions to fill in a certain amount, & to appropriate the instrument to a certain purposes, but the party fraudulently filled in a different amount, &



devoted the cheque to other purposes. It was held that forgery was committed. Erle J. stated:

"If a cheque is given to a person with a certain authority, the agent is confined strictly within the limits of that authority & if he chooses to alter it, the crime of forgery is committed. If the blank cheque was delivered to him with a limited authority to complete it, the filled it up with an amount different from the one he was directed to insert & if, after the authority was at an end he filled it up with any amount whatever, that too would be clearly forgery."

In the present case I am of opinion that the resp. committed forgery by filling in the blank columns in the Store Issue Order which he knew was signed not by R. Prasad but by Rajindar who forged the signature of "E. Prasad" therein. According to the confession the resp. had sold the forged order to Bhagwan Lal & Gopalji for a sum of Rs. 2,100. In my opinion this part of the confession has been corroborated & must be accepted as true. It follows that the resp. is guilty of the charge under Section 468 & of the charge under Section 471, I. P. C. "

26.The Delhi High Court, in ***Nakul Kohli Vs. State***¹⁹, had dealt with the said phrase and it is useful to quote paragraph No.6 of the said Judgment, which reads as follows:-

"6. Thus, a perusal of the said provisions would show that if a document, which is not genuine, is being used as such and a person is made to part with money on that basis then not only the offence of cheating as defined under Section 415 IPC but also

¹⁹ (2010) ILR 5 Delhi 644 : 2010 SCC Online Del 2328
<https://www.mhc.tn.gov.in/judis>



the offence of forgery as defined under Section 463 IPC is attracted. The contention of the learned Counsel for the Petitioner that under Section 464 IPC "making" a false document means signing, sealing or executing only is untenable. I am not in agreement with the decision of the learned Single Judge of the Calcutta High Court in Pramatha Nath (supra). In my view, photocopying a document, which is not genuine and with the kind of technology that is available now, wherein exactly similar copies of the original can be made, would fall within the ambit of making a false document. With the advent of technology, scanners and computerized colour photocopiers produce identical copies which are exactly similar to the original. Excluding photocopying/printing from the ambit of a "false document" would be giving too narrow a reading to the word 'makes' as used in Section 464 First (a) because the said word is not limited by the subsequent words signs, seals or executes. If the word 'makes' was to confine to signing or executing, then there was no need of introducing this word in the said Section. It is settled law that the words used in an enactment are not superfluous. This reading of Section 464 IPC by the Calcutta High Court in Parmatha Nath (Supra) is contrary to the illustrations 'c' and 'd' to Section 464 IPC. Moreover, this view of Calcutta High Court has been dissented to by a division bench of Bombay High Court in Emperor v. Krishtappa Khandappa MANU/MH/0030/1925 : AIR 1925 Bombay 327, where Chief Justice Macleod held as under:

“The only question is whether possession of the counterfeit seal, plates or other instrument for making an impression, renders accused No. 4, liable as having committed an offence under Section 473, Indian Penal Code, in that he had made or counterfeited a seal, plate or other instrument for making an impression intending that the same should



*be used for the purpose of committing any forgery, which would be punishable under any Section of Chapter 18 other than Section 467, or with such intent had in his possession any seal, plate or other instrument, knowing the same to be counterfeit. It has been contended that as forgery implies the making of a false document, a person counterfeiting marks on a tree would not be making a false document within the meaning of Section 464, and this contention found favour with the Assistant Session Judge who relied upon the decision in *Empress v. Riasat Ali*. It seems to us that the learned Chief Justice for the purposes of that particular decision did not consider the provisions of Section 29, Indian Penal Code. The question here is whether a document must necessarily be something which is signed, sealed or executed. Section 29 says "the word 'document' denotes any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of these means, intended to be used...as evidence of that matter." Explanation 2 says: "Whatever is expressed by means of letters, figures or marks as explained by mercantile or other usage, shall be deemed to be expressed by such letters, figures or marks within the meaning of this Section although the same may not be actually expressed."*

Now these letters when imprinted on the trees were intended to be evidence that the trees had been passed by the Ranger, and so could be removed from the place where they were lying in the forest. The letters, therefore, imprinted on the trees would be a document within the meaning of Section 29 of the Indian Penal Code.

*I am further fortified in my view by the decisions in *The Province of Bihar v. Surendra Prasad Ojha* MANU/BH/0157/1950 : AIR (38) 1951*



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Patna 86; L.K. Siddappa v. Lalithamma MANU/KA/0089/1953 : 1954 CrI. L.J. 1235 (Mysore) and Ranjit Sinha v. The State MANU/BH/0075/1963 : AIR 1963 Patna 262.”

[Emphasis supplied]

27. In ***Ashoke Dutta Naik Vs. State (Goa)***²⁰, the Judicial Commissioner's Court, for the then Union Territory of Goa, Diu, Daman, has held as follows:-

“It is not correct to say that an offence of forgery in terms of Section 464 comes into being when a person makes a false document and not when a person causes to be made a false document. No word in an enactment is surplusage. The law making authority in its wisdom has used the word 'makes' in addition to the other words, such as, “signs, seals and executes”. The said word has therefore to be interpreted independently of the other words referred above. Hence, where a bank employee steals away a blank draft form from the bank and gets it filled and signed by other conspirators so that it may appear as genuine, he makes a false document within the terms of S.464 I.P.C. (1925) 26 CrI LJ 1014 (Bom) and (1951) 52 CrI LJ 771 (Pat), 1954 CrI LJ 1235 (Mys) Rel. on. 1953 CrI LJ 1826 (Cal), Dist.”

28. I am fully in agreement with the above reasonings of the Patna, Delhi High Courts and the Judicial Commissioner, Goa, that making the false document, has to be strictly interpreted as per Section 464 of the Indian

²⁰ 1979 CrI LJ (NOC) 95
<https://www.mhc.tn.gov.in/judis>



Penal Code. When Section 464 of IPC., clearly uses the phrase, “*whoever dishonestly or fraudulently, (a) makes, signs, seals or executes a document or a part of a document*”, it cannot be interpreted otherwise to state that “maker” means the person who signs or execute alone, as these words are differently and distinctly used in Section 464 of the Indian Penal Code. Therefore, in this case, the maker i.e., the first accused, who arranged for the purchase of stamp paper, arranged for, a draftsman to draft the Power of Attorney, arranged for, attesting witnesses and registration of the same, is the maker of the Power of Attorney while the unknown person who was not prosecuted, signed, affixed left thumb impression and executed the same.

29.As a matter of fact, both persons are liable to be prosecuted for the offence of forgery. Therefore, the argument of the Learned Senior Counsel in this regard is fallacious. The prosecution, in this case, had clearly alleged the first accused to be the maker of the false document, namely the Power of Attorney, and by clear-cut evidence of P.W.2, P.W.3, P.W.4, and P.W.5, the fact that it is the first accused, who made the document is proved by the prosecution. Therefore, the ratio of the Judgments relied upon by the Learned Senior Counsel to the effect that a person cannot be convicted for the offences under Sections 465 and 468 of IPC, without alleging them to be



the maker of the document, is not applicable to the case on hand.

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30. Therefore, I answer the question accordingly that the prosecution, in this case, has clearly alleged the accused to be the maker of the false document and therefore once the document is proved to be false by the evidence of the Forensic Expert, upon comparing the left thumb impression, coupled with the evidence of P.W.1, I am of the view that the conviction for the offences under Sections 465 and 468 of IPC, is in order.

Question No.2:

31. As far as the conviction for the offence under Sections 471 is concerned, in this case the parties are siblings. Therefore there is no way the accused can plead ignorance. The evidence of P.W.2 and P.W.3, the attesting witnesses are very clear that they did not see P.W.1/*Suganthi* signing the document or affixing her left thumb impression only to save their skin, they made a statement as if P.W.1/*Suganthi* was present in an Auto. The said piece of evidence is categorically unbelievable. When the evidence of the prosecution witness also contains embellishments or falsehood, the Hon'ble Supreme Court of India has held by the Judgment of *Ugar Ahir v.*



State of Bihar²¹, more specifically relying paragraph No.6, which reads as follows:-

“6. The maxim falsus in uno, falsus in omnibus (false in one thing, false in everything) is neither a sound rule of law nor a rule of practice. Hardly one comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggerations, embroideries or embellishments. It is, therefore, the duty of the court to scrutinise the evidence carefully and, in terms of the felicitous metaphor, separate the grain from the chaff. But, it cannot obviously disbelieve the substratum of the prosecution case or the material parts of the evidence and reconstruct a story of its own out of the rest.”

[Emphasis supplied]

32.The substratum of the evidence of PW-2 and 3 is that they did not actually see PW-1 signing the document and admit that their declaration to the contrary in the Power of Attorney document is false. I hold that on the face of it, P.W.2 and 3, to save their own skin, deposing as if, *Suganthi* was present in Sub-Registrar Office, has to be totally discarded. This apart, the subsequent conduct of getting a loan from the Bank in the name of P.W.1 and selling the property among themselves, that is, in the name of the second accused, the wife of the first accused and in the name of the third accused being the own brother of the first accused, it is clear and categorical that the accused have knowingly used the false document to their benefit.

²¹ AIR 1965 SC 277 : (1965) 1 Cri LJ 256
<https://www.mhc.tn.gov.in/judis>



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33.The Learned Senior Counsel has made a strenuous effort, by producing Section 313 of Cr.P.C., questioning to the effect that in respect of all the three accused, the entire evidence is verbatim re-produced as questions to all the three accused, without delineating the respective roles played by each of the accused, and without delineating the inferences necessarily to be drawn so as to demonstrate the incriminating circumstances required for each of the offence.

34.The law relating to the questioning under Section 313 of the Code of Criminal Procedure can be culled out from the various decisions cited by the Learned Senior Counsel is as follows :

A valuable statutory and Constitutional right

Section 313 Cr.P.C., confers a valuable right upon an accused to establish his innocence and can well be considered beyond a statutory right, as a constitutional right to a fair trial under Article 21,²².

Object of Sec. 313

²² Jai Prakash Tiwari v. State of M.P., 2022 SCC OnLine SC 966, Reena Hazarika Vs. State of Assam, (2019) 13 SCC 289



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The object of Section 313 of the Code is to establish a direct dialogue between the court and the accused,²³.

Purpose of Sec. 313

The purpose of Sec.313 Cr.P.C is to meet the requirements of principles of natural justice i.e the *audi alterum partem*,²⁴. The accused is to be given a reasonable opportunity to explain the adverse circumstances which have emerged against him during the course of trial,²⁵.

What is Reasonable Opportunity under S.313 ?

A reasonable opportunity entails putting all the adverse evidence in the form of questions so as to give an opportunity to the accused to articulate his defence and give his explanation. An empty formality of bundling all circumstances together and giving a single opportunity to the accused to explain himself, would deprive him of fair or reasonable opportunity as he may not be able to put forth a rational and intelligible explanation,²⁶.

Explanation to clause a and b of S.313

The word "may" in clause (a) of sub-section (1) in Section 313 of the Code cannot be held to confer a discretionary power on the Court to

²³ Jai Prakash Tiwari v. State of M.P., 2022 SCC OnLine SC 966

²⁴ Latu Mahto and Anr. v. State of Bihar ,(2008) 8 SCC 395, Sujit Biswas V. State of Assam, (2013) 12 SCC 406

²⁵ Jai Prakash Tiwari v. State of M.P., 2022 SCC OnLine SC 966

²⁶ Jai Prakash Tiwari v. State of M.P., 2022 SCC OnLine SC 966



consider or not to consider such defence, since it constitutes a valuable right of an accused for access to justice, and the likelihood of the prejudice that may be caused thereby. If there has been no consideration at all of the defence taken under Section 313 Cr.P.C., the conviction may well stand vitiated,²⁷.

The clause (b) of the sub-section provides that the failure to put forth the necessary question, would result in a handicap to the accused and he can legitimately claim that no evidence, without affording him the opportunity to explain, can be used against him²⁸.

Purpose of Sec.313 defeated vitiates trial or not?

Even when the true purpose or spirit of the Sec.313 is defeated and has caused a grave prejudice to the accused as the Court may not be aware of all the necessary facts and circumstances to arrive at a fair conclusion, it does not vitiate the trial *ipso facto* unless the accused fails to prove that grave prejudice has been caused to him,²⁹.

Common questions framed and asked all the accused persons would defeat the requirements of Sec.313,³⁰.

Circumstances not put to the accused:

²⁷ Reena Hazarika Vs. State of Assam, (2019) 13 SCC 289

²⁸ Latu Mahto and Anr. v. State of Bihar, (2008) 8 SCC 395

²⁹ Jai Prakash Tiwari v. State of M.P., 2022 SCC OnLine SC 966

³⁰ State of M.P v. Mukesh and Others, (2006)13 SCC 197, State of M.P. vs. Ram Prakash & Ors. 1989

Crl. J. 1585



The circumstances which are not put to the accused in his examination under Sec.313 Cr.P.C cannot be used against him and cannot be treated as evidence within the meaning of Sec.3 of the Evidence act, as the accused cannot be cross-examined with reference to such statement,³¹.

Non-explanation of charge to Accused

The Charge has to be properly explained to the accused, so the accused can defend themselves from the charge. If the charges are not properly explained then it would amount to grave prejudice, which would vitiate the trial,³².

The Accused shall use it properly:

The accused shall also not use the opportunity in a casual or cavalier manner, rather have to give appropriate explanation for the questions put to him.

35.Now, applying the principles to the case on hand, on a perusal of Section 313 of Cr.P.C., questioning, it is seen that each and every piece of the evidence of all the prosecution witnesses has been put to the accused in detail and their response to the accused is sought. In this case, on a reading of the evidence, the facts are open and shut in nature. It is not necessary

³¹ Sujit Biswas Vs. State of Assam, (2013) 12 SCC 406

³² Latu Mahto and Anr. v. State of Bihar, (2008) 8 SCC 395, Sheorati v. State of Bihar, 2001 CrL J 2750



that any facts have to be inferred or any incriminating circumstances have to be so gathered and stitched together so as to bring home the charges, that is to say, the plain reading of the evidence as such is enough to bring home the ingredients of the charges against the accused. This is a gender-based crime, a manifestation of the misogynistic arrogance of both the brothers. Accused No.1 and 3 did not want to give their sister her property, even though the grand-father himself had purchased the same in the very name of P.W.1/*Suganthi*. Therefore, the first accused, forged the Power of Attorney and thereafter created documents of title in respect of A2 and A3. This is a simple case and there is no great deal of culling out of circumstance or ingredients of the various offence and therefore, considering the nature of the offence, and the nature of the evidence let in by the prosecution, I am of the view that on a cumulative reading of the Section 313 of Cr.P.C., questioning, it cannot be said that the accused were put to prejudice in a manner so as to, not to understand the material evidence against them or the incriminating circumstances against them.

36. Therefore, as pointed out by the Learned Senior Counsel, even though the Trial Court could have framed the questions under Section 313 of the Code of Criminal Procedure in a better manner, but, however, I am



unable to persuade myself that it was so erroneous or wanting so as to cause prejudice or hardship to the defense or to the extent to hold that the accused were never called upon to answer the material evidence or the incriminating circumstances on record.

37. On the other hand, the accused in this case, took up the 313 questioning in a casual manner and except to answer in one word as false, did not come up with any explanation whatsoever. Therefore, on a cumulative reading of Section 313 of Cr.P.C., questionings and the answers given by the accused would only strengthen the case of the prosecution and would point out the fingers towards the guilt of the accused. Therefore, after considering the issue cumulatively in view of the Judgments referred above supra and the ratio laid thereupon, I am of the view that the prosecution for the offense under Section 471 is sustainable.

Question No.3:

38. Once the findings are given against the accused in respect of the offence under Sections 465, 468 and 471 of IPC, the only argument advanced in respect of the offence under Section 420 of IPC, falls automatically and this is a clear case of cheating of the first



respondent/P.W.1 of her property. Therefore, the conviction for the offence under Section 420 is sustainable.

Question No.4:

39.Now coming to question No.4, a perusal of the Judgment of the Trial Court, the Trial Court starts the discussion of the case from paragraph No.29 onwards and after extracting the evidence and other facts up to paragraph No.28, in paragraph No.30, it relies upon the 161 statement of the father of the accused No.1 and 3, and also the P.W.1/the first respondent herein. He was not examined in spite of the fact that he was available. Therefore, the reasonings in the entire paragraph Nos.30 and 31, is illegal and it is not a plausible view.

40.The second finding is that the person, who impersonated and signed and also affixed the left thumb impression is not identified and investigated and therefore, the offence is not proved. The same is also erroneous in law, in view of the finding regarding question No.1 supra, as the first accused is also the maker of the false document. Thereafter, the Trial Court only relies upon the evidence of P.W.2 and 3, stating that they have seen *Suganthi* in the Sub-Registrar Office. Relying upon the said



finding is an untenable statement and is again perverse. Finally, in paragraph No.34, the Trial Court holds that when P.W.1 has not filed any Civil case in spite of the forgery of the Power of Attorney, the prosecution has not proved the offences beyond the doubt, is again on the face of it, is an illogical, perverse and impossible view. Therefore, all the four findings of the Trial Court are absolutely untenable and are not at all possible views. Therefore, the Lower Appellate Court has rightly interfered in the decision of acquittal and upturned the findings into one of guilt. The Lower Appellate Court has given cogent reasons after re-appraisal of the evidence and considering the findings of the Trial Court. Therefore, I do not find any error whatsoever in the Judgment of the Lower Appellate Court, and I am of the view that the Judgment is in consonance with the rulings of the Hon'ble Supreme Court of India, in *Samsul Haque Vs. State of Assam* and *N.Vijayakumar Vs. State of Tamil Nadu*, cited supra.

E. The Sentence :

41.Now coming to the sentence, already the Lower Appellate Court has taken a lenient view and considering the facts and circumstances of this case that till date the first respondent herein is made to run from pillar to post for the enjoyment of her own property and I consider that the



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maximum sentence of three years imprisonment of the accused No.1 and 2 and one year Imprisonment on the third accused has been appropriately imposed.

The Result :

- (i) The Criminal Revision is dismissed.
- (ii) The Petitioners are granted two weeks time from today to surrender to undergo the remaining period of sentence.

.08.2022

Index : Yes/ No
Speaking /Non-Speaking Order

klt

To

- 1.The District Munsif Cum Judicial Magistrate, Parangipettai.
- 2.The II-Additional District and Sessions Court, Chidambaram.
- 3.The Sub-Inspector of Police, District Crime Branch Cuddalore, Cuddalore District.



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D.BHARATHA CHAKRAVARTHY. J.,

klt

Pre- Delivery Order in
Crl.R.C.No.452 of 2019

.08.2022