

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL REVISION APPLICATION NO.18 OF 2017

Harjitsingh S/o Tirathsingh Sawhney,
Age 55 years, Occu. Business,
R/o House No.5/1/55/1-P, Osmanpura,
Aurangabad,
Taluka and District Aurangabad. ... **Applicant.**

Versus

1. Paramjitsingh Tirathsingh Sawhney,
Age 50 years, Occu. Unknown,
R/o Near N.C.C. Canteen, Osmanpura,
Aurangabad,
Taluka and District Aurangabad.
2. The State of Maharashtra,
Through the Police Inspector,
City Chowk Police Station, Aurangabad,
Taluka and District Aurangabad. ... **Respondents.**

...
Advocate for Applicant : Party in Person.
Advocate for Respondent No.1 : Mr. A. R. Rathod.
APP for Respondent-State : Mr. K. S. Patil.
...

CORAM : S. G. MEHARE, J.

**RESERVED ON : 10.01.2023
PRONOUNCED ON : 06.04.2023**

JUDGMENT :-

1. Rule. Rule made returnable forthwith and heard finally
by consent of the parties.

2. The complainant has impugned the judgment and order of acquittal of the learned Additional Sessions Judge-5, Aurangabad, in Criminal Appeal No.122 of 2015, dated 02.12.2016.

3. The applicant and respondent No.1 are real brothers, and the accused No.2 was their father. He died during the trial.

4. The dispute arose when the present applicant learnt that his signature was forged on Form No.9 issued by the Office of City Survey, Aurangabad. The applicant and accused had filed the joint application of mutation to the office of the City Survey, Aurangabad, on 05.02.1994. However, the deceased/accused had raised the objection. Therefore, City Survey Officer directed them to bring probate of the Will of their grandmother. Accordingly, the applicant applied for probate. When that application was pending, on 16.07.1996, respondent No.1 filed an application to the City Survey Office to enter his name on the record of right about the said property on the basis of the Will of his mother dated 23.06.1993. The deceased accused wrote the said application and respondent No.1 submitted it under his signature. The notice in Form No.9 was issued in respect of the said application to the complainant. However, between 29.07.1996 to 23.08.1996, he

was in Delhi. In his absence on 21.08.1996, both accused submitted a false and fabricated notice in Form No.9 by doing his signature to the Office of City Survey. His signature amounted to no objection to mutation entry in the name of respondent No.1.

5. On his complaint, the crime was registered against present respondent No.1 and the deceased father for the offences punishable under Sections 420, 467, and 468, read with Section 34 of the I.P.C. The applicant led the evidence and also produced the handwriting expert opinion. Appreciating the evidence, the learned Judicial Magistrate First Class held respondent No.1 guilty of the offence punishable under Section 465 read with Section 34 of the I.P.C. and sentenced him to suffer R.I. for six months and a fine of Rs.5,000/-. The respondent No.1 had preferred an appeal before the Additional Sessions Judge-5 at Aurangabad. The learned Additional Sessions Judge-5 acquitted him. The appeal preferred by the present applicant for enhancement of the sentence was also dismissed by the common judgment.

6. The applicant, in person, has argued at length. Mostly disclosing the facts, he raised the objection to the findings recorded by the learned subordinate Appellate Court. He

argued that the reasons for the conclusion given by the subordinate Appellate Court were not legally admissible. Therefore, the subordinate Appellate Court has committed an error of law in acquitting respondent No.1. Referring to the bunch of documents and arguing as if it is an appeal; he prayed to allow the criminal revision application and restore the judgment of the learned Judicial Magistrate First Class.

7. Per contra, the learned counsel for respondent No.1 has vehemently opposed the grounds raised by the applicant. He also repeated the facts of the case. However, supporting the impugned judgment and order, he would argue that the reasons given by the learned subordinate Appellate Court are legal, correct and proper. There was an inordinate delay of six years in lodging the report. That has also been correctly considered. There was no evidence, how the alleged forged documents came to the Court. The respondents never mutated the property in his name. He prayed to dismiss the petition.

8. In reply, the applicant argued that the appeal against the probate is pending, and the stay has been granted to the second probation. The property was in the joint name of his mother and her sister. The illegal constructions were removed from CTS No.17016. The handwriting expert proved that the

signature on the disputed document does not match the signature of the applicant. The prosecution had proved that the signature over the disputed document was forged. By the said document, the applicant was the beneficiary. The said document was created with common intention. Therefore, the criminal revision application deserves to be allowed.

9. Perused both the judgments and orders passed by the learned Judicial Magistrate First Class and the Additional Sessions Judge, Aurangabad. After having gone through the judgments, there appears to be a dispute over a signature of applicant, on Form No.9, which was placed in the City Survey Office. In cross-examination, the complainant/present applicant has candidly admitted that, according to him, accused No.2 (died) made his false signature because he knew his handwriting.

10. In view of the admission of applicant about forged signature by his father, the sole question to be considered here is whether respondent No.1 can be held guilty for the alleged forged signature. The dispute before the Trial Court was restricted to the forgery of the signature of the applicant. Therefore, it would be unnecessary to go into the other dispute about the Will and share of the respective parties in the

property. The law is well settled that mere entry in the revenue record is not proof of title. The applicant had objected to the application moved by the respondent No.1. The prosecution was to prove that the present respondent No.1 committed the crime with a common intention shared with the deceased accused.

11. The Hon'ble Supreme Court in the case of ***Nandu Rastogi @ Nandji Rastogi and another Vs. State of Bihar, 2003 SCC (Cri.) 177*** has observed that “to attract Section 34 of the IPC, it is enough that each accused had shared a common intention to commit the offence and in furtherance, thereof each one played his assigned role by doing separate acts, similar or diverse”.

12. In the case of ***Sewa Ram Vs. State of U.P AIR 2008 SC 682***) it has been held that, Section 34 of the IPC has been enacted on the principle of joint liability in the doing of a criminal act. The Section is only a rule of evidence and does not create a substantive offence. The distinctive feature of the Section is the element of participation in action. The liability of one person for an offence committed by another in the course of a criminal act perpetrated by several persons arises under Section 34 if such criminal act is done in furtherance of the

common intention of the person who joined in committing the crime. Direct proof of common intention is seldom available, and, therefore, such intention can only be inferred from the circumstances appearing from the proved facts of the case and the proved circumstances. In order to bring home the charge of common intention, the prosecution has to establish by evidence, whether direct or circumstantial, that there was a plan or a meeting of minds of all the accused persons to commit the offence for which they are charged with the aid of Section 34, be it pre-arranged or on the spur of the moment. But it must necessarily be before the commission of the crime. The true concept of the Section is that if two or more persons intentionally do an act jointly, the position in law is just the same as if each of them has done it individually by himself.

13. In the case of *Harjit Singh Vs. State of Punjab, 2002 SCC (Cri.) 1518*, it has been held that “common intention is a state of mind of an accused which can be inferred objectively from his conduct displayed in the course of the commission of the crime as also prior and subsequent attendant circumstances. Mere participation in the crime with others is not sufficient to attribute common intention to one of the others involved in the crime. The subjective element in common intention, therefore,

should be proved by an objective test. It is only then that one accused can be made vicariously liable for the acts and deeds of the other co-accused”.

14. The subjective standard requires the prosecutor to prove, beyond a reasonable doubt, that the accused intended his or her action, while the objective standard requires the prosecutor to prove, beyond a reasonable doubt, that a reasonable person would not have acted as the accused did in the circumstances of the case.

15. The applicant's case was that he did not sign Form No.9, and it was not his signature. To prove this fact, P.W.5 led the evidence and proved that the present respondent No.1 had filed an application (Exh.65) along with one Will Deed, the death certificate of his mother and P.R. Card of CTS No.17016. Thereafter, the proclamation and notices were issued to all the concerned. Exh.69 bears the signature in the name of the applicant. It was a notice calling an objection from the persons interested in the mutation entry from the persons interested in the property proposed to be mutated in the name of the applicant. Exh.71 prove that the present respondent No.1 had moved an application for mutation on 16.07.1996. It was an order of mutation wherein the objection of the present

application was upheld, and the said application was filed with a liberty to file an application afresh after obtaining the probate. However, *prima facie*, it appears that the learned Additional Sessions Judge erred in law in not believing the witnesses and erroneously held that the prosecution did not prove that the signature of the applicant on the Form No.9 was forged by the accused and hence no offence of forgery is made out. Form No.9 (Ex 69) was a notice issued by the Office of the City Survey, and the signatures were obtained at the place of the accused. In the circumstances, the reason recorded by the learned Additional Sessions Judge that the said document Exh.69 was not seized from the possession of the accused, and hence, the accused cannot be held guilty appears not correct. Learned Additional Sessions Judge ignoring the material evidence i.e. the order of the City Survey Officer Exh.71, in which it was observed that accused No.1 (Respondent No.1) had presented the said application, erroneously held that there is no specific evidence that the accused No.1 had produced that notice before the City Survey Officer on 21.08.1996 as alleged by the applicant and there was no endorsement on that document to that effect.

16. It has to be borne in mind who was the beneficiary of the forged signature of the applicant. The material on record, if read in the context of the beneficiary, it can be believed that the present respondent No.1 was the beneficiary of the Will deed on the basis of which the mutation was sought. Considering the conduct of respondent no.1 with other material, it is evident that the applicant had shared a common intention in committing the crime with the deceased accused. These aspects appear to have been brushed aside by the learned Additional Sessions Judge, Aurangabad.

17. Now, a question arises whether the Court can take cognizance of the offence in view of Section 468 of the Code of Criminal Procedure ?

18. Section 468 of the Cr.P.C. provides that after the lapse of a period of limitation as prescribed therein, the Court cannot take cognizance of the offence. It has been provided that where the offence is punishable with a fine only, the limitation shall be six months. Where the offence is punishable with imprisonment for a term not exceeding one year, the limitation shall be one year, and if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years, the limitation to take cognizance is three years.

19. The offence punishable under Section 465 of the IPC provides the imprisonment for a term which may extend to two years or with a fine or with both. Section 471 of the I.P.C. also prescribed a similar punishment as provided for forgery under Section 465 of the I.P.C. The present applicant did not challenge the order of the learned Judicial Magistrate First Class acquitting respondent No.1 for the offence punishable under Sections 420 and 468 of the I.P.C., which provides for the punishment of imprisonment for a term which may extend to seven years. He barely appealed the order of the imprisonment for the enhancement of the punishment. Considering the offence proved under Section 465 read with Section 34 of the I.P.C., the Court believes that the complaint was time barred. However, the Court erroneously took the cognizance. The learned Additional Sessions Judge has correctly held that the complainant did not offer an explanation for the delay, and that became fatal to this case. Though the applicant proved the offence of forgery against the accused, that cannot be received in the evidence for the reason that the Court erroneously took cognizance of the offence, which was time barred. Therefore, respondent No.1 cannot be punished. For the reasons stated above, the criminal revision

application deserves to be dismissed. Hence, the following order :

ORDER

- (i) Criminal Revision Application stands dismissed.
- (ii) Rule stands discharged. No order as to costs.
- (iii) Record and Proceedings be returned to the learned Judicial Magistrate First Class, Aurangabad.

(S. G. MEHARE, J.)

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vmk/-