



IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL REVISION APPLICATION NO.5 OF 2022

STATE OF GOA THR. PI CRIMEAPPLICANT
BRANCH POLICE STATION

VS

WILFRED ALOUSIUM NICOLAU JOAO
(MAJOR)RESPONDENT

Mr. S. G. Bhobe, Public Prosecutor for the Applicant.

Ms. Asha Desai, Advocate for the Respondent.

CORAM: BHARAT P. DESHPANDE,J

DATED : 2nd July, 2024

ORAL ORDER:

1. Heard Mr. S.G. Bhobe and Ms. Asha Desai, learned Counsel for the parties.
2. The matter is taken up for final disposal at the admission stage itself with consent.
3. The revision is filed by the State though PI Crime Branch challenging the order passed by the Additional Session Judge dated 29/10/2021 in Criminal Revision Application No.70 of 2018 wherein the revision filed by the original Accused No.7 /Respondent herein was

allowed and the order passed by the Magistrate issuing process and directing to frame charge against Accused No.7 was quashed and set aside and accordingly Accused No.7 was discharged for the offence punishable under Section 468, 471 and 420 of IPC.

4. Mr. Bhobe appearing for the State would submit that on the basis of the complaint lodged by the Member Secretary of GCZMA , FIR was registered in the year 2010 and after investigation, charge sheet was filed against all 7 accused persons. He submits that learned Magistrate vide its order dated 14/08/2018, directed that the charges be framed against Accused No.7/Respondent herein. Mr. Bhobe would further submit that prior to such order Accused Nos.1 to 6 filed proceedings before the Appellate Court in Criminal Revision Application No.6 of 2017 and by order dated 03/10/2017, the order of issuing process against Accused Nos.1 to 6 was quashed and set aside. Mr. Bhobe fairly submits that no appeal was filed against the order dated 03/10/2017 by the State, which became final and accordingly the matter was only taken up against original Accused No.7 wherein the learned Magistrate passed the order of framing charge, on 14/08/2018.

5. Mr. Bhobe would submit that the learned Magistrate while considering material placed on record found that the statement of witness by name Uday Sawant clearly shows that Accused No.7 after inspection went to the chamber of the Member Secretary and after

sometime came out with a letter which to his knowledge a forged document. He submits that thus there are reasons to believe that Accused No.7 had knowledge that the document is forged and not signed by the Accused No.6 as alleged.

6. Mr. Bhobe fairly submits that it is not the case of the prosecution that the contents of the said letter are incorrect. However, the only contention of the prosecution is that such a letter is a forged document and that Accused No.7 is involved in such forgery.

7. Mr. Bhobe further submits that it is an admitted fact that such letter was not used as genuine document since it was not produced before the concerned authorities but recovered from the possession of Accused No.6.

8. While submitting on the First Appellate Court's findings, Mr. Bhobe would say that the findings of the First Appellate Court are contrary to the facts and the material placed on record since earlier order passed in the Revision No.6 of 2017 clearly observed that there is prima facie case against Accused No.7.

9. Per contra, Ms. Asha Desai appearing for the Respondents would submit that the findings of the Revisional Court in Criminal Revision Application No.6 of 2017 delivered on 03/10/2017 were challenged

before this Court by Accused No.7 vide Criminal Revision No.65 of 2017 wherein this Court vide its order dated 01/11/2017 clearly observed that the findings of the Revisional Court as far as Accused No.7 is concerned are unwarranted and cannot looked into by the concerned Magistrate while considering the material for framing of charge.

10. Ms. Desai would submit that first of all there is no material to show that the Accused No.7 in fact forged the said document. She submits that only the statement of Uday Sawant stating that he saw Accused No.7 coming out of the chamber of Accused No.6 and handing over of letter would not in any manner prove or establish that such document is forged by Accused No.7.

11. Ms. Desai would further submits that the contents of the said letter/documents are considered to be the correct statement since the property mentioned therein is admittedly beyond 500 meters from the high tide line. She therefore submits that Accused No.7 who was working as draftsman and who himself inspected the said property, was not supposed to forge any letter or documents, the contents of which are correct. Since the authorship of the alleged forged document is not established from the expert's opinion, there is no material even to frame charges against the Accused No.7.

12. Rival contentions fall for consideration.

13. The admitted fact as discussed above from the submissions of the parties is that the contents of the said documents are not disputed. The case of the prosecution is that such a document was forged by Accused No.7 and thereafter, it was used as a genuine document. It is admitted that the said document was not produced before any authority as a genuine document. Thus such contention of the prosecution must fail.

14. Perusal of such findings in order dated 03/10/2017 would clearly reveal that Accused No.1 is a Company whereas Accused Nos. 2 to 5 are Directors. The question of prosecuting the company no such allegations has been rightly dealt with and since such findings are not challenged by the State, it becomes binding on the parties. The learned Additional Sessions Judge also considered the fact that Accused No.6 therein who was the Member Secretary of the Goa Coastal Zone Management Authority is also required to be discharged as there was no question of Accused No.6 to forge his own signature. Thus, the material which is placed on record is only against Accused No.7/Respondent herein.

15. The findings of all the Courts regarding authorship of the said documents are incorrect. The said document was forwarded to the handwriting expert along with the signature of Accused Nos.6 and 7. The report received from the Government Examiner on questioned documents would clearly reveal that the authorship of such documents

cannot be ascertained. Three orders in this respect passed by the different authorities speak in one line. Thus when the signature of Accused No.7 is not found in any questioned document, the aspect of forged signature of Accused No.6 by Accused No.7 is clearly out of question.

16. The only material that remains on record is the statement of one Uday Sawant who claimed that after the inspection of the property, they requested Accused No.7 to issue a letter. Accordingly it is alleged that Accused No.7 entered into the chamber of the Accused No.6 and after some time came out with a letter and handed it over to the said witness. Only on his statement alone, the learned Magistrate observed that there is prima facie material for framing of charge against Accused No.7.

17. Such observation is not accepted by the First Appellate Court while passing the impugned order. The observations in paragraph No.29 of the impugned order clearly goes to show that since the contents of the said document do not show that they are forged and thus there was no need for Accused No.7 to create such fraud document, cannot be faulted with.

18. It is not a case of the said Uday Sawant that he saw Accused No.7 preparing and signing such document. He only stated that Accused No.7 went inside the chamber and then came out with the said letter.

19. In this respect, the statement of the stenographer by name Indira shows that the format of such a letter was stored in the computer available in the office. Only by changing the names of the parties and the date, such letters were issued earlier. Even the signatures of the other accused persons were forwarded to the handwriting expert. However, the report is inconclusive. Thus, the contention on behalf of the prosecution that Accused No.7 forged the signature of Accused No.6 is not established by the expert opinion which is a corroborative piece of evidence so as to frame charge with regard to the offence of forgery. Admittedly, these documents were not used as genuine documents by Accused Nos.7 and thus the question of framing charge against him for using fraud documents is out of question.

20. The learned Additional Sessions Judge in the impugned order discussed in detail with regard to the ingredients of the alleged offences and arrived at a conclusion which cannot be faulted with. Such findings are based on the material found along with the charge sheet and cannot be termed as perverse or illegal. Accordingly, the revision filed by the State needs to be rejected.

21. Criminal Revision Application No.5 of 2022 stands rejected.

BHARAT P. DESHPANDE, J.