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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL REVISION APPLICATION NO.75 OF 2019

- 1) Baba s/o Parasram Shambharkar,
Aged about 47 Years,
Occupation : Principal Aniket College of
Social Work, Wardha,
R/o Sai-Vibhor Apartment,
Flat No. V-10, Jagrut Nagar,
Nari Road, Nagpur – 440026.

- 2) Narendra s/o Madhao Dandekar (Dead),
through his legal heir,
(2)(i) Smt. Madhuri Wd/o Narendra
Dandekar, Aged about 50 Years,
Occupation : Household,
R/o Wahitpur, Post Sukali Station,
Rah. Seloo, District Wardha.

..... APPLICANTS

// VERSUS //

State of Maharashtra,
Through Police Station Officer,
Police Station, Sitabuldi,
Nagpur.

....NON-APPLICANT

Mr. Shashibhushan Wahane, Counsel for the applicants/accused
Nos.2 and 3.
Mrs. M. A. Barabde, APP for the non-applicant/State.

WITH

CRIMINAL REVISION APPLICATION NO.78 OF 2019

Vandana D/o Laxmanrao Jumde,
Aged 42 Years, Occupation : Household,
R/o. Wadner, Tahsil : Hinganghat,
District Wardha and also
R/o. Talegaon,
Taluka and District Wardha.

..... APPLICANT

(2)

// VERSUS //

State of Maharashtra,
Through Police Station Officer,
Police Station, Sitabuldi,
Nagpur, District Nagpur.

....NON-APPLICANT

Mr. R. M. Patwardhan, Counsel for the applicant/accused No.1.
Mrs. M. A. Barabde, APP for the non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.
RESERVED ON : 23.04.2025
PRONOUNCED ON : 08.05.2025

JUDGMENT :

1. By preferring these revision applications, the applicants/accused No.2 namely Baba s/o Parasram Shambharkar and legal heirs of deceased accused No.3 Narendra s/o Madhao Dandekar namely, Smt. Madhuri Wd/o Narendra Dandekar in Criminal Revision Application No.75/2019 and Vandana D/o Laxmanrao Jumde applicant/accused No.1 in Criminal Revision Application No.78/2019 challenges the Judgment and order of conviction passed by the learned 2nd Additional Chief Judicial Magistrate, Nagpur in Regular Criminal Case No.334/2002 dated 24.04.2007 and confirmed in Criminal Appeal No.98/2007 and 100/2007 dated 28.03.2019.

2. Brief facts of the prosecution case as emerges from the police papers and recorded evidence are as under:

The applicant Vandana D/o Laxmanrao Jumde was a student of Aniket College of Social Work, wherein Baba s/o Parasram

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Shambharkar another applicant (original accused No.2) serving as a Principal and deceased Narendra s/o Madhao Dandekar was serving as a clerk. She appeared for the Summer Session Examination of 1998 of BSW Part – I and secured 05 marks in compulsory English subject and during the revaluation, she had secured average 10 marks in the subject of compulsory English and thus, she was failed. The applicant/accused Vandana D/o Laxmanrao Jumde converted the figure 10 into 18 in the mark-sheet and 10 into 30 in the notification and misappropriated the said mark-sheet and notification as genuine one and submitted the same along with the admission form of BSW Part – III and sought admission to the said course. She had filed mark-sheet of BSW Part – I with the examination form of BSW – III, wherein it was detected that she was failed in English subject and thus, she duped the Nagpur University and also committed the offence of cheating forgery and using forged document as a genuine one with criminal intent. It is alleged that she was sharing common intention with the other two applicants/accused namely, Baba s/o Parasram Shambharkar and deceased Narendra s/o Madhao Dandekar, who being the Principal and admission Clerk of the said Aniket College. The applicants/accused Nos.2 and 3 Baba s/o Parasram Shambharkar and deceased Narendra s/o Madhao Dandekar have accepted and approved the examination form of the accused Vandana and sent to it to the Nagpur University and thus, they committed the abetment

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of the offence punishable under Sections 420, 468, 471 read with Section 109, 34 of the Indian Penal Code, in furtherance of their common intention. Initially, the charge was framed against the accused No.1 Vandana Jumde. After recording the evidence of PW-1 Vimal Meshram it revealed that the applicants/accused Nos.2 and 3 are also concerned with the offences for abetment of the same, and therefore, in view of Section 319 of the Code of Criminal Procedure, they are added as an accused.

3. On the basis of the First Information Report, further investigation was carried out by the Investigating Officer. During the investigation, he has collected relevant documents from the University as well as from the College by drawing seizure memo. After completion of the investigation, the charge-sheet was filed against the accused.

4. The learned 2nd Additional Chief Judicial Magistrate, Nagpur framed the charge initially against the accused No.1 Vandana vide Exh.9 and after adding accused Nos.2 and 3 the charge was also framed vide Exh.10 against them.

5. To prove the charge, prosecution examined in all six witnesses namely, PW-1 Vimal Dayaram Meshram Exh. 13 was serving as Assistant Registrar Revaluation, Nagpur University, PW-2 Deorao Satbaji Kumbhare Exh.72 Deputy Registrar Exam in the Nagpur University, PW-3 Anandrao Govindaji Bankar Exh.84

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Assistant Registrar Revaluation, PW-4 Sanjay Nilkhanth Wankhede vide Exh.93 service as office Superintendent in Aniket College of Social Work, PW-5 Narayan Nagoji Thakare vide Exh.140 Superintendent Nagpur University and PW-6 Rajjabali Ashrafali Sayyad Investigating Officer. Besides oral evidence, prosecution placed reliance on tampered mark-sheet Exh.15, tampered notification Exh.36 and photocopy of original notification Exh.37.

6. On appreciating the evidence, the learned 2nd Additional Chief Judicial Magistrate, Nagpur held all the accused guilty and convicted the accused No.1 Vandana Laxmanrao Jumde for the offence punishable under Section 420 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for three years and fine of Rs.20,000/-, in default rigorous imprisonment for two months. The accused No.1 is also convicted for the offence punishable under Section 468 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for three years and fine of Rs.20,000/-, in default to suffer rigorous imprisonment for two months and the accused No.1 is also convicted for the offence punishable under Section 471 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for one year and fine of Rs.10,000/-, in default to suffer rigorous imprisonment for one month.

7. The accused No.2 Baba s/o Parasram Shambharkar is also convicted for the offence punishable under Section 420, 468,

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471 read with Section 109, 34 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for three years and fine of Rs.20,000/-, in default to suffer rigorous imprisonment for two months for the offence punishable under Section 420 of the Indian Penal Code, rigorous imprisonment for three years and fine of Rs.20,000/-, in default rigorous imprisonment for two months of the offence punishable under Section 468 of the Indian Penal Code and rigorous imprisonment for one year and fine of Rs.10,000/-, in default rigorous imprisonment for one month for the offence punishable under Section 471 of the Indian Penal Code.

8. The deceased accused No.3 - Narendra Madhao Dandekar is also convicted in the similar manner as accused No.2 is convicted.

9. Being aggrieved and dissatisfied with the aforesaid judgment and order of sentence, the accused Nos.2 and 3 preferred an Appeal No.100/2007 and the accused No.1 also preferred an Appeal No.98/2007. The learned Additional Sessions Judge – 12, Nagpur confirmed the said sentence, hence these revision applications.

10. Heard learned Counsel Mr. Wahane for applicants/accused Nos.2 and 3 in Criminal Revision Application No.75/2019 and learned Counsel Mr. Patwardhan for applicant/accused No.1 in Criminal Revision Application No.78/2019.

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Learned Counsel Mr. Wahane also placed on record his detailed submissions and submitted that the entire evidence on record nowhere discloses that with the criminal intent the accused Nos.2 and 3 shared the common intention with the accused No.1 and committed the offence. The entire evidence of the prosecution shows that the accused No.2, who was serving as Principal and accused No.3 clerk has not verified the documents with due care and forwarded the same to the University. Except these allegations, there is no evidence on record to show that they shared a common intention with the co-accused and committed these offences for pecuniary benefits. As far as the abetment is concerned, there is absolutely no evidence to show that the accused Nos.2 and 3 abetted the accused No.1 by way of instigation, aiding or in any manner to commit the offence. Section 107 of the Indian Penal Code (for short 'the IPC') defines abetment. A person is said to have instigated the another when he goad or urge forward provoke, incite or encourage to do "an act" which the person otherwise would not have done. In order to amount to abetment, there must be *mens rea*. Without knowledge or intention, there cannot be any abetment. The knowledge and intention must relate to the act said to be abetted which is absent in the case. Therefore, in order to constitute abetment, there must be direct incitement to do culpable act.

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11. He submitted that in absence of the evidence, the observation of the learned trial Court and the Appellate Court that present applicants/accused Nos.2 and 3 with sharing common intention is erroneous and liable to be quashed and set aside.

12. He further submitted that as the observation of the learned trial Court and the Appellate Court as to the involvement of the present applicants/accused by abetting the co-accused itself is illegal and perverse and therefore, the revision application deserves to be allowed by quashing and setting aside the conviction.

13. Learned Counsel Mr. Patwardhan for the applicant/accused No.1 submitted that as far as the accused No.1 is concerned, there is absolutely no evidence that she has forged the said mark-sheet. The evidence of the prosecution witnesses shows that the notification was forwarded to the College and not to the accused, therefore, no question arises as to the forging of the said document. He submitted that the ingredients of the offence for the purpose of attracting the offence under Section 471 of the IPC that fraudulent or dishonest use of document as genuine and knowledge or reasonable believe on the part of the person using the document that it is forged one. He submitted that there was no criminal intent on the part of the accused. The prosecution evidence especially evidence of PW-1 nowhere shows that it was the accused No.1, who has forged the said document. Merely because that document was

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attached with the examination form she is arraigned as an accused. He invited my attention towards the evidence laid by the prosecution i.e. PW-1 Vimal Meshram, who deposed vide Exh.13 and Exhs.14 and 15 are proved by her. As per her evidence, in the mark-sheet Exh.15, 18 marks were written, whereas the accused No.1/applicant secured 10 marks. In the notification, it was corrected as 30. He submitted that during cross-examination it revealed that she was not at all concerned, with the examination department. Accused No.1 was already exempted in subject Marathi Sociology, and therefore she was eligible to get admission in the third year on the basis of ATKT. PW-1 was not concerned with the revaluation section. She admitted the same. She further admitted that the student having ATKT in the Winter Session can appear for upper class in the Summer Session. So, this admission itself is sufficient to show that the applicant/accused No.1 Vandana was entitled to have admission in the upper class. PW-1 further admitted that the mark-sheet or notification was not referred to the handwriting expert. Thus, in the absence of the evidence of the handwriting expert, the conviction and sentence awarded is erroneous and liable to be quashed and set aside. In support of his contention he placed reliance on **Shailesh Ramchandra Tupkary & etc. Vs. State of Maharashtra** reported in **2009(2) AIR Bom R 354** wherein it is held that failure to avail service of handwriting expert though was available adverse inference ought to be drawn.

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Mere evidence of witness that entry was in handwriting of accused when he did not state that entry was made to his presence, not sufficient to convict accused unless authorship of the entry proved and prays for quashing and setting aside of the judgment and order of sentence.

14. Learned APP supported the judgment of the learned trial Court and submitted that merely because the handwriting expert is not examined is not sufficient to disbelieve the evidence of the prosecution. She invited my attention towards the evidence of the witnesses and submitted that the examination form was submitted by the accused No.1.

15. It is undisputed that accused No.1 was a student of Aniket College of Social Work and accused No.2 was the Principal and accused No.3 was admission clerk. The evidence of PW-4 Sanjay Wankhede vide Exh.93 who was serving as Superintendent of Aniket College of Social Work disclosed that accused No.1 took admission for BSW part – I in Aniket College of Social Work, Wardha in 1995-96. Her admission form is at Exh.104. She also submitted the relevant documents at the time her admission. She took admission for BSW part - II in the same college, in the year 1996-97 and along with the admission form she submitted the mark-sheet of BSW part – I where it appears that she failed in three subjects namely, English, Sociology and Elements of Social Work.

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The original mark-sheet of BSW part – I was returned to her on her application Exh.110. In the year 1996 she took admission in the College of BSW part - III vide Exh.111. The photocopies of the marks of accused No.1 of her earlier examination are at Exhs.112 to 118. The photocopies of notification of revaluation is at Exh.119. Copies of the extract of admission register and receipt book of the College are at Exhs.123 and 124. The documents produced on record shows that the above said facts and documents are not disputed by any of the accused. These documents are seized from the custody of the College. The University maintains Final Tabulation Register (FTR) in respect of marks obtained by students. The extract of FTRs are at Exh.28 to 35. These FTRs are related to the examinations BSW part-I Summer 1996, BSW part – I Winter 1996, BSW part -I Summer 1997, BSW part – I Winter 1997, BSW part -I Summer 1998, BSW part -II Summer 1997, BSW part II Winter 1997, BSW part – II Winter 1998 respectively. The evidence further shows that the student requires to submit the application along with the relevant documents to the College before appearing for the examination while filing the examination form. The duty of the College to scrutinize the said form and then forward to the Nagpur University. The evidence of the witnesses further shows that accused No.1 submitted her examination form Exh.16 of BSW part – III. It has also come on record that she had also submitted mark-sheet Exh.15 and notification of revaluation of Exh.36 along

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with the said examination form. It is alleged that the marks of English (compulsory paper of BSW part – I Summer 1998) of accused No.1 was converted from 10 to 18 by overwriting in mark-sheet Exh.15. In notification Exh.36 marks of English paper of BSW part – I Summer 1998 was converted from 10 to 30. The defence of the accused No.1 is that as she received the said document and she has submitted the same along with the examination form and she is not involved in tampering them. The mark-sheet Exh.15 is relating to BSW part – I Summer 1998 it shows marks of English only. On perusal of the documents by the bare eyes it reveals that the marks 10 converted into 18 by overwriting on it and there is also tick mark on both the options "Pass and fail". The notification Exh.36 has also overwriting in the marks which shows 10 converted into 30. Thus, the documents if perused discloses that the documents are tampered by overwriting.

16. To corroborate this fact, the prosecution examined PW-1 Vimal Meshram vide Exh.13 who was Assistant Registrar Revaluation Nagpur University at the relevant time. She was Assistant Superintendent Examination Nagpur University. As per her evidence that duty assigned to her section to scrutinize the examination form. She described the procedure of scrutiny and submitted that on bare perusal of the mark-sheet Exh.15 it reveals to her that originally 10 marks are written and later on there is

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overwriting on the digit zero and other zero is connected to each and thus, it was made as 18 marks. She also stated that as per the FTR Exh.21 accused No.1 had secured only 10 marks in the compulsory English in the revaluation and prior to revaluation she had secured for 5 marks in English and its ITR is at Exh.22. Her evidence is supported by the documents Exhs.21 and 22. These documents sufficiently shows that accused No.1 had secured only 10 marks in English after revaluation.

17. The evidence of PW - 2 Deorao Kumbhare Deputy Registrar, Exam and PW - 3 Anandrao Bankar Assistant Registrar of Revaluation corroborates the version of PW - 1. The evidence of PW - 1 to PW - 3 along with the documents Exhs.15 and 56 on appreciation proves that the said documents are forged. It is an admitted position that on perusal of the documents it reveals that the marks which are obtained by the accused No.1 are converted by overwriting on it.

18. Though learned Counsel for the accused submitted that there is no evidence of handwriting expert, but the evidence on record sufficiently disclosed that there is a tampering in the mark-sheet, notification and the original marks reveals from the photocopy of the FTR Exh.21. Thus, the evidence of these witnesses sufficiently shows that the documents which are issued by the University i.e. mark-sheet and the notification both are tampered.

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Thus, as far as the role of the accused No.1 is concerned, which establishes from the evidence of the prosecution witnesses. Notification of revaluation Exh.37 is the original copy and Exh. 36 is the copy of original notification. It is submitted that the original FTR and RTR had not filed on record, and therefore their copies filed on record have no evidentiary value. The originals were brought by the prosecution witnesses while recording their evidence and after inspecting and verifying the same, the said documents are returned, therefore the contention of the learned Counsel for the accused is not sustainable. Therefore, as far as the evidence against the accused No.1 is concerned, which sufficiently shows that she is involved in the tampering with the marks in mark-sheet Exh.15 and revaluation notification Exh.36. The learned trial Court as well as the Additional Sessions Judge in Criminal Appeal Nos.98/2007 and 100/2007 rightly appreciated the same and no perversity in the impugned judgment reveals. The learned Counsel for the accused No.1 could not point out any illegality in the judgment and order passed by both the courts below.

19. Learned Counsel for the applicant/accused No.1 placed his reliance on the decision **Shailesh Ramchandra Tupkary Vs. State of Maharashtra** (referred supra) wherein it is observed that failure to avail service of handwriting expert though was available adverse inference ought to have drawn.

20. As far as the present matter is concerned, the oral evidence on record sufficiently shows the involvement of accused No.1 in alleged offence of tampering.

21. The essential ingredients of Section 471 are: (i) fraudulent or dishonest use of document as genuine, (ii) knowledge or reasonable belief on the part of person using the document that it is a forged one. Section 471 is intended to apply to persons other than forger himself, but the forger himself is not excluded from the operation of the Section. To attract Section 471, it is not necessary that the person held guilty under the provision must have forged the document himself or that the person independently charged for forgery of the document must of necessity be convicted, before the person using the forged document, knowing it to be a forged one can be convicted. The Hon'ble Apex Court in **A. S. Krishnan & Anr.Vs.State Of Kerala** reported in **2004 ALL MR (Cri) 2566 (S.C.)** while interpreting the provision 471 of IPC observed that "the expression 'fraudulently and dishonestly' are defined in Sections 24 and 25, IPC respectively. For an offence under Section 471, one of the necessary ingredients is fraudulent and dishonest use of the document as genuine. The act need not be both dishonest and fraudulent. The use of document as contemplated by Section 471 must be voluntary one. For sustaining conviction under Section 471 it is necessary for the prosecution to prove that

accused knew or had reason to believe that the document to be a forged one. Whether the accused knew or had reason to believe the document in question to be a forged has to be adjudicated on the basis of materials and the finding recorded in that regard is essentially factual."

22. The Hon'ble Apex Court further interpreted the phrases "intention" or "knowledge" or "reason to believe" and observed that the expression "knowledge" is an awareness on the part of the person concerned indicating his state of mind. "Reason to believe" is another fact of the state of mind. "Reason to believe" is not the same thing as "suspicion" or "doubt" and mere seeing also cannot be equated to believing. "Reason to believe" is a higher level of state of mind. Likewise "knowledge" will be slightly on higher plane than "reason to believe". A person can be supposed to know where there is a direct appeal to his senses and a person is presumed to have a reason to believe if he has sufficient cause to believe the same. "Reason to believe". A person is said to have 'reason to believe' a thing, if he has sufficient cause to believe that thing but not otherwise". What it means is that a person must have reason to believe if the circumstances are such that a reasonable man would, by probable reasoning, conclude or infer regarding the nature of the thing concerned. Such circumstances need not necessarily be capable of absolute conviction or inference; but it is

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sufficient if the circumstances are such creating a cause to believe by chain of probable reasoning leading to the conclusion or inference about the nature of the thing. These two requirements i.e. "knowledge" and "reason to believe" have to be deduced from various circumstances in the case.

23. In the light of the above observation of the Hon'ble Apex Court if the factual aspect in the present case is taken into consideration, the evidence laid by the prosecution i.e. evidence of PW-1 Vimal Meshram who deposed vide Exh.13 and who proved Exh.14 and 15. The mark-sheet Exh.15 wherein it by bare eyes it reveals that marks 10 by overwriting the same converted as 18, whereas the application form Exh.16 is also proved by the witness. As far as the FTR Exh.21 accused No.1 had secured only 10 marks in the compulsory English in revaluation against the Roll No.1655. Before revaluation, she has secured only 5 marks in English and its FTR is at Exh.21. Thus, the evidence of PW-1 is also supported by Exhs.21 and 22. It is further corroborated by PW-2 Deorao Kumbhare, Deputy Registrar Examination and PW-3 Anandrao Bankar, Assistant Registrar of Revaluation of Nagpur University. The notification Exh.36 is also on record which also sufficiently shows that the overwriting in the said notification and marks 10 are converted into marks 30.

24. In substance, the evidence on record sufficiently shows that there is a tampering of the mark-sheet. The said tampering is also proved by the prosecution on the basis of concerned document i.e. Exhs.15, 21, 22, 36 and 37. The accused is also charged for the offence punishable under Sections 467 and 468 of the IPC. Section 467 of IPC relates to the forgery of such documents as valuable securities and of other documents mentioned. Section 468 of the IPC deals with the forgery for the purpose of cheating. The offence is complete as soon as there was forgery with a particular intent. Section 420 of the IPC deals with cheating and dishonestly inducing delivery of property. The offence of cheating is made of two ingredients. Deception of any person and fraudulently or dishonestly inducing that person to deliver any property to any person or to consent that any person shall retain any property. To put it differently, the ingredients of the offence are that the person deceived delivers to someone a valuable security or property, that the person so deceived was induced to do so, that such person acted on such inducement in consequence of his having been deceived by the accused and that the accused acted fraudulently or dishonestly when so inducing the person. To constitute the offence of cheating, it is not necessary that the deception should be by express words, but it may be by conduct or implied in the nature of the transaction itself.

25. The intention is an essential ingredient to constitute the offence of abetment, it has to be shown that the accused had a fraudulent dishonest intention at the time of committing the offence. Thus, as far as the offence under Sections 420, 467, 468 and 471 of IPC are concerned, it is proved that accused No.1 forged the documents intending to use for the purpose of cheating and she also used them as genuine, and therefore all the offences are proved against her.

26. The Hon'ble Apex Court in the case of **A. S. Krishnan & Anr.Vs.State Of Kerala** referred supra observed that use of forged mark sheet for securing admission in medical college, such types of crimes deserve no leniency and deterrent punishment is necessary. It is observed by the Hon'ble Apex Court that in a case when students use forged mark sheets to obtain admission thereby depriving eligible candidates to get seats and that too in a medical course. The leniency or undue sympathy will be misplaced and actually result in miscarriage of justice. It is further observed that such types of crimes deserve as a matter of fact, deterrent punishment in the larger interests of society. If at all, the case calls for severe punishment.

27. In view of the above observation of the Hon'ble Apex Court as offence punishable under Section 468, 471 and 420 is made out against the present accused No.1, and therefore, no

interference is called for as far as the punishment imposed by the learned trial Court and confirmed by the Appellate Court is concerned.

28. Now coming to the role of the applicants/accused Nos.2 and 3 are concerned. The evidence on record shows that the accused No.2 was serving as Principal and accused No.3 was serving as Clerk in the Aniket College of Social Work. The evidence on record shows that they were charged with the duty to verify the documents attached to the examination form, but they certified falsely that they inspected the documents and found accused No.1 qualifying for admission to the examination and thereby they aided accused No.1 in using forged document as genuine for securing admission to the examination. If the evidence of PW-4 is considered it shows that the accused No.2 was In-charge Principal since 1997. Exh.16 examination form of BSW part-III bears the signature of accused No.2 Principal at three places and also bears the stamp of his College. Exh.37 bears the signature of accused No.2 Principal at the rear side. It is a copy of notification issued by the University. Supplementary form of examination filled by the accused No.1 is at Exh.94 along with the Exh.94 there is an admission card which is at Exh.95. There is one mark-sheet of Summer 1997 BSW part-II of accused No.1 attested by the accused No.2 Principal and it is at Exh.96. The original receipt of the

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examination fees issued by the College is at Exh.97. There is one mark-sheet photocopy submitted by the accused No.1 attested by accused No.2 Principal. The admission form of BSW-I of the accused No.1 is also on record, it bears the signature of Smt. S.P. Badge, who was the Principal and also signed at the time of seizure by accused No.2.

29. Thus his evidence shows that the accused No.1 has submitted the examination form as per the duty allotted. It has to be accepted by the accused No.3, who also received the examination fees from accused No.1. The accused No.3 after receipt of the said form along with mark-sheet and certificate has to verify the forms and certificates and mark-sheet attached to it and thereafter he has to place before it to the Principal. In the examination form there is declaration that examination form and the documents are verified by the Principal and the accused No.2 had signed the said declaration at Exh.16. The examination form along with documents have been sent to the Nagpur University by the Principal. The cross-examination of this PW-4 shows that whenever admission form is submitted it is to be verified by the admission clerk and if he is having any difficulty or problem he has to approach to the Superintendent. He also admitted that after checking the form by him it was sent to the Principal. The cross-examination further shows that on bare reading of the

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notification, scoring, overwriting and tampering is visible. After seeing the notification, scoring, tampering and overwriting were noticed in the notification by him. He further admits that after noticing the tampering in the notification the admission form was sent to the Principal. He further admits that after checking the form by the clerk and by him, the Principal thought that everything was complied and hence, he signed on the same. He further admits that the form was placed before the Principal after checking the same and then the provisional admission was given. He admitted that when the University found that the notification is tampered, overwriting and scoring, then it was intimated to the College and accordingly the Principal cancelled the admission of the accused No.1. He further admits that after receiving the admission form, there is a procedure which is not followed in this College and form was not checked and it was forwarded.

30. Thus, the evidence of PW-4 shows that the clerk has to verify the form thereafter he has to re-verify the same and thereafter it is to be forwarded to the Principal. Considering the evidence on record, admittedly there is no allegation that applicants/accused Nos.2 and 3 have forged the documents Exhs.15 and 36. Only allegation against the present accused Nos.2 and 3 is that they have not verified and without verifying the same, they have endorsed the certificate that they have verified the same and

found to be correct. As without verifying and scrutinizing the document they have endorsed, and therefore, it is alleged against them that they have aided the accused No.1 in forging the documents and forwarding the same to the University.

31. To charge someone on the charge of the abetment, the prosecution must prove that the accused played the role in said abetment. Section 107 of IPC explains to attract the abetment, the accused has to either encourage the individual or to do the act which would come with the purview of aid. Instigation is to goad, urge forward, provoke, incite or encourage to do "an act". The dictionary meaning of the abetment shows there should be intention to provoke incite or encourage the doing of an act by the said person. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid the conviction or abetment is not maintainable. The intention of the legislature and the ratio of the cases decided by this Court are clear that in order to convict a person for abetment there has to be a clear *mens rea* to commit the offence. It also requires an active act or direct act which led the other accused to commit an offence. This act must have been intended to push the accused in committing such act.

32. In order to bring a case within the purview of Section 107 of IPC, there must be an evidence to show that the person have abetted the commission of offence and have played an active role by an act of instigation or aiding or by doing certain act to facilitate the commission of the said offence. Therefore, the act of abetment by the person charged with the said offence must be proved and established by the prosecution. Thus, the requirement under Sections 107 and 108 of IPC is a positive act on the part of the accused to instigate or aid in committing the offence by the other accused and in the absence of the same, the conviction cannot be sustained. There has to be a clear intention to commit the offence. The test which is to be applied is that on the basis of the material or evidence on record it is to be ascertained whether there is anything to indicate even *prima facie* that the accused intended to commit said act. To attract the provisions what is to be shown is that the accused have actually instigated or aided to the another co-accused in committing the said act. There must be direct or indirect nexus between the act of the accused as to the abetment and the act of the other accused who committed the said offence. In the light of above well settled legal position, if the evidence in the present case is appreciated, the evidence of PW-1 shows that it was the duty of the accused Nos.2 and 3 to verify the documents filed by the accused No.1 and thereafter forward the same to the University, which is not done by the accused Nos.2 and 3. The

cross-examination on behalf of accused Nos.2 and 3 also shows that it was the accused No.1, who had misutilized the mark-sheet and the notification by sending the examination form to the University. It further shows that the notification of result of revaluation was directly sent to the concern student. The evidence of PW-2 Deorao Satbaji Kumbhare, who was serving as a Deputy Registrar Examination in Nagpur University also states about the tampering of the mark-sheet and notification and the entire allegation is levelled against the accused No.1. He also deposed that the examination form received from the accused No.1, there was a tampering in the mark-sheet and the notification. His cross-examination also shows that the notification of revaluation and mark-sheet of revaluation is sent to the college and the student by the University. The evidence of PW-3 Anandrao Govindaji Bankar who works as an Assistant Registrar in Nagpur University also testified against the accused No.1 and the evidence PW-4 Sanjay Wankhede who was serving as the office Superintendent Aniket College of Social Work also shows that on bare reading of the notification the scoring, overwriting and tampering was visible. His admissions given during the cross-examination shows that initially, the clerk has to check the same, thereafter it is to be forwarded to the Superintendent and after checking the same, it is to be forwarded to the Principal. He admitted the procedure that the admission form is to be submitted and checked by the admission clerk and if he is having any difficulty

then he has to approach to the Superintendent. Though the clerk takes this admission form to the Principal to obtain the signature before obtaining the signature, he has to verify all the aspects. His evidence further shows that admission form of the accused No.1 shown to him by the admission clerk, prior to sending the same to the Principal, he checked it and thereafter it was sent to the Principal. He also admitted that the Principal might have signed on it as it is verified by the accused No.3 as well as PW-4. Thus, there is no evidence to prove that the applicants/accused Nos.2 and 3 either forged the documents or aided her for making forgery of those documents, and therefore, it cannot be said that they have committed an offence under Section 468 read with Section 109 of IPC. The offence of abetment is also not made out against the accused Nos.2 and 3. At the most, it can be negligence or dereliction in duties, which is assigned to them. No criminal intent can be attributed to them. Therefore, even if taking the allegation as it is at its face value it cannot be said that the allegation would amount to instigating or aiding the applicant/accused No.1 to commit the offence. There is no reasonable nexus between the present accused No.1 and accused Nos.2 and 3. At the most, it is the negligence which can be attributed against the accused Nos.2 and 3, therefore, the conviction recorded by both the Courts against the accused Nos.2 and 3 is liable to be quashed and set aside. Accordingly, I proceed to pass following order:

(27)

ORDER

- (i) Criminal Revision No.75/2019 is **allowed**.
- (ii) The impugned judgment passed by the 2nd Additional Chief Judicial Magistrate, Nagpur in Regular Criminal Case No.334/2002 and confirmed by the Additional Sessions Judge-12, Nagpur in Criminal Appeal No.100/2007 is hereby quashed and set aside.
- (iii) The applicants/accused Nos.2 and 3 are hereby acquitted from the charges punishable under Sections 420, 468 and 471 read with Section 34 of the Indian Penal Code.
- (iv) The accused Nos.2 and 3 shall surrender their bail bonds.
- (v) The accused Nos.2 and 3 are set free.
- (vi) Criminal Revision Application No.78/2019 is **dismissed**.
- (vii) The applicant/accused **No.1 Vandana d/o Laxmanrao Jumde** shall surrender herself before the trial Court within four weeks from today.
- (viii) The record and proceeding of the Regular Criminal Case No.334/2002 shall be sent to the lower Court forthwith along with the copy of the judgment.

Both the revisions applications are disposed of.

(URMILA JOSHI-PHALKE, J.)