# A.S. Krishnan And Anr vs State Of Kerala on 17 March, 2004

## Equivalent citations: AIR 2004 SUPREME COURT 3229, 2004 (11) SCC 576, 2004 AIR SCW 3066, 2004 CRILR(SC MAH GUJ) 511, 2004 (2) BLJR 849, (2004) 3 JT 461 (SC), (2004) 16 ALLINDCAS 21 (SC), 2004 BLJR 2 849, 2004 (16) ALLINDCAS 21, 2004 (3) SCALE 362, 2004 ALL MR(CRI) 2566, 2004 (3) ACE 332, 2004 (3) JT 461, 2005 SCC(CRI) 612, 2004 (2) SLT 965, (2004) 2 KHCACJ 195 (SC), (2004) 2 EASTCRIC 199, (2004) 2 SUPREME 508, (2004) 2 ALLCRIR 1478, (2004) 3 SCALE 362, (2004) 2 ESC 281, (2004) 2 CRIMES 317, (2004) 2 RECCRIR 312, (2004) 2 CURCRIR 124, (2004) 48 ALLCRIC 953, (2004) 2 CHANDCRIC 133, (2004) SC CR R 1118, 2004 CRILR(SC&MP) 511, (2004) 28 OCR 113, (2004) 2 ALLCRILR 797

## Author: Arijit Pasayat

## Bench: Doraiswamy Raju, Arijit Pasayat

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           CASE NO.:
Appeal (crl.)  916 of 1997

PETITIONER:
A.S. Krishnan and Anr.

RESPONDENT:
State of Kerala

DATE OF JUDGMENT: 17/03/2004

BENCH:
DORAISWAMY RAJU & ARIJIT PASAYAT

JUDGMENT:
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J U D G M E N T ARIJIT PASAYAT,J The appeal presents a strange scenario where the accusation is that appellant No.2, a doctor doctored documents so that his son appellant No.1 would get admission to a medical college and become a doctor. Allegations were to the effect that they manipulated mark sheets and on the basis of forged mark sheets he got admission which otherwise would not have been available to him. The mark sheets related to the two pre-degree examinations of the Kerala University conducted in 1978-79 and 1979-80, for two years i.e. Ist and IInd year respectively. They faced trial with two others. For the sake of convenience they are described as A-1 and A-2 and the other two who were acquitted as A-3 and A-4.

Prosecution version as unfolded during trial is essentially as follows:

A-1 is the son A-2, who was running a nursing home at Ernakulam during the relevant period and A-4 was an Assistant Registrar, Examination Wing, Kerala University. A- 1 was a Pre-degree student during the academic years 1978-79 and 1979-80 in the Mar Ivanios College, Thiruvananthapuram, affiliated to the Kerala University. He appeared for the first year Pre-degree examination in April, 1979 and for second year Pre-degree examination in April/May 1980. After the second year examination, A-1 got following marks as indicated in the mark list issued by the Mar Ivanios College:

English : 204/300 Hindi : 109/150 Physics : 127/150 Chemistry : 131/150 Biology : 129/150 Grand total : 700/900 Total for the optional subjects, viz. Physics, Chemistry and Biology was 387 out of 450. The above mark list issued by the Kerala University to A-1, through Mar Ivanios College, Thiruvanthapuram was received by both the appellants with their acknowledgement in the mark lists kept in the college. As both appellants were aware that the marks secured by the A-1 were insufficient to get an admission in any medical college for the first year MBBS course in Kerala on merit, they entered into a criminal conspiracy along with A-3 and A-4 on some day between 30.6.1980 and 10.10.1980 for forging a mark list showing higher marks and pursuant to such conspiracy A-4 in the case procured a blank mark list of Pre-degree examination and by fraudulent means and without the knowledge and authority of the Controller of Examinations (PW-1) got the impression of the facsimile signature of PW-1 and the University emblem seal affixed on the blank mark list form. A-4 wrote in his own handwriting falsely and fraudulently the following marks in the forms to have been secured by A-1 in the Pre-degree final year examination:

English : 204/300 Hindi : 109/150 Physics : 142/150 Chemistry : 140/150 Biology : 138/150 Grand total : 733/900 In addition total of 420 marks out of 450 marks was shown for the optional subjects, viz. Physics, Chemistry and Biology. A-4 forged the initials of the concerned section assistants, who actually prepared the true mark list issued through Mar Ivanios College and received by A-1 and A-2. A-4 also attested a true copy of the mark list (Ext.P27). He forged with his designation and seal and entrusted both the forged mark list and its true copy attested by him (Ext.P27) to A-1 and A-2. Ext.D-4 is the forged mark list. A-1 and A-2 thereafter prepared an application form for admission to a medical college during the year 1980-81 with their signatures by incorporating the marks found in Ext.D-4, the forged mark list fully knowing the forged nature of Ext.D-4 and forwarded such application together with the attested true copy Ext.P-27 of Ext. D-4 to the medical college, Thiruvanthapuram with the fraudulent intention to make the concerned authorities to believe that the marks shown in the application are the real marks obtained by A-1 and thereby cheated the selection committee and obtained admission for the first year M.B.B.S. course on merit basis. Appellants with the intention of causing disappearance of the evidence of commission of the crime destroyed the true genuine mark list/the true copy of which is marked as Ext.D-8 in this case received by them from Mar Ivanios College and thus the appellants and the other acquitted accused

committed the alleged offences. A-3 was an associate of A-2.

Information was lodged with the police. Investigation was undertaken and on completion thereof charge sheet was filed indicating commission of offence punishable under Sections 120B, 466, 468 and 471 of the Indian Penal Code, 1860 (in short the 'IPC') read with Section 34 IPC. The case was tried by the Special Court for trial of Mark list Cases, Trivandrum. Sixty three witnesses were examined and 65 documents were marked. The accused persons pleaded innocence, examined one person as DW-1 and exhibited documents. The trial Court found that the accusations were established so far as A-3 and A-4 were concerned. It held the appellants A-1 and A-2 guilty of offences punishable under Sections 471, 420, 120B and 201 read with Section 34 IPC and sentenced to suffer imprisonment for one year and two years for the offence under Sections 471 and 420 respectively and six months each for the charge under Section 120B and 201 read with Section 34 IPC. The accused appellants were acquitted of the charges of the offence under Sections 467 and 468 IPC. By the impugned judgment the High Court found that the conviction was in order so far as the offences relatable to Sections 471, 420 read with Section 34 were concerned, but set aside the conviction for the offences punishable under Sections 120B and 201 IPC. Custodial sentence was reduced to three months each for the offences punishable under Section 471 and 420 read with Section 34 IPC.

In support of the appeal Mr. U.R. Lalit, learned senior counsel submitted that after the acquittal of A-3 and A-4 who were primarily alleged to be responsible for the forgery, conviction cannot be maintained so far as the appellants are concerned. A-4 had given not only the alleged forged mark sheet but also himself attested a copy thereof. There was no reason for the present appellants to suspect the correctness thereof. There was specific charge of conspiracy relating to forged mark sheet and to commit an illegal act. The forgery was alleged so far as A-4 is concerned. Sections 463 to 471 require as an essential ingredient the existence of a forged document and use thereof. It cannot be said that the document in question is a forged document. The father (appellant No.2) took a document from A-4 and handed it over to A-1 who used it. The son (A-1) could not have entertained doubt that the document handed over to him by the father was a forged one. Unless there is conspiracy or common intention, Section 34 would have no application. Even in the instant case, charge of offence punishable under Section 201 was set aside and there was acquittal of the charges relatable to Sections 467 and

468. The document cannot be said to be a forged one and when charges of forgery were not established, there was no question of a forged document being there. On hypothetical basis the High Court has proceeded to conclude that the document was forged as it attributed knowledge of the forgery and manipulation of the documents to the appellant.

All non-genuine documents are not forged. They must be covered by the conditions indicated in Sections 463 and 464. There is no mens rea involved. Unless the part allegedly played by A-4 is established, there cannot be a forged document. The prosecution has failed to prove the minimum requirements of law. It is a case of prosecution having not proved its case. Even if it is assumed that the document was forged, A-1 cannot be said to have knowledge or to have used it fraudulently or dishonestly. There must be a reason to believe that it was a forged one. The expression 'reason to believe' is defined in Section 26 IPC. When the facts of the case in the background of Section 26 are noted, it cannot be said that the appellants had reason to believe that the document was forged. The expression used is 'reason to believe' and not 'reason to suspect' which are conceptually different. When the documents were handed over by A-4, there was no scope for either A-2 or A-1 entertaining any doubt, because the source from which the document came is that of Assistant Registrar who is authorised to issue the certificate. The criminal intent is totally eliminated by he factual scenario. The natural reaction would have been to believe the document to be correct. No knowledge can be attributed to A-1 when the forgery or alleged conspiracy is not established. When charge of conspiracy has been not held to be proved, the knowledge cannot be traced to the accused persons. Since no conspiracy has been found in A-1 and A-2, by necessary implication Section 34 is eliminated. Even otherwise, the incident took place more than quarter of a century back when A-1 was a student and aged about 17 years, and this is a fit case for extending the benefit under the Probation of Offenders Act 1958, (in short the 'Probation Act').

In response, learned counsel for the State submitted that clean and cogent evidence show that the actual mark sheets were received by appellant no.1 from the college. There is no evidence to show that he had applied for re- valuation for the second year. The procedure to be adopted for seeking re-valuation is admittedly known to the appellant, because A-1 had applied for the previous year. The result on revaluation was communicated so far as first year is concerned. The High Court has analysed the evidence to show that as required in the declaration form A-2 had signed the application. Therefore, it cannot be said that neither A-1 nor A-2 had any knowledge about the forgery. It has been conceded before the High Court that Exh.D-4 was a forged document. Even if A-3 and A-4 have been acquitted and/or conspiracy has not been established, charge under Section 471 does not get affected.

Certain factual aspects need to be noted in the present case. Though criticism was levelled against the analysis made by the High Court to find out how on the basis thereof it was held that the document was forged one, we find no substance therein. It was clearly conceded before the High Court that D-4 was a forged document. What was urged before the High Court was that even if it is forged, the appellants had not used it deliberately or intentionally as a forged document. A comparison of the mark sheet filed by A-1 with the marks register shows great variance. The High Court has noticed that the appellants had asked for revaluation of the first year pre degree answer sheets as they were not satisfied with the marks shown in the mark list and claiming that A-1 should have obtained more marks. Evidence was let in by the prosecution to indicate that in Part II Examination, optional subjects are there and the subjects are Physics, Chemistry and Biology and the maximum one can get in one of the above optional subjects is 150 marks and 45 marks were required to be obtained to pass. Part I consists of English and language other than English. As noticed by the High Court, Part II (optional subjects) each subject consists of Paper I, Paper II and

practical. The examination for Paper I is conducted in the first year, where A-1 appeared in 1979. Paper II is written in the second year of the course and A-1 undisputedly appeared in the year 1980. The total marks of 150 are split as follows:

> Paper I (Ist year) 40 marks Paper II (2nd year)60 marks Practicals 50 marks It has not been disputed by the appellants that the marks obtained by A-1 in the first year for Paper I were known. What they had done was to ask for revaluation. A-1 had obtained 24, 33 and 35 marks in Physics, Chemistry and Biology (as evidenced by Ext. P2). There is no provision for seeking revaluation for practical examination and it is only restricted to theory papers. Unless one knows the marks secured in a particular examination, the question of seeking revaluation does not arise. Though a claim was made that the result of revaluation was not known so far as Ist year is concerned, the evidence on record clearly proves to the contrary. In the communication relating to results of revaluation it had been clearly indicated that there was no change in the marks. Obviously, the marks shown in excess of the actual in Exh.D-4 can be related to Paper II. The excess marks are 33, i.e. 15, 9 and 9 in Physics, Chemistry and Biology respectively. As per Exh. D-4 the marks indicated are 142, 140 and 138 for the aforesaid three subjects. The High Court has taken pains to analyse that for the second year in respect of Paper II the maximum marks are 60 in the aforesaid three subjects. If by way of illustration, Physics marks are taken, originally before revaluation the mark secured by A-1 was 55 and if excess 15 marks are added to it, as the allegedly forged document shows the total comes to 70 marks. If the total marks for a paper are 60, there cannot be even a shadow of doubt that A-1 could not have secured 70 marks. Similar is the case of Biology, where the marks would be 61 against a total maximum marks of 60. Of course in Chemistry 59 marks are shown as against maximum 60 marks. If a student gets cent percent marks in paper II in each subject the total would come to 180, whereas on the basis of D-4 it comes to 190. This impossible difference would have attracted notice of A-1 and A-2. They are not illiterate persons. As claimed by learned counsel for the appellants, A-1 was a brilliant student and A-2 was a reputed doctor and that they would miss this simple aspect in mark list is not only possible, to believe, but also would be against normal human experience. The High Court also on the basis of evidence tendered by PW-60, came to conclude that in the first year for Paper I the total marks secured by A-1 was 92 and practical marks were 138. Even if it is conceded for the sake of arguments, as submitted by learned counsel for the appellant, that A-1 secured cent percent marks in Paper II the total marks would have come to 92+138+180 which would make a total of 410, and not 420 as Ext.D-4 shows.
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> Another interesting feature has been noticed by the High Court to show how it would have been impossible for A-1 and A-2 to overlook something tainted appearing to even naked eyes. Exh.D-4 is dated 30.6.1980. It was not disputed before the High Court that the results were published for the first year degree course on 30.6.1988. If the results were published on 30.6.1980, Exh.D-4 which is purported to have been drawn up after revaluation could not have indicated a date seal of 30.6.1980. These

factors clearly go to show that A-1 and A-2 had sufficient knowledge that there was forgery and they had used the document knowing it to be forged. The pretended ignorance stood belied and self condemned on the indisputable materials on record. The plea of innocence as presently advanced has no substance.

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, as long as the fact that the document used stood established or proved to be a forged one. The act or acts which constitute the commission of the offence of forgery are quite different from the act of making use of a forged document. The expression 'fraudulently and dishonestly' are defined in Sections 25 and 24 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.

Under the IPC, guilt in respect of almost all the offences is fastened either on the ground of "intention" or "knowledge" or "reason to believe". We are now concerned with the expressions "knowledge" and "reason to believe". "Knowledge" is an awareness on the part of the person concerned indicating his state of mind. "Reason to believe" is another facet 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 mine. 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. Section 26 IPC explains the meaning of the words "reason to believe" thus:

26 - "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."

In substance 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 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. (See Joti Parshad v. State of Haryana (AIR 1993 SC 1167) As noticed by the High Court in great detail, the factual position leaves no manner of doubt that the accused appellants had not only the knowledge, but also had reason to believe that the document was a forged one before they used it.

Acquittal of some of the co-accused from the charge of conspiracy cannot really affect the accusations under Section 471 IPC. In Madan Lal v. The State of Punjab (AIR 1967 SC 1590) two persons were tried for alleged commission of offences punishable under sections 409, 465, 477-A and 120B IPC. Though the accusations under Section 120B were set aside, the High Court confirmed the conviction under Section 409 simpliciter. A contention was raised before this Court that if the charge relating to criminal breach of trust was along with the charge of conspiracy, conviction simpliciter for criminal breach of trust would not be valid. This Court held that if the charge of conspiracy is followed by substantive charge of another offence there is nothing to prevent the Court convicting an accused for the substantive charge even if the prosecution had failed to establish conspiracy. Looked at from any angle the judgment of the High Court does not suffer from any infirmity to warrant interference.

So far as the question of sentence is concerned, we find that the High Court has already taken a liberal view so far as A-2 is concerned. In a case when students use forged mark sheets to obtain admission thereby depriving eligible candidates to get seats and that too to a medical course and a doctor is involved in the whole operation, uncalled for leniency or undue sympathy will be misplaced and actually result in miscarriage of justice. 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. We find no substance in the plea relating to sentence or extending the benefits of the Probation Act. The appeal fails and is dismissed.