

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

CRIMINAL APPLICATION NO.83 OF 2020

**ABHAY S/O. RAMESHLAL GUNDECHA
VERSUS
THE STATE OF MAHARASHTRA AND ANR**

Mr. G. G. Kadam, Advocate for the applicant
Mr. P. G. Borade, APP for the respondent/State
Mr. N. B. Khandare, Advocate for respondent No. 2.

**CORAM : SMT. ANUJA PRABHUDESSAI AND
R. M. JOSHI, JJ.**

DATE : 12th JANUARY, 2023

PER COURT :-

1. Learned counsel for the applicant seeks leave to amend the prayer clause B-1 as to mention the number of criminal case as well as the Court before which the charge-sheet has been filed. Leave granted. Amendment to be carried out forthwith.

2. With consent, heard learned for the petitioner, learned APP for the respondent/State and learned counsel for respondent No. 2, finally at the stage of admission.

3. This is an application under Section 482 of the Code of Criminal Procedure to quash FIR No. I-66/2018 registered at Bhingar Camp Police Station, Ahmednagar and consequent R.C.C. No. 336 of 2020 pending on the file of 5th JMFC, Ahmednagar for the offences under

Section 464, 466 and 471 of the IPC.

4. The records reveal that the proceeding under the D.V. Act (Cr.M.A. No. 904 of 2014) filed against the applicant and his father are pending before the 8th Court JMFC, Ahmednagar. The father of the applicant, who was the opponent No. 2 in the said proceeding died during the pendency of the proceedings. On 30th January, 2018, the applicant filed an application to keep the matter in abeyance in view of the transfer application filed by him before learned PDJ, Ahmednagar. The opening para of the applications stated that "the application is being filed by the 'opponent No.2' and the words "opponent No.2" were typed below the signature. The learned Judge observed that the opponent No.2 i.e. the father of the applicant had expired and that the death certificate was already placed on record. The learned Judge held that the applicant had impersonated his father and had forged the signature of his father and issued notice to the applicant to show cause as to why criminal action should not be initiated against him.

5. The applicant filed his reply to the said notice and explained that his father i.e. opponent No.2 in the proceedings had expired and the death certificate was already on record. He further explained that due to inadvertence and typographical error the words 'opponent No.2' were typed instead of the words 'opponent No.1'. It was stated that the error

was unintentional and tendered apology. The learned Judge did not accept the explanation given by the applicant and passed the order stating that directions are already given for registration of crime. In this background the crime has been registered against the applicant for offences under Sections 464, 466 and 471 of the Indian Penal Code.

6. Learned counsel for the applicant submits that the FIR as well as the other material collected in the course of the investigation does not disclose that the applicant had forged the signature of his father or that he had created a false document and used the same as a genuine documents. He submits that the FIR and the other material collected in support of the same does not disclose essential ingredients of the offence as alleged. Hence, continuance of the proceedings would be sheer abuse of the process of the Court.

7. We have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

8. The question for our consideration is whether the uncontroverted allegations made in the FIR and the material in support thereof discloses any cognizable offence against the applicant.

9. The applicant is alleged to have committed offences under Sections 464, 466 and 471 of the IPC. It is therefore imperative to

examine the ingredients of these sections which read thus:

"464. Making a false document – [A person is said to make a false document or false electronic record -

First.- who dishonestly or fraudulently -

(a) makes, signs, seals or executes a document or part of a document;

(b) makes or transmits any electronic record or part of any electronic record;

(c) affixes any [electronic signature] on any electronic record;

(d) makes any mark denoting the execution of a document or the authenticity of the [electronic signature],

with the intention of causing it to be believed that such document or part of document, electronic record or [electronic signature] was made, signed, sealed executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or

Secondly – Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with [electronic signature] either by himself or by any other person, whether such person be living or dead at the time of such alternation; or

Thirdly – Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his [electronic signature] or any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or electronic record or the nature of the alternation.]

Explanation 1.- A man's signature of his own name may amount to forgery.

Explanation 2. - The making of a false document in the name of a fictitious person, intending it to be believed

that the document was made by a real person, or in the name of a deceased person, intending it to be believed that the document was made by the person in his lifetime, may amount to forgery.

Explanation 3.- For the purpose of this section, the expression "affixing [electronic signature]" shall have the meaning assigned to it in clause (d) of sub-section (1) of section 2 of the Information Technology, Act, 2000 (21 of 2000).

"466. Forgery of record of Court or of public register, etc.- [Whoever forges a document or an electronic record], purporting to be a record or proceeding of or in a Court of Justice, or a register of birth, baptism, marriage or burial, or a register kept by a public servant as such, or a certificate or document purporting to be made by a public servant in his official capacity, or an authority to institute or defend a suit, or to take any proceedings therein, or to confess judgment, or a power of attorney, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

[Explanation - For the purpose of this section, "register" includes, any list, data or record of any entries maintained in the electronic form as defined in clause (r) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000).']

471. Using a genuine a forged [document or electronic record]- Whoever fraudulently or dishonestly uses as genuine any [document or electronic record] which he knows or has reason to believe to be a forged [document or electronic record], shall be punished in the same manner as if he had forged such [document or electronic record]."

10. A plain reading of these provisions would indicate that 'forgery' as defined under Section 463 of IPC is one of the essential

ingredients of Sections 464, 466 and 471 of IPC.

11. In ***Sheila Sebastian Versus R. Jawaharaj and Another*** reported in **(2018) 7 SCC 581** the Hon'ble Supreme Court has held thus:

"19. A close scrutiny of the aforesaid provisions makes it clear that, Section 463 defines the offence of forgery, while Section 464 substantiates the same by providing an answer as to when a false document could be said to have been made for the purpose of committing an offence of forgery under Section 463 IPC. Therefore, we can safely deduce that Section 464 defines one of the ingredients of forgery i.e. making of a false document. Further Section 465 provides punishment for the commission of the offence of forgery. In order to sustain a conviction under Section 465, first it has to be proved that forgery was committed under Section 463, implying that ingredients under Section 464 should also be satisfied. Therefore unless and until ingredients under Section 463 are satisfied a person cannot be convicted under Section 465 by solely relying on the ingredients of Section 464, as the offence of forgery would remain incomplete."

12. In the instant case, it is not in dispute that the father of the applicant, who was arrayed as 'opponent No.2' had expired during the pendency of the D.V. proceedings. The applicant had himself placed on record the death certificate of his father and there was thus no question of impersonating him. It is also not in dispute that the applicant had not forged the signature of his father but he had himself signed the application, purported to have been filed on behalf of his father (opponent No.2). The applicant had not made any false document with

intent to cause damage or injury to any person and for any other reason specified in Section 463 IPC. It is also not the case of the prosecution that the applicant had made the application on behalf of the opponent No.2 with an intent to defraud or deceive any person. It is apparent that a mere typographical error has been construed as 'forgery' to initiate criminal proceedings on such basis is a much ado about nothing.

13. Having gone through the entire records, in our considered view, the uncontroverted contents of the FIR and the other material collected in the course of the investigation does not disclose any offence as against the applicant. Hence this is a fit case to exercise discretion under Section 482 of Cr.P.C. to prevent abuse of the process of law.

14. In the result, the application is allowed in terms of prayer clause B-1. Consequently FIR No. 66 of 2018 registered at Bhingar Camp Police Station, Ahmednagar and R.C.C. No. 336 of 2020 pending on the file of 5th JMFC, Ahmednagar stands quashed.

(R. M. JOSHI, J.)

(SMT. ANUJA PRABHUDESSAI, J.)

ssp