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IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL WRIT PETITION NO. 120 OF 2023.

1. Jose Santano Brigido Pires,
66 years of age, Indian National,
R/o H. No. 827 B, Camotim
Vaddo, Candolim, Bardez, Goa.
2. John Francisco,
68 years of age, Indian National,
R/o H. No. 827 B, Camotim
Vaddo, Candolim, Bardez, Goa.Petitioners.

Versus

State of Goa
(Through P.I., Ribandar
Crime Branch Police Station)Respondent.

Ms. Asha Desai, Advocate for the petitioner.
Mr S. G. Bhobe, Public Prosecutor for the respondent.

CORAM: BHARAT P. DESHPANDE, J

DATE : 2nd July 2024.

ORAL JUDGMENT :

1. Rule. Rule is made returnable forthwith.
2. Matter is taken up for final disposal at the admission stage itself with consent of the parties.
3. The challenge in the present petition is to the order passed by the learned Magistrate and thereafter by the learned Additional Sessions Judge observing that there is prima facie material to frame

charge against the petitioners for the offence punishable under Sections 468, 471, 420 read with Section 34 of the IPC.

4. Ms Desai appearing for the petitioners would submit that complaint was lodged by the Member Secretary of the Goa Coastal Zone Management Authority (“GCZMA” for short) in connection with an alleged forged letter dated 30.6.2005, used as genuine document for the purpose of obtaining relevant permissions. Accordingly First information was recorded from 30.8.2010 wherein present petitioners along with other two officers of GCZMA were made accused. The learned Magistrate while passing the impugned order dated 29.11.2018, discharged the accused nos. 3 and 4 however, directed that the charges be framed against the original accused nos. 1 and 2/petitioners herein for the offence punishable under Sections 468, 471, 420 read with Section 34 of IPC.

5. Ms Desai would submit that petitioners applied for no objection certificate from GCZMA and accordingly a letter was issued to them which is dated 30.6.2005. She submits that said letter was produced by the petitioners before the concerned authority for conversion of land bearing survey no.150/3/A of Candolim. Complaint was lodged by one lady claiming that illegal construction is going on in the property belonging to the present petitioners and under Right to Information Act she obtained a letter issued by GCZMA. Thereafter show cause notice was issued to the petitioners

and in reply to such show cause notice, petitioners produced a letter dated 30.6.2005 which contains only one paragraph whereas the letter issued to the lady who filed a complaint contains two paragraphs having same outward number. On observing such discrepancies in the letter issued by GCZMA, the Member Secretary filed his complaint before the Crime Branch alleging that both the letters were forged and accordingly an offence was registered.

6. Ms Desai would submit that signatures of the petitioners were obtained during investigation and forwarded to handwriting experts along with alleged forged documents. The report from the handwriting expert is inconclusive. She submits that only on the basis of the reply filed by the petitioners to the show cause notice issued by GCZMA and producing a copy of letter dated 30.6.2025 containing one paragraph, offence is registered against the petitioners.

7. Ms Desai would submit that learned Magistrate as well as learned Additional Sessions Judge observed that it is for the petitioners to prove that documents are not forged. She submits that putting such burden on the accused at this stage is clearly an error on the part of the concerned authority since it is for the prosecution to prima facie prove that there is grave suspicion of commission of the offence by the petitioners. Petitioners were not required to prove anything at the said stage and therefore putting such burden is clearly

against the said proposition of the law.

8. Ms Desai would further submits that both the format of the letters dated 30.6.2005 were found in the hard disk attached from the office of the GCZMA and that there was only one computer which was used by all the staff members for carrying out official work. She would further submit that even the allegations against the then Member Secretary are not proved or established and therefore, he along with other staff members as accused nos.3 and 4 were discharged.

9. Ms Desai further submits that ingredients of Sections 468, 471 and 420 are not made out as against the petitioners and therefore, there is no material even to frame charges against them.

10. Mr Bhobe appearing for the State would submit that the only material collected by the Investigating Agency is the hard disk wherein both the drafts of the same letter were found in the hard disk. He fairly submits that signatures on the alleged documents are not found conclusive as that of the original accused no. 3 and even the material regarding the present petitioners from the handwriting expert is inconclusive. The only material in the present chargesheet is that petitioners used this letter for the purpose of conversion of land and then obtaining permissions.

11. Rival contentions fall for determination.

12. Section 468 reads thus:-

“Forgery for purpose of cheating-Whoever commits forgery, intending that the document or electronic record forged shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

13. Section 471 provides that using as genuine forged document and states that 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.

14. Section 463 of IPC defines “**Forgery**” wherein it provide that whoever makes any false document or false electronic record or part of a document or electronic record, with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.

15. Section 464 of IPC deals with making a false document and provides that a person is said to make a false document or false

electronic record, firstly, 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.

16. Present chargesheet which was filed against the petitioners and other accused persons would go to show that allegations are against all the accused persons and that with respect to alleged documents in question. The main allegation in paragraph 12 of the chargesheet would go to show that all the accused persons with common intention prepared forged letters dated 30.6.2005 bearing No.GCZMA/N/474/889 having signature in the name of Dr. N. P. S. Varde, Member Secretary of GCZMA pertaining NOC for conversion of land under survey no.150/3/A of Candolim, village Bardez Taluka in the name of accused persons and produced the same as genuine in the office of the GCZMA in the reply to the show cause notice issued to derive undue advantage thereby cheated GCZMA.

17. Mr Bhobe, fairly admitted that reply filed by the petitioner nos.1 and 2 to the show cause notice is not part and parcel of the chargesheet though show cause notice is found on record.

18. Learned Magistrate while passing the impugned order, observed that accused no.3 who was the Member secretary could not have forged his own signature. Similarly accused no. 4 being the draftsman working in the GCZMA was also discharged.

19. Mr Bhobe fairly submitted that the order of discharge of accused nos. 3 and 4 by the learned Magistrate was not challenged. Thus it goes to show that allegation in the chargesheet against all the four accused persons is not even prima facie proved. When accused nos. 3 and 4 were discharged, material available against the petitioners is with regards to forgery and using forged documents as genuine. Though show cause notice was issued to them by GCZMA, it is the fact that drafts of both these letters were admittedly found in the hard disk of the computer used in the office of GCZMA.

20. It is no doubt true that the signature of the accused no.3 , then Member Secretary, on the said letter is not found conclusive by the handwriting expert. Thus, it cannot be positively said that the signature appearing on the said letter is forged one or not of accused no. 3 who was working as Member Secretary at the relevant time. Once the report is inconclusive, it is to be considered in both ways. It

cannot be said that the signature appearing on the document is only forged. The other possibility that the signature is a genuine one cannot be ruled out. In such circumstances, the Investigating Agency first of all failed even prima facie to show that the letter is a forged document. In such circumstances, the question of making allegation against the petitioners that they knew that it was a forged document could not be arrived at this stage. It was also required to note that even the Investigating Agency is not sure whether the letter is a forged document and in fact it contains a forged signature of original accused no.3.

21. As rightly pointed out by Mr Bhobe that there are two documents having the same outward number wherein the first letter/document contains two paragraphs. Second document/letter contains only one paragraph. Admittedly drafts of both these letters/documents are found in the hard disk of the computer maintained by GCZMA. Thus, it is conclusive proof that such letters/documents were typed and the drafts were maintained in the said computer by the members of the said department. It is also brought on record that there was only one computer at the relevant time and all the staff members were using the same computer. Statements of stenographer and other staff members nowhere show as to who typed the said document/draft and saved it in the hard disk. It is also not established as to who took out the print by

mentioning the name of the present petitioners with the outward number. Thus, the contention of the prosecution that the petitioners had knowledge that it is forged documents and they used it as genuine, is not at all established and more so with grave suspicion.

22. Ms Desai would submit that such letter was produced by the petitioners along with their reply to the show cause notice would clearly go to show that the petitioners were also of the opinion that said document is a genuine one. If they had a knowledge of forgery or forged document, they would not have placed it on record along with their show cause notice.

23. Be that as it may, the fact remains that the reply filed by the petitioners to the show cause notice is not part of the chargesheet and thus considering such an aspect as an admission on the part of the petitioners, as observed by both the Courts, is perverse finding. Document which is not part of the chargesheet could not have been considered as an admission of the accused thereby shifting the burden on them to prove otherwise. Such procedure adopted by the Courts below is clearly against the settled proposition of law as far as criminal jurisprudence is concerned. The Investigating Agency and the prosecution is duty bound even at the stage of framing of charge to show to the Court that there is grave suspicion against the accused persons. The matter in hand clearly goes to show that except the reply of the petitioners to the show cause notice which is not even a part of

the chargesheet, there is no other material to even point finger against the petitioners for the offence and using such a document as genuine.

24. Learned Magistrate as well as learned Additional Sessions Judge, failed to consider these aspects and arrived at incorrect findings/observations. Both these orders therefore need interference.

25. The impugned order passed by the learned Magistrate dated 29.11.2018 and the impugned order passed by the learned Additional Sessions Judge dated July 2023 specifically directing to frame charges against the petitioners are hereby quashed and set aside. Accordingly, both the petitioners are discharged for the offence punishable under Sections 468, 471 and 420 read with Section 34 of IPC.

26. Rule is made absolute in the above terms.

27. Criminal Writ Petition stands disposed of.

BHARAT P. DESHPANDE, J.