



IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL WRIT PETITION NO.39 OF 2024

NARAINA SINAI VARDE,

.....Petitioner

S/o. Pandurang Sinai Varde,
 71 years of age, Retired,
 R/o. H.No. 1154, B.B. Borkar Road,
 Alto Porvorim, Goa.

Versus

1. STATE OF GOA
 (Through P.I. Crime Branch Police Station)

2. MICHAEL LOBO,
 s/o. Vincent Lobo,
 42 years of age, Indian national,
 R/o. H.No.177, Bhattiwado,
 Parra, Bardez, Goa.

3. FRANCIS VIEGAS @ FRANKY,
 s/o. Francis Xavire Viegas,
 57 years of age, Indian National,
 R/o. H.No.293/A,
 Sonarwaddo, Verla, Parra, Bardez, Goa.

4. WILFRED ALOYSIUS NICOLAU JOAO,
 S/O. Antonio Joao,
 59 years of age, Indian National,
 R/o. H. No. E-14/1, Salembhar,
 Mercedes, Goa

.....Respondents

[Deleted as per order
 dated 22/04/2024.]

Mr. Parag Wagle, Advocate for the Petitioner.

Mr. Pravin Faldessai, Additional Government Advocate for the
 Respondent/State.

CORAM:

BHARAT P. DESHPANDE, J

DATED:

3rd July, 2024.

ORAL JUDGMENT:

1. Rule.
2. Rule is made returnable forthwith.
3. The matter is taken up for final disposal at the admission stage with consent.
4. Heard Mr. Parag Wagle, learned Counsel for the Petitioner and Mr. Pravin Faldessai, learned Additional Government Advocate for the Respondent/State.
5. The present Writ Petition is filed by the Petitioner who is Accused No.3, thereby challenging the order passed by the learned Magistrate as well as order passed by the Additional Sessions Court in the revision which was partly allowed and directing that charge be framed against the present Petitioner for the offence punishable under Section 468 r/w 34 IPC. The learned Additional Sessions Judge however discharged the Petitioner from the offence punishable under Sections 471, 420, 201 r/w 34 IPC.
6. Mr Wagle appearing for the Petitioner would submit that on the basis of allegations no offence under section 468 of IPC is made out since the Petitioner cannot be charged for committing forgery

of his own signature on a letter which he is supposed to sign as a Member Secretary of GCZMA. He submits that the definition of forgery as provided in Section 463 of IPC is not at all established against the Petitioner.

7. Mr Wagle would submit that other accused persons are already discharged by this Court and also by the concerned trial Court under the reason that there is absolutely no material to frame charge in the present case.

8. Mr Faldesai, appearing for the State, fairly submits that the document in question is not found in the file however only a soft copy of the alleged forged letter is available in the hard disk. He submits that the original letter alleged to have been forged is not attached along with the charge sheet and that there is no report of the handwriting experts. However, Mr Faldesai submits that the letter in question was used for the purpose of obtaining permission by other accused persons. The Petitioner being member secretary of the GCZMA was in lawful custody of the concerned computer wherein the soft copy of the letter was saved and thus any misuse of such soft copy, could have been prevented

9. A complaint was filed on 31/12/2009 with CID Dona Paula by the then member secretary of GCZMA alleging that a letter signed

by the present Petitioner as member secretary as then he was is a forged document and the same was used by other Accused persons as genuine for getting permissions from the other Departments. The investigation was completed and charge sheet was filed somewhere in the year 2016 before the Magistrate. The learned Magistrate framed charge against the petitioner along with Respondent Nos. 2 to 4 for the offence punishable under section 468, 471, 420, 201 r/w 34 IPC.

10. The petitioner challenged such order of framing of charge, in criminal revision application No.31 of 2018 before the Additional Sessions Judge, Mapusa. The said revision was decided by the impugned order dated 10th October 2023 by the Additional Sessions Judge. By the said impugned order, the learned Additional Sessions Judge partly allowed the said revision thereby discharging the Petitioner from the offence punishable under section 471, 420, 201 r/w 34 IPC but retained the order of learned Magistrate for framing charge under section 468 r/w 34 IPC which is impugned in the present proceedings.

11. The petitioner is accused no. 3 before the learned magistrate and it is clear from the record as well as order passed by the learned magistrate dated 25/ 04/2018 that the accused nos. 1 and 2 therein

did not argue with regard to framing of charge and conceded that there is material for framing charge against them under section 468, 471, 420, 201 r/w 34 IPC.

12. The present petitioner along with accused no.4 who has also filed Criminal Writ Petition No. 9 of 2024 and kept today along with the present matter, argued the matter and resisted framing of charge against them for the said offences.

13. The charge sheet shows that accused nos.1 and 2 conspired with accused nos.3 and 4 to commit forgery by preparing a letter dated 24/06/2006 in the name of accused no.3 and then accused nos.1 and 2 used the said forged letter as genuine and produced the same in the office of village panchayat Calangute for obtaining construction licence along with a request for grant of NOC for the proposed construction of a resort and committed the offence. The allegations in the charge sheet are with regard to conspiracy and mainly against petitioner no. 3 that he forged his own signature on the alleged letter.

14. The petitioner was admittedly working as a member secretary of GCZMA at the relevant time and he had an authority to issue such letter / document for and on behalf of the authority.

15. The definition of forgery as found in section 463 reads thus:

“463. Forgery.—3[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.”

16. The above definition shows that first of all it is necessary to make a false document with intent to cause damage or injury to the public or any person or to support any claim or title.

17. Section 468 for which the petitioner is charged as per the order of the Revisional Court provides that 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.

18. It is clear from the record that the person who has an authority to sign a document is a petitioner himself. Thus he cannot be charged for forging his own signature on a document or a letter which he is having authority to do so. The aspect of forgery is therefore clearly missing. Once this fact is established, the question of charging the Petitioner for the offence under Section 468 r/w 34 IPC is also ruled out for the simple reason that first of all such a

person has to commit forgery with the intent to use such document for the purpose of cheating.

19. When the Petitioner was working as Member Secretary, he was having authority to issue such a letter and it cannot be considered as forging his own signature or using such forged document for the purpose of cheating.

20. It is also an admitted fact that the original letter issued by Accused no.3/ petitioner is not a part and parcel of the charge sheet. There is no report of any handwriting expert to show that the letter in question is not appended with the original signature of the accused no. 3.

21. The record also shows that at the relevant time, there was only one computer available in the office of GCZMA which was used by all the staff members. It is also a fact that a draft letter was found saved in the hard disk of the said computer and the statements of the Stenographer or the Clerk nowhere, show as to who dictated such letter to them or who directed them to edit such letter by adding the names of the accused no.1 and 2 and then to take out the print. In such circumstances, it is difficult to accept the contention of the learned Revisional Court to conclude even considering the

aspect of grave suspicion to hold that there is a material to frame charges against the Petitioner.

22. While deciding similar matters on similar ground this Court has already found that no material is found against the present petitioner and hence the observation of the Revisional Court regarding framing of charge against the Petitioner under Section 468 r/w 34 IPC needs interference.

23. For the above reasons, the impugned order directing to frame charge against the petitioner under section 468 r/w 34 of IPC needs to be quashed and set aside.

24. The petitioner stands discharged for the said offence. Rule is made absolute forthwith.

BHARAT P. DESHPANDE, J.