

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **Crl. M.C No. 2029/2010**

% Reserved on: 4th June, 2010
Decided on: 9th July, 2010

NAKUL KOHLI
S/o Sh. S.K. Kohli,
R/o 72, 1st Floor, Nav Jeevan Vihar,
Malviya Nagar, Delhi.

..... Applicant/Accused
Through: Mr. Vijay Aggarwal and Mr. Gurpreet
Singh, Advocates.

versus

STATE
Through Standing Counsel (Crl.)
Govt. of NCT of Delhi,
High Court of Delhi,
New Delhi.

..... Respondent
Through: Mr. Naveen Sharma APP

Coram:
HON'BLE MS. JUSTICE MUKTA GUPTA

1. Whether the Reporters of local papers may
be allowed to see the judgment? Yes
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported
in the Digest? Yes

MUKTA GUPTA, J.

1. The Petitioner is facing trial in case FIR No.71/2005 P.S., Special Cell, Lodhi Colony, Delhi registered on the allegation that one travel agent is charging huge amount of money from the innocent people desiring to go to

America, wherein the police associated one Jigar Modi a victim of the Petitioner's offence. On a trap being laid the Petitioner was apprehended on whose personal search one coloured photocopy of American Visa in the name of Upender Kumar Karsan Bhai was recovered from right side pocket of his pant which was seized. On apprehension, the Petitioner confessed that he along with co-accused had taken Rs. 6,10,000/- from Jigar Modi and his friend. During the investigation, the witness Jigar Modi handed coloured photocopy of US visa depicting the name and photo of Upender Kumar which had been shown and handed over to him and his friend Upender Kumar, by the Petitioner. It is alleged that the Petitioner in conspiracy with other co-accused cheated Shri Upender Kumar Karsan Bhai and other persons representing that the accused Rajneesh is the official of the embassy and on this false pretext induced the said persons to pay the amounts to procure visa for them. Three other victim witnesses Sher Singh, Gurpreet Singh and Avtar Singh along with his son Kamalpreet Singh also joined the investigation and stated that co-accused Ashish Sharma who used the name Rahul @ Neeraj, along with the present Petitioner had an office at Vardhman Tower, Preet Vihar, Delhi. They all gave money (Rs.1 lac by each person) and the passports to the Petitioner and Ashish Sharma for arranging visas but the accused persons did not do so nor did they return the money and passports of these victims. In the meantime, the recovered coloured photocopy of US visa was verified from US embassy, New Delhi which was found to be fake and forged. The US embassy sent a

communication dated 16th May, 2005 intimating that no visa bearing No. 20056955325107 was issued by their embassy to Shri Upender Kumar Karsan Bhai and the same is fake. Even as per the report of GEQD, which was submitted after examining an original visa taken from the American embassy, it has been opined that the visa mark Q1 (recovered from accused Nakul Kohli) is “Spurious in Nature.”

2. On a charge sheet being filed, the learned CMM framed the charges against the Petitioner under Sections 419/420/471/474/120B IPC. Aggrieved by the said order the Petitioner filed a revision petition, however the same was dismissed vide order dated 12th November, 2009. Hence, the Petitioner has filed the present petition impugning the orders dated 12th November, 2009 passed by the learned ASJ and 15th December, 2008 passed by the learned CMM.

3. Learned counsel for the Petitioner during arguments did not challenge the charges framed under Sections 419/420/120B IPC and has only challenged framing of charges for offences under Sections 471/474 IPC. He contends that no offence punishable under Section 471 IPC can be made out as only a photocopy was being used and for an offence under Section 471 IPC to be attracted, it is essential that the document should be signed or executed. According to him printing or photocopying of a document does not attract the provisions of Section 471 IPC. Reliance in this regard is placed on Section 464 IPC wherein according to learned counsel for the Petitioner, printing or writing

is not making a false document. According to the learned counsel if any accused passes on a photocopy, the same would amount to cheating only and not forgery. Reliance in this regard is placed on *Pramatha Nath v. State*, 52 *Crl. L.J. 1480*.

4. Learned counsel for the Petitioner further states that since the incriminating document is a photocopy the same is not admissible in evidence in terms of Sections 64 and 65 of the Evidence Act, being a secondary document and thus no charge can be framed against the Petitioner on the basis of the photocopy. Reliance is placed on *Shashi Lata Khanna v. State of Delhi and others*, 2005 (2) *JCC 1220*.

5. The short question in the present petition which arises for determination is that if an accused has given the coloured photocopy of a visa, which is not genuine and made them to part with money on the basis of said document, whether it would fall within the ambit of an offence of forgery as defined under Sections 463 and 464 IPC and punishable under Sections 471 and 474 IPC.

Sections 463, 464, 471 and 474 IPC are reproduced as under:-

“463. Forgery.-[Whoever makes any false documents 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.

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 in any material part thereof, after it has been made or 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 alteration; 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] on 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 alteration.

471. Using as 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].

474. Having possession of document described in section 466 or 467, knowing it to be forged and intending to use it as

genuine.—[Whoever has in his possession any document or electronic record, knowing the same to be forged, and intending that the same shall fraudulently or dishonestly be used as genuine, shall, if the document or electronic record is one of the description mentioned in section 466 of this Code], be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; and if the document is one of the description mentioned in section 467, shall be punished with [imprisonment for life], or with imprisonment of either description, for a term which may extend to seven years, and shall also be liable to fine.”

6. Thus, a perusal of the said provisions would show that if a document, which is not genuine, is being used as such and a person is made to part with money on that basis then not only the offence of cheating as defined under Section 415 IPC but also the offence of forgery as defined under Section 463 IPC is attracted. The contention of the learned counsel for the Petitioner that under Section 464 IPC “making” a false document means signing, sealing or executing only is untenable. I am not in agreement with the decision of the learned Single Judge of the Calcutta High Court in *Pramatha Nath (supra)*. In my view, photocopying a document, which is not genuine and with the kind of technology that is available now, wherein exactly similar copies of the original can be made, would fall within the ambit of making a false document. With the advent of technology, scanners and computerized colour photocopiers produce identical copies which are exactly similar to the original. Excluding photocopying/printing from the ambit of a “false document” would be giving too narrow a reading to the word ‘makes’ as used in Section 464 First (a)

because the said word is not limited by the subsequent words signs, seals or executes. If the word `makes` was to confine to signing or executing, then there was no need of introducing this word in the said Section. It is settled law that the words used in an enactment are not superfluous. This reading of Section 464 IPC by the Calcutta High Court in *Parmatha Nath (Supra)* is contrary to the illustrations `c` and `d` to Section 464 IPC. Moreover, this view of Calcutta High Court has been dissented to by a division bench of Bombay High Court in *Emperor vs. Krishtappa Khandappa, AIR 1925 Bombay 327*, where Chief Justice Macleod held as under:-

“The only question is whether possession of the counterfeit seal, plates or other instrument for making an impression, renders accused No. 4, liable as having committed an offence under S. 473, Indian Penal Code, in that he had made or counterfeited a seal, plate or other instrument for making an impression intending that the same should be used for the purpose of committing any forgery, which would be punishable under any section of Chapter 18 other than S. 467, or with such intent had in his possession any seal, plate or other instrument, knowing the same to be counterfeit. It has been contended that as forgery implies the making of a false document, a person counterfeiting marks on a tree would not be making a false document within the meaning of S. 464, and this contention found favour with the Assistant Session Judge who relied upon the decision in *Empress vs. Riasat Ali (1)*. It seems to us that the learned Chief Justice for the purposes of that particular decision did not consider the provisions of S. 29, Indian Penal Code. The question here is whether a document must necessarily be something which is signed, sealed or executed. S. 29 says “the word ‘document’ denotes any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of these means, intended to be used ... as evidence of that matter.” Explanation 2 says: “Whatever is expressed by

means of letters, figures or marks as explained by mercantile or other usage, shall be deemed to be expressed by such letters, figures or marks within the meaning of this section although the same may not be actually expressed.”

Now these letters when imprinted on the trees were intended to be evidence that the trees had been passed by the Ranger, and so could be removed from the place where they were lying in the forest. The letters, therefore, imprinted on the trees would be a document within the meaning of S. 29 of the Indian Penal Code.”

I am further fortified in my view by the decisions in *The Province of Bihar vs. Surendra Prasad Ojha AIR (38) 1951 Patna 86*; *L.K. Siddappa vs. Lalithamma 1954 Crl. L.J. 1235 (Mysore)* and *Ranjit Sinha vs. The State AIR 1963 Patna 262*.

7. The contention of the learned counsel that he should be discharged at this stage for offences under Section 471 and 474 IPC as the document is a photocopy and thus a secondary evidence, is also untenable, because in a given case where a photocopy is used as the primary offending article, the same would be the primary evidence for the purpose of trial of the said case. Moreover, as to how a document is to be proved, whether by way of primary or secondary evidence is not required to be considered at the stage of framing of charge. The law in this regard is well-settled that at the stage of framing of charge only a strong suspicion of the accused having committed the said offence is sufficient. The reliance of the Petitioner on the decision of this Court rendered in *Shashi*

Lata Khanna (Supra) is misconceived. In the said case, during the course of investigation, the accused had produced original forged rent note to the Investigating Officer, however, he did not seize the same and thus, the prosecution did not produce the original forged rent note as evidence during the trial. It is in this context that this Court held that no reliance could be placed on the photocopy of the forged rent note in the absence of original one. In the present case, since it is at the stage of framing of charge and the trial is yet to begin, this issue will be looked into by the learned trial court during the course of trial.

8. The present petition is dismissed. No order as to costs.

(MUKTA GUPTA)
JUDGE

JULY 09, 2010
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