2025 INSC 1098

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 3977 OF 2025
(@SPECIAL LEAVE PETITION (CRIMINAL) NO. 9317 OF 2025)

VANDANA **…APPELLANT**

VERSUS

STATE OF MAHARASHTRA **…RESPONDENT**

O R D E R

ARAVIND KUMAR, J.

1. Heard. Leave granted.

2. The Appellant has questioned the correctness and legality of the judgment of the High court of judicature at Bombay, Nagpur bench in Criminal Revision Application no. 78 of 2019 which affirmed the judgement rendered in Criminal Appeal no. 98 of 2007 which had reduced/altered the sentence imposed by the trial court for rigorous imprisonment Three years for the offence under section(s) 420 and 468 read with section 34 of the Indian Penal Code, 1860 (hereinafter to be read as “IPC”) and Fine of Rs. 20,000/- for each of these offences with default

sentence of Two months; and Rigorous Imprisonment for One year for the offence punishable under section 471 IPC with fine of Rs. 10,000/- and default sentence of One month to Simple Imprisonment for One year for the offence punishable under section 420 read with section 511 IPC and fine of Rs. 20,000/- with default sentence of Two months and further Simple Imprisonment of One year for the offences punishable under section 468 and 471 IPC with fine of Rs. 20,000/- and Rs.10,000/- respectively, with default sentence of Two months/One-month simple imprisonment respectively.

3. The material facts necessary for disposal of the present appeal are set forth hereunder:

3.1 It is the case of the appellant that she was a student of Bachelor of Social Work (BSW) at Aniket College of Social Work affiliated to Nagpur University and had appeared for the summer session examination of 1998 BSW Part-I and had secured 05 marks in the compulsory English subject and on revaluation she secured 10 marks and had been declared as 'failed'. Thereafter, to secure admission in BSW Part-III course she submitted her admission form along with her mark-sheet (Exh. 15) and revaluation notification (Exh. 36) which was received and verified by Admission Clerk (acquitted as Accused No. 3) and further attested and signed by the principal (acquitted as

Accused No. 2) and sent to the University for further process where the examination department noticed the alleged forgery and cancelled her admission. It was alleged by the prosecution that the marks in the Compulsory English Subject were altered from “10” to “18” in the mark-sheet (Exh. 15) and from “10” to “30” in the notification (Exh. 36), and that on the basis of such tampered documents she attempted to secure admission to BSW-III course. On the basis of letter received by the University, an FIR came to be registered, and after investigation petitioner was charge-sheeted, and the name of the other two accused were inserted on an application filed under section 319 Code of Criminal Procedure, 1973 (hereinafter to be referred as “Cr.P.C.”) by the prosecution. During the trial, after the examination of prosecution witnesses, section 313 CrPC statement of Accused No. 1 came to be recorded by putting compound questions wherein it was stated by her that she had submitted the correct examination form along with marksheet and revaluation notification and denied the allegations of forgery. Ultimately, after the trial, all the three accused were convicted. On an appeal, the sentence was modified and affirmed in the revision petition as noted supra. On Revision, by all the accused persons, the Revisional Court by the impugned order acquitted the co-accused No. 2 and 3 while upholding the conviction

of Accused No. 1. Aggrieved by the same, Appellant-Accused No. 1 is in appeal.

4. We have heard the learned counsels appearing for the parties and examined the material on record along with the orders of the courts below.

4.1. The Learned Counsel for the appellant submitted that the Impugned Judgement overlooked the evidentiary infirmities in the prosecution's case particularly in the light of absence of any handwriting expert or forensic verification of the allegedly forged marksheet or notification and still proceeded to convict the appellant.

4.2. The Learned Counsel further submitted that overwriting seen by bare eyes without expert corroboration is an unsafe basis for criminal conviction in light of the standard of proof required under the criminal law.

4.3. The Learned Counsel further contended that no university official who prepared or dispatched the marksheet or notification was

examined as witness, depriving the accused of a fair opportunity to challenged the chain of custody or authorship of the documents.

4.4. The Learned Counsel also submitted that the basic requirement under section 420 IPC that the accused must have induced a person *fraudulently or dishonestly* to deliver property was not proved especially in the light of the fact that the University admitted the student on documents certified by the college.

4.5. The Learned Counsel lastly submitted that Exh. 37 (original) and Exh. 36 (Alleged Tampered Copy) were not proved to be materially inconsistent in a manner that would attribute forgery to the appellant alone. Hence, he prayed to allow the present appeal.

4.6. *Per contra,* the Learned Counsel appearing on behalf of the Respondent vehemently supported the Impugned Judgement of conviction and sentence and prayed for dismissal of the appeal.

5. The offences involved in the present appeal are section 420, 468, 471 of the IPC and for immediate reference they are extracted herein below

> **“420. Cheating and dishonestly inducing delivery of property.-** Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.
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> **468. 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.
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> **471. Using as genuine a forged document or electronic record. -** Whoever fraudulently and dishonestly uses as genuine any document or electronic record which he knows or has reason to believe to be forged document or electronic record, shall be punished in the same manner as if he had forged such document or electronic record.”

6. The offence of forgery and making of false document as defined under section 463 and section 464 of the IPC are extracted herein below for ready reference:

> **“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.
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> **464. Making a false document**. - A person is said to make a false document or false electronic record[1]:
> First— Who dishonestly or fraudulently—

(a) **makes**, sign, 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 digital signature on any electronic record;
(d) makes any mark denoting the execution of a document or the authenticity of the digital signature, with the intention of causing it to be believed that such document or part of document, electronic record or digital signature was made, signed, sealed, executed, transmitted or affixed by or by the authority or 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 digital 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, sign, seal, execute or alter a document or an electronic record or to affix his digital signature on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practiced upon him, he does not know the contents of the document or electronic record or the nature of the alteration."

7. It is apposite to note that to attract offence of Section 468 IPC, the prosecution must establish that the accused **made a false document** within the meaning of Section 464 IPC, with intent to cheat. Likewise, Section 471 IPC requires proof that the accused used a forged document as genuine, knowing or having reason to believe it to be forged at the time of its use.

8. In the instant case, the mark-sheet and the revaluation notification went through a chain of custody. Firstly, from appellant to admission clerk and after the admission clerk had verified and received the alleged documents then the custody was routed to the principal of the college. The prosecution had failed to prove, by any reliable evidence, that the alleged tampering was effected by Appellant herself or while the documents were in the exclusive custody and control of the appellant this tampering had occurred. On the contrary, the material evidence would disclose that the documents passed through institutional hands for scrutiny, endorsement and forwarding and at certain points of time it was not in the custody of appellant at all. In such circumstances, the passing of the alleged document through the hands of several person before it was detected as forged renders unsafe to arrive at a conclusion that appellant had authored the tampering or possessed the contemporaneous knowledge of such tampering. It is apt to mention that it is well-established principle of law that suspicion, howsoever grave, cannot replace the standard of legal proof.

9. Secondly, the court below have rested essentially on visual inference of overwriting to hold tampering stood established. No handwriting or forensic expert opinion was obtained regarding the

authorship of alleged tampering. This court in ***Fakhruddin v. State of Madhya Pradesh***[1]**,** has observed:

> "**10.** Evidence of the identity of hand writing receives treatment in three sections of the Indian Evidence Act. They are Sections 45, 47 and 73. Handwriting may be proved on admission of the writer, by the evidence of some witness in whose presence he wrote. This is direct evidence and if it is available the evidence of any other kind is rendered unnecessary. The Evidence Act also makes relevant the opinion of a hand writing expert (S. 45) or of one who is familiar with the writing of a person who is said to have written a particular writing. Thus, besides direct evidence which is of course the best method of proof, the law makes relevant two other modes. A writing may be proved to be in the handwriting of a particular individual by the evidence of a person familiar with the handwriting of that individual or by the testimony of an expert competent to the comparison of handwritings on a scientific basis. A third method (S. 73) is comparison by the Court with a writing made in the presence of the Court or admitted or proved to be the writing of the person.
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> **11.**Both under S. 45 and S. 47 the evidence is an opinion, in the former by a scientific comparison and in the latter on the basis of familiarity resulting from frequent observations and experience, In either case the Court must satisfy itself by such means as are open that the opinion may be acted upon. One such means open to the Court is to apply its own observation to the admitted or proved writings and to compare them with the disputed one, not to becorof v an handwriting expert but to verify the premises of the expert in the one case and to appraise the value of the opinion in the other case. This comparison depends on an analysis of the characteristics in the admitted or proved writings and the finding of the same characteristics in large measure in the disputed writing. In this way the opinion of the deponent whether expert or other is subjected to scrutiny and although relevant to start with becomes probative. Where an expert's opinion is given, the Court must see for itself and with the assistance of the expert come to its own conclusion whether it can safely be held that the two writings are by the same person. This is not to say that the Court must play the role of an expert but to say that the Court may accept the fact proved only

1 **(1966) SCC OnLine SC 55**

> when it has satisfied itself on its own observation that it is safe to accept the, opinion whether of the expert or other witness."

10. While expert opinion is not mandatory, nevertheless when authorship is central to establish the guilt of the accused and by direct evidence it is not demonstrated to show that the alleged writing has been made in the presence of a witness, non-examination of an expert or any other cogent proof of authorship to corroborate the alleged forgery beyond reasonable doubt weighs heavily against the prosecution. Therefore, the courts below treated "***apparent overwriting"*** as conclusive which approach is alien to the standard proof beyond reasonable doubt.

11. Thirdly, even assuming the prosecution theory to be true namely, that documents were deployed to secure admission to BSW-III course, record do not establish the *mens rea* which is pre-requisite for Section 471 IPC (knowledge/reason to believe) or for attempt to cheat under Section 420 read with Section 511 IPC being present. The documents were stamped by college authorities and passed through administrative scrutiny. In the absence of evidence that the appellant had dishonest intention to either make the false document or knew of its falsity while submitting it, the mental status or *mens rea* remains unproved.

12. Fourthly, we also found observations of non-compliance with Section 313 CrPC. It is found that several incriminating circumstances

were put to the appellant in compound and omnibus questions as recorded by the appellate court. This court has constantly held and we reiterate that Section 313 is not an empty formality. Where there is failure to put material circumstances fairly and distinctly, it causes prejudice and vitiates reliance placed on such circumstances. The said defect strikes at a valuable statutory right of defence of the accused. In the present case, it is on record that the accused was not possibly able to understand the incriminating circumstances put against her and was not able to answer properly because of the compound questions. Nevertheless, the courts have relied upon the statement which in our considered view causes prejudice to the accused.

13. Hence, in the light of aforesaid discussion, we find the conviction to be unsustainable. We say so because after meticulously examining aforesaid provisions and the judgements of the court below it is clearly discernible that all the courts while appreciating the evidence on record have confined themselves to the issue of establishing the alleged tampering. However, the prosecution has not discharged its burden on authorship of the alleged forgery.

14. The settled principles are well known:

(i) That the benefit of doubt follows when two views are reasonably possible;

(ii) That the Suspicion however grave cannot substitute standard of legal proof; and

> **(iii)** That the exclusive control of the alleged forged document must be proved when there is lack of direct evidence to connect the alleged forgery to the accused especially in a case where the alleged document has passed through the hands of several persons before forgery is detected. If the same is not proved, at best, the evidence on record may arouse suspicion but they do not establish beyond reasonable doubt that the accused had forged, or knowingly used, or attempted to cheat by use of such forged documents.

15. Therefore, in the light of aforesaid discussion, the appeal deserves to be allowed and accordingly, it stands **Allowed** and the conviction of the appellant under the Impugned order dated 08.05.2025 in Criminal Revision Application No. 78 of 2019 under Section 420 read with Section 511 IPC Sections 468 and 471 IPC together with the sentences imposed, are hereby **set aside**.

16. Pending applications, if any, stands disposed of.

……..…….....J.
(ARAVIND KUMAR)

……..…….....J.
(SANDEEP MEHTA)

NEW DELHI;
SEPTEMBER 11th, 2025.