

CRIMINAL REVISION APPLICATION NOS.7 AND 8 OF 2002

Shri Pravin Naik,
r/o Margao, Goa.

... Applicant.

versus

S T A T E,
through the Public Prosecutor,
High Court of Bombay at Panaji.

... Respondent.

Miss Pooja Bharne, Advocate for the Applicant.

Mr. A. P. Lawande, Public Prosecutor for the State/
Respondent.

CORAM: P. V. HARDAS, J.

DATED: 22ND MARCH, 2002.

ORAL JUDGMENT

These two Criminal Revision Applications have been filed by the present Applicant who by the Order of the learned IInd Additional Sessions Judge, South Goa, Margao, in Sessions Case No.5 of 1995 and in Sessions Case No.10 of 1995 is facing trial for an offence punishable under Sections 387 and 507 of the Indian Penal Code. The charge-sheet which was filed against the present Applicant/Accused was for an offence punishable under Sections 507, 384, 386 and 388 r/w 511 of the Indian Penal Code and Sections 108, 109 and 114 of the Indian Penal Code. After the case was committed to the Court of Sessions, the learned Sessions Court by its Order dated 20th October, 2001 in the two Cases namely Sessions Case No.5 of 1995 and Sessions Case No.10 of 1995 ordered that a charge under Sections 387

and 507 of the Indian Penal Code be framed against the present Applicant/Accused and since both the offences were triable by the Judicial Magistrate, First Class, Margao transferred the case to the Chief Judicial Magistrate, Margao for trial of the aforesaid offences. The Applicant/Accused being aggrieved by the aforesaid Order has filed the present Criminal Revision Applications.

2. Criminal Revision Application No.7 of 2002 arises against the Order dated 20th October, 2001 passed by the IInd Additional Sessions Judge, South Goa, Margao, in Sessions Case No.5 of 1995 and Criminal Revision Application No.8 of 2002 arises from the Order of the IInd Additional Sessions Judge, South Goa, Margao, in Sessions Case No.10 of 1995. Since both the revisions raise identical questions, the revisions are being disposed of by a common Order.

3. By consent of the parties these revisions are taken up for final hearing.

4. Miss Pooja Bharne, the learned Advocate appearing for the Applicant, who has very ably argued the aforesaid revisions, has urged before me that the only material which the learned Sessions Judge found against the Applicant/Accused for framing of the charge

was the report of the handwriting expert who opined that the specimen handwriting of the Accused tallied with the disputed handwritings of the anonymous letters. According to her, the record bears out the fact, that the Applicant/Accused was made to copy the style of the handwriting in the anonymous letters while the specimen handwritings were obtained by the Investigating Officer during the investigation in the presence of the panchas. According to her, the specimen handwritings, therefore, do not represent the natural handwriting of the Applicant/Accused. Coupled with this, it is urged before me that since the Accused was forced in copying the style of the handwriting from the anonymous letters, there is a violation of the right of the Accused under Article 20(3) of the Constitution of India inasmuch as the Applicant/Accused has been forced to give evidence against himself which would tend to incriminate him in the trial. Alternatively, it is submitted relying on the decision of the Supreme Court in **Union of India v. Prafulla Kumar Samal and another** reported in AIR 1979 SC 366 that undoubtedly the Court for framing the charge has the powers to sift and weigh the evidence but the sifting and weighing should be for a limited purpose to find out whether or not a prima facie case against the Accused is made out. Further, placing reliance on the aforesaid Judgment, it is submitted before me, that the material i.e. the report of the handwriting expert does

not raise even a suspicion against the Applicant leave apart grave suspicion and, therefore, the learned Sessions Court was in error in directing the framing of the charge against the Applicant/Accused for an offence punishable under Sections 387 and 507 of the Indian Penal Code.

5. The Supreme Court in the matter of **Union of India v. Prafulla Kumar Samal and another**(supra) has held thus:-

"The Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial".

6. Mr. A. P. Lawande, the learned Public Prosecutor appearing for the State has urged before me that the material on record raises a grave suspicion against the Applicant/Accused for having committed an offence punishable under Sections 387 and 507 of the Indian Penal Code. According to the learned Public Prosecutor appearing for the State, apart from the

report of the handwriting expert, the prosecution has recorded the statement of a witness who speaks about the fact that the Applicant/Accused had purchased Inland letters. Further, according to the learned Public Prosecutor appearing for the State, the question of violation of Article 20(3) of the Constitution of India is a matter which would be required to be dealt with and decided by the learned Trial Court after recording of the evidence. Prima facie, according to him, this Court cannot come to a conclusion that the specimen handwritings have been obtained from the Applicant/Accused in violation of Article 20(3) of the Constitution of India.

7. I find considerable force in the submissions advanced by the learned Public Prosecutor appearing for the State. The material which is produced by the prosecution in support of its allegation certainly prima facie establishes the complicity of the Accused in the commission of the offence.

8. The report of the handwriting expert, though as rightly submitted by the learned Advocate appearing for the Applicant, in given circumstance cannot be made a foundation of a conviction, however, at this stage, it raises grave suspicion against the Applicant in respect of his complicity in the offence. Therefore, according

to me, the IInd Additional Sessions Judge, South Goa, Margao, was perfectly justified in ordering the framing of charge under Sections 387 and 507 of the Indian Penal Code. It was faintly urged, by the learned Advocate appearing for the Applicant, that if the report of the handwriting expert cannot be accepted without corroboration, the conduct of trial would be an exercise in futility and, therefore, the Applicant/Accused deserves to be discharged. Whether to accept the report of the handwriting expert without corroboration is a matter which falls in the realm of appreciation of evidence which exercise the learned Trial Court would be performing after the recording of the evidence. I consider it highly inappropriate at this juncture to scuttle the prosecution case on this ground.

9. Thus, there is no merit in the aforesaid revisions and Criminal Revision Application Nos.7 and 8 of 2002 are dismissed.

10. Record and Proceedings, which were called for from the learned Trial Court be immediately remitted back to the learned Trial Court.

(P. V. HARDAS)
JUDGE