

(2019) 10 KAR CK 0014

In the Karnataka High Court

Case No : Criminal Petition No. 847, 848, 466 Of 2013

State Of Karnataka @ APPELLANT @Hash Ramesh

Date of Decision : 25-10-2019

Acts Referred:

Indian Penal Code, 1860 — Section 34, 225, 255, 258, 261, 326, 420, 473, 467, 468, 471, 473, 474

Code Of Criminal Procedure, 1973 — Section 156(3), 313, 320, 320(2)(8), 340, 428, 482

Citation : (2019) 10 KAR CK 0014

Hon'ble Judges : Ravi Malimath, J;H.P.Sandesh, J

Bench : Division Bench

Advocate : Deepak J, Namitha Mahesh B.G., Dnesh Kumar K., R.B. Deshpande

Final Decision : Dismissed

Judgement

1. These three appeals are filed against the judgment of conviction and order of sentence dated 14.03.2013/30.03.2013 passed in Sessions Case No.290 of 2005 on the file of the Fast Track Court I at Kolar.

2. Criminal Appeal No.847 of 2013 is filed by the State challenging the judgment of acquittal passed against accused No.1 for the offences punishable under Sections 255, 258, 261, 467, 468, 471, 473, 474 and 420 read with Section 34 of Indian Penal Code.

3. Criminal Appeal No.848 of 2013 is filed by the State challenging the inadequate sentence imposed on Accused Nos.2 to 5 for the offences punishable under Sections 467, 468, 471, 473, 474 and 420 read with Section 34 of Indian Penal Code.

4. Criminal Appeal No.466 of 2013 is filed by Accused Nos.2 to 5 challenging the judgment of conviction and order of sentence for the offences punishable under Sections 467, 468, 471, 473, 474 and 420 read with Section 34 of Indian Penal Code.

5. Brief facts of the case:

It is the case of the prosecution that accused Nos.2 and 3 are the brothers and they are the sons of Ramaiah. Accused No.4 is the son of accused No.2. Accused No.5 is the one who has been arraigned as accused No.7 in the complaint-Ex.P.1. Accused No.1 is the son of Smt.Pankajamma stamp vendor and according to the prosecution, he has tampered the stamp papers by changing the dates and sold the stamp papers in favour of the accused. It is the allegation against accused Nos.2 to 5 that in order to defeat the sale agreement executed in favour of PW.1, all these accused persons shared their common intention and created the Will which is marked as Ex.P.40.

6. Based on the complaint of complainant, who has been examined as PW.1, the Police have investigated the matter and filed charge sheet against these accused persons deleting the names of other accused persons. Only these accused persons were subjected for trial. It is the specific allegation against accused No.1 that he issued two stamp papers of the denomination of Rs.5/- each in the month of October 2003 by putting ante date as 06.02.1992 in the name of dead person-Ramaiah, who died on 24.05.1995 itself. Accused No.1 forged the signature of his mother Pankajamma, while issuing ante dated stamp paper. The Complainant, in order to confirm that accused No.1 was selling tampered ante dated Government stamps, approached him along with PW.4 and purchased the stamp papers of Rs.10/- in his name and in the name of P.W.4 with ante date as 17.7.1995.

7. The specific allegation against accused No.5 is that he is a deed writer and writes deeds by mentioning ante dates in the name of dead persons as if the documents are written by the deceased and forging the signature of the said person as scribe of the documents. The forged Will dated 07.02.1992 has been written by accused No.5 Narasappa in the first week of October 2003 near Taluk Office, Kolar, under the instructions of accused Nos.2 to 4 and so also the said Narasappa had written the application dated 21.10.2003. The said application and Will in question are in the handwriting of accused No.5 and the said accused No.5 had shown the name of the deceased Venkataramana Gowda as the scribe of the said document. Hence, the accused persons have committed the offences alleged against them. The Investigating Officer, after investigation, filed the charge sheet against accused Nos.1 to 5 for the offences punishable under Sections 255, 258, 261, 467, 468, 471, 473, 474 and 420 read with Section 34 of Indian Penal Code.

8. After filing of the charge sheet, the accused persons were secured before the Court below and they did not plead guilty and claims the trial. The prosecution in order to prove their case examined as many as 16 witnesses i.e., PWs.1 to 16 and got marked the documents Exs.P.1 to 40. After the closure of prosecution evidence, statements of the accused were recorded under Section 313 of Code of Criminal Procedure. Accused Nos.1 and 5 submitted that they have no evidence on their behalf but accused Nos.2 to 4 examined one witness as D.W.1 and got marked the document as Ex.D.1.

9. The Court below, after recording the evidence, heard the arguments of learned Special Public Prosecutor as well as the defense counsel. After hearing the arguments and considering both oral and documentary evidence, the Court below convicted accused Nos.2 to 5 for the offences punishable under Sections 467, 468, 471, 473, 474 and 420 read with Section 34 of Indian Penal Code. Hence, accused Nos.2 to 5 have filed the Criminal Appeal No.466 of 2013.

10. The Court below acquitted accused No.1 for all these offences. Hence, the State has filed the Criminal Appeal No.847 of 2013 questioning the judgment of acquittal against accused No.1. The State has also filed Criminal Appeal No.848 of 2013 questioning the sentence imposed against accused Nos.2 to 5 contending that the sentence imposed is inadequate and it requires interference of this Court.

11. Learned counsel appearing for accused Nos.2 to 5 in Criminal Appeal No.466 of 2013 would contend in the appeal memo that the Court below has committed an error in relying upon the evidence of PWs.1, 2, 3, 5, 9 and 15 even though they suffers from legal infirmities, contradictions, omissions and improvements in their evidence.

12. The Court below has rightly acquitted the appellants/accused for the offences punishable under Sections 255, 258 and 261 read with Section 34 of Indian Penal Code. The Trial Court should have acquitted the appellants on the ground that there is a delay in filing the complaint. The Court below has committed an error in discarding the evidence of DW.1. Hence, the judgment of the Trial Court suffers from legal infirmities, reasons and the findings given by the learned Sessions Judge are not at all satisfactory but they are based on surmise and conjecture. Hence, it requires interference of this Court.

13. Learned counsel appearing for the appellants/accused in his arguments vehemently contends that even though the prosecution did not produce any Register before the Court, the Trial Court has committed an error in convicting the accused persons. The prosecution has failed to prove the material before the Court and there are discrepancies in the evidence of PWs.1 and 4. The Court below has committed an error in relying upon the evidence of PWs.1, 4, 5 and 16 and wrongly comes to the conclusion that Ex.P.40 is created in the name of the deceased person. The very approach of the Trial Court is erroneous in coming to the conclusion that accused Nos.2 to 5 have committed an offence of forgery and created the documents. Hence, it requires interference of this Court.

14. Learned High Court Government Pleader appearing for the State in Criminal Appeal No.847 of 2013 would contend that the Court below has committed an error in acquitting accused No.1 by coming to the wrong conclusion that the Investigating Officer has not obtained the sample handwritings of accused No.1 to prove the handwriting available in Ex.P.40. It is contended that the Court below has failed to see that PWs.1 to 4 have clearly stated that accused No.1 has sold the documents Exs.P.8, 9, 21 and 22. There are no reasons to disbelieve the evidence of these witnesses.

15. The Trial Court has failed to see that though the license to sell the stamp papers had expired in the year 1993 itself, the accused No.1 has sold the stamp papers by forging the signature of his mother. Even though there was no any license in the name of accused No.1, he has sold the stamp papers by putting ante date. The Court below has wrongly held that the prosecution has not proved the case against accused No.1. PWs.1 and 4 have purchased the ante dated stamps from accused No.1. Their evidence is creditworthy and reliable. The Trial Court, without any valid reasons, has brushed aside the evidence of these witnesses. The Trial Court has failed to consider the fact that accused No.1 was selling the stamps even after the expiry of period of the license of his mother and he indulged in criminal activities. Hence, it requires interference of this Court.

16. Learned High Court Government Pleader appearing for the State in Criminal Appeal No.848 of 2013 would contend that though the Court below has convicted accused Nos.2 to 5 but has failed to impose appropriate sentence. The sentence imposed by the Court below is inadequate and the same is not in commensurate with the offences for which they have been convicted. The Trial Court has failed to see that there are no mitigating circumstances to impose a lesser sentence on the respondents. The Trial Court has rightly convicted the accused but ought to have imposed adequate sentence. Hence, it requires interference of this Court.

17. The Court below also fails to consider the fact that accused Nos.2 to 4 are the habitual offenders and they have created Ex.D.1 and brought DW.1 before the Court and tendered false evidence. A complaint was also lodged in this regard and the Trial Court had issued a direction to register the case separately. Hence, taking into account the conduct of the accused Nos.2 to 4, the Court below ought to have imposed maximum sentence on the accused Nos.2 to 4, but has not done the same. The very purpose, scope and ambit of punishing the persons who indulge in fabricating and forging the documents has not been considered and it defeat the very legitimate rights of the aggrieved persons by imposing lesser sentence. Hence, it requires interference of this Court.

18. Learned High Court Government Pleader appearing for the State, in support of its two appeals, vehemently contends that first of all the Court below has committed an error in acquitting accused No.1, who has been indulged in selling the ante dated stamp papers that too by forging the signature of his mother even though there was no authority of license since the same was expired in the year 1993 itself.

19. Learned High Court Government Pleader would contend that the Court below fails to take note of the seriousness of the allegation and gravity of the offence. When the Court below came to the conclusion that accused Nos.2 to 5 were indulged in committing the serious offence of forgery and tendered the evidence by summoning DW.1 before the Court and relying upon the concocted document, the Court ought to have imposed the adequate sentence and the same has not been done. Hence, it requires interference of this Court. Accused No.1 may be convicted and suitably sentenced and so also accused Nos.2 to 5 be suitably

sentenced by allowing both the appeals.

20. Learned counsel appearing for the accused Nos.2 to 5 as well as PW.2 have filed a joint application under Section 482 read with Section 320(2)(8) of Code of Criminal Procedure for compounding the offence contending that they have settled the matter amicably and the original complainant-PW.1, on the advice of the elders, his family members and also the well wishers, have amicably settled the dispute with appellants/accused Nos.2 to 5. In view of the settlement arrived at between the parties, the original complainant-PW.1 withdraws his allegations made against the appellants herein. The original complainant does not intend to proceed against accused Nos.2 to 5. The settlement arrived at between the parties is voluntary and without any undue influence. Under the circumstances, this Court may be pleased to permit the appellants/accused Nos.2 to 5 and original complainant PW.1 to compound the offence by setting aside the judgment of conviction and order of sentence and thereby, acquit accused Nos.2 to 5/appellants in Criminal Appeal No.466 of 2013. The parties have also filed the joint affidavit in support of the said application.

21. Learned counsel appearing for the accused relied upon the judgment reported in (2012) 10 SCC 303 in the case of GIAN SINGH VS. STATE OF PUNJAB AND ANOTHER. By referring to this judgment, learned counsel would contend that there was a civil dispute between the parties and both of them settled the matter in the Regular First Appeal before this Court. Hence, this Court has to compound the offences. He also relied upon the judgment reported in LAWS (SC) 2018 3 121 in the case of BITAN SENGUPTA AND ANOTHER VS. STATE OF WEST BENGAL AND ANOTHER and brought to our notice paragraph No.4 of the judgment. He would also contend that the Apex Court taking note of spirit of the law laid down by this Court in the case of B.S.JOSHI AND OTHERS VS. STATE OF HARYANA AND ANOTHER, held that the High Court should have accepted the settlement and compounded the offences. It is, more so, when the settlement between the parties, who were husband and wife, was even acted upon as the parties took mutual divorce on that basis and set aside the order of conviction.

22. Learned counsel for the accused also further relied upon the judgment reported in LAWS (SC) 1987 4 40 in the case of Y.SURESH BABU VS. STATE OF ANDHARA PRADESH. Referring to this judgment, he would contend that the accused was sentenced for the offence punishable under Section 326 of Indian Penal Code, which is not compoundable under Section 320 of Code of Criminal Procedure and sought leave of the Court to compound the offence. The Apex Court taking an over all view of the facts and circumstances granted permission to compound the offence on condition that the appellant shall pay a sum of Rs.10,000/- to respondent No.2 by way of compensation for the physical injury suffered by him. If the amount is not deposited within the period of allowing the conviction and sentence recorded by the Court below against the appellant under Section 326 of Indian Penal Code shall stand. However, if the amount is deposited within the time allowed, the conviction and sentence of the appellant

under Section 326 of Indian Penal Code shall be set aside.

23. Learned counsel for the accused referring to these judgments would contend that in the case on hand also, there was a civil dispute between the parties and subsequently, they have settled the matter amicably before this Court in Regular First Appeal and hence, they may be permitted to compound the sentence.

24. Per contra, learned High Court Government Pleader appearing for the State would contend that having considered the factual circumstances of the case and also factual aspects of the case, it is not a fit case to invoke Sections 482 and 320 of Code of Criminal Procedure to compound the offences. The accused persons were indulged in tampering the stamp papers by putting ante date and created the Will by forging the same in the name of dead person. They also created the document Ex.D.1 and examined the witness-DW.1 stating that he was a signatory to the said document and tendered false evidence before the Court. The Court below also invoked Section 340 of Code of Criminal Procedure against the said witness. It is an offence committed against the society at large and the dispute is not between themselves. The serious offence of forgery has been committed and hence, it is not a fit case to invoke Section 320 of Code of Criminal Procedure.

25. Learned High Court Government Pleader appearing for the State in support of her contention relied upon the judgment reported in (2017) 9 SCC 641 in the case of PARBATBHAI AAHIR ALIAS PARBATBHAI BHIMSINHBHAI KARMUR AND OTHERS VS. STATE OF GUJARAT AND ANOTHER. She brought to our notice paragraph Nos.16.2 to 16.5 and we would like to extract the same as under:-

"16.2. The invocation of the jurisdiction of the High Court to quash a First Information Report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of Section 320 of the Code of Criminal Procedure, 1973. The power to quash under Section 482 is attracted even if the offence is non-compoundable.

In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power.

While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised (i) to secure the ends of justice, or (ii) to prevent an abuse of the process of any court.

The decision as to whether a complaint or First Information Report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated."

26. Learned High Court Government Pleader referring to the observation made by the Apex Court at later portion of paragraph No.17 of the judgment stated supra also brought to our notice, the High Court observed that in a case involving extortion, forgery and conspiracy where all the appellants were acting as a team, it was not in the interest of society to quash the FIR on the ground that a settlement had been arrived at with the complainant. It is further observed that the case involves allegations of extortion, forgery and fabrication of documents, utilization of fabricated documents to effectuate transfers of title before the registering authorities and the deprivation of the complainant of his interest in land on the basis of a fabricated power of attorney. Hence, the Apex Court dismissed the appeal. In the case on hand also there are no grounds to invoke Section 320 of Code of Criminal Procedure since it involves forgery, fabrication of documents and utilization of such fabricated documents to defeat the right of the complainant. Merely the settlement arrived at between the parties is not a ground to set aside the conviction.

27. It is further contended that the parties have led their evidence before the Trial Court and supported the case of the prosecution. The Court below after considering the materials available on record convicted the accused persons. Though the documents came into existence in order to defeat the rights of the parties inter se, the very act of the accused persons is nothing but an offence against the society at large. Hence, they are not entitled for the benefit under Section 320 of Code of Criminal Procedure. Hence, prayed this Court to dismiss the application.

28. Having heard the arguments of learned counsel appearing for the accused and also learned High Court Government Pleader appearing for the State, the points that arise for our consideration are :-

1. Whether the Court below has committed an error in convicting accused Nos.2 to 5 for the offences punishable under Sections 467, 468, 471, 473, 474 and 420 read with Section 34 of Indian Penal Code and it requires interference of this Court?
2. Whether the Court below has committed an error in acquitting accused No.1 for the offences punishable under Sections 225, 258, 261, 467, 468, 471, 473, 474 and 420 read with Section 34 of Indian Penal Code and it requires interference of this Court?
3. Whether the Court below has committed an error in not adequately sentencing the accused persons for the gravity of the offence committed by them and it requires interference of this Court?
4. Whether the Court can entertain the application filed under Section 482 read with Section 320(2)(8) of Code of Criminal Procedure in view of the settlement arrived at between the complainant-PW.1 and accused Nos.2 to 5 and permit the accused persons to compound the offence?

5. What order?

29. Point No.4: Before considering point Nos.1 to 3, we would like to consider point No.4. If this application is allowed, there is no need to consider the grounds of the appeal and if the same is not allowed, then this Court can consider point Nos.1 to 3. Hence, the same is taken at the first instance.

30. Learned counsel appearing for the appellants in the application has contended that the parties have settled the matter between themselves since it was a civil dispute and hence, this Court can invoke Section 482 read with Section 320 of Code of Criminal Procedure. In support of his contention, he relied on the judgment rendered in the case of GIAN SINGH VS. STATE OF PUNJAB AND ANOTHER. Having considered the principles laid down in the judgment referred supra, the Apex Court held that if any offence is against the Society at large, the same cannot be compoundable and in case of matrimonial matters and the dispute inter se between the parties, under such circumstances, the Court can invoke Section 320 of Code of Criminal Procedure.

31. Learned counsel also relied upon the other two judgments of the Apex Court with regard to the matrimonial disputes. The Apex Court has held that spirit of the law has to be taken note of and to keep harmony between the parties, the Court can invoke Section 320 of Code of Criminal Procedure in BITAN SENGUPTA's case as referred supra. The Apex Court also in Y.SURESH BABU's case as referred supra while dealing with Section 326 of Indian Penal Code ordered to pay a compensation to 2nd respondent while compounding the offence. It has to be noted that the Court has to take note of the factual aspects of each case while entertaining the application under Sections 482 and 320 of Code of Criminal Procedure.

32. Learned High Court Government Pleader appearing for the State referring to the judgment of PARBATBHAI AAHIR ALIAS PARBATBHAI BHIMSINHBHAI KARMUR AND OTHERS VS. STATE OF GUJARAT AND ANOTHER brought to the notice of this Court that the Apex Court accepted the reasoning of the High Court that in a case involving extortion, forgery and conspiracy and where all the appellants were acting as a team, the same was not in the interest of Society to quash the FIR on the ground that a settlement had been arrived at with the complainant and further observed that when the offence of forgery, fabrication of documents and utilization of fabricated documents were made, under such circumstances, the Court cannot invoke Section 482 and 320 of Code of Criminal Procedure.

33. In the case on hand, the case of the prosecution is also that accused persons were indulged in tampering the stamp papers changing the date of issuance and thereafter, the same was made use of for the purpose of creating the Will that too in the name of the deceased person. The said document is used as evidence before the Court. Apart from that, taking note of the fact that DW.1 who has been examined before the Court in support of the fabricated document gave

evidence and the Court below has invoked Section 340 of Code of Criminal Procedure against the witness also; having considered the factual aspects of the case and also the seriousness of the allegation and gravity of the offence; forging of documents, fabrication of evidence and utilization of the fabricated documents, we are of the opinion that it is not a fit case to exercise power either under Section 482 or Section 320 of Code of Criminal Procedure to set aside the judgment of conviction which has been delivered by the Trial Court based on both oral and documentary evidence. The Apex Court in PARBATBHAI'S case held that in a case involving extortion, forgery and conspiracy and where all the parties acting as a team, indulged in crime, the same is not in the interest of Society and merely because they have settled the dispute among themselves is not a ground to quash or set aside the judgment. In the case on hand also, the act of the accused are forgery, fabrication of document and utilization of the forged document and hence, the offence is against the Society at large. Therefore, we do not find any merit in the application to entertain the same and set aside the judgment of conviction.

34. Point Nos.1 to 3: The sum and substance of the case of the prosecution is that the original complainants have filed PCR No.203/2003 against accused Nos.1 to 8 making the allegation that, accused No.2- Venkateshappa in order to meet his family needs agreed to sell the property belongs to him to the first complainant - R.Muniyappa for a total consideration of Rs.1,20,000/- as per the registered agreement of sale dated 10.04.2002 and received an advance sale consideration of Rs.1,00,000/- from the first complainant and agreed to execute the Sale Deed after getting the Khatha of the said land in his name within three years from the date of agreement by receiving the balance sale consideration. The said accused failed to execute the registered Sale Deed and hence, the first complainant had filed a suit for specific performance in O.S.No.112/2003.

35. Accused No.3 in order to meet his family needs offered to sell his land to the second complainant - G. Venkatanarayana for a sum of Rs.2,25,000/- and received an advance sale consideration of Rs.2,00,000/- and executed an agreement of sale in his favour along with his brothers and mother, since there is no written partition between the family members of accused Nos.2 and 3. This complainant insisted all the co-parceners and sharers in the family to execute the agreement and they have executed the same and agreed to execute the registered sale deed within three years and receiving the balance sale consideration of Rs.25,000/-. They did not come forward to execute the Sale Deed and hence, he filed a suit in O.S.No.55/2002.

36. The accused persons, who appeared before the Trial Court have setup the existence of will and on enquiry came to know that they have created the Will. It is contended in the complaint that they have collected anti dated stamp paper from accused Nos.1 and 8 on 6.2.1992 for Rs.10/- in order to create Will. The first accused being the son of the stamp vendor, accused No.8, in order to cause loss to the Government and to make wrongful gain and to cheat the

complainants, though he is in possession of stamp papers issued by the Treasury, Kolar of the year 2002-03 till 31.3.2003, tampered the said Government stamps by removing the stamp issuing date seal fixed by the Government Treasury with chemical and put his own date, month and year seal in the said Government stamp paper as 6.2.1992, as it Government Treasury issued said stamp papers to 8th accused on 6.2.1992. Though, no such stamp papers were issued by the Treasury to the 8th accused on 6.2.1992 and issued two stamps of Rs.5/- each in the month of October 2003 by putting anti date as 6.2.1992 in the name of a dead person, who died on 24.5.1995. The first accused again forged the signature of the 8th accused - Pankajamma.

37. It is also the case of the complainants that in order to confirm that the said accused No.1, he is engaged in selling the tampered Government Stamp papers approached accused No.1 on 25.11.2003 along with retired Sub-Inspector C. Narayanappa, the complainant R. Muniyappa asked accused No.1 to give Rs.10/- stamp paper in his name with anti date as 17.7.1995 and the said Narayanappa asked the said Ramesh to give Rs.10/- stamp paper in his name with anti dated 6.3.1995 and accused No.1 collecting the more amount had brought four Rs.5/- stamp papers of the year 2002, put some acid on the original date, month and year seal of the Government Treasury, removed the said original date, year and month and put seal dated 16.07.1995 and issued stamp paper of Rs.10/- with anti date as 17.7.1995 in the name of the complainant Muniyappa. The said Narayanappa asked for stamp paper dated 6.3.1995, the said accused No.1 issued two stamp papers of Rs.5/- each by putting required date of C.Narayanappa as 6.3.1995 by tampering the treasury seal as 8.3.1995, forging the signature of accused No.8 in both the stamp papers. The very allegations made in the complaint against accused No.1 and other accused persons. The allegation against accused Nos.2 to 4 is that, in connivance with accused No.5, they have created the Will in the name of a person who was no more. The Court below referred the matter under Section 156(3) of Code of Criminal Procedure to the concerned Dy.S.P., Kolar, to make the detailed investigation of the case. Thereafter, after investigation a charge sheet is filed against accused Nos.1 to 5, who have faced the trial before the Court Below.

38. The very contention of the appellants in Criminal Appeal No.466/2013 that the Court below has committed an error in convicting accused Nos.2 to 5 in the absence of sufficient material against the accused. Hence, it requires an interference of this Court and the Judgment of conviction has to be set aside.

39. The other two appeals filed by the State contending that the sentence imposed is inadequate and Court below committed an error in acquitting accused No.1, who indulged in tampering the stamp paper issued by the Treasury.

40. In order to consider the rival contentions of the respective appeals this Court has to re-appreciate the evidence available on record. The prosecution relies upon the evidence of prosecution witnesses, who have been examined as PWs.1 to 16. In keeping the contentions, considered the material witnesses, who have

been examined before the Court i.e., PWs.1, 2, 3, 5, 9 and 15, the grouse of the accused in the appeal memo also that the Court below has committed an error in relying upon the evidence of these witnesses.

41. The witness, PW-1, in his evidence, he says that his father was passed away in the year 1995 itself. He entered into an agreement of sale with his brothers for a sum of Rs.1,20,000/- and paid the advance of Rs.1,00,000/- but they did not come forward to execute the Sale Deed and hence, he filed the suit. It is also his evidence that the complainant No.2 also entered into an agreement of sale for a sum of Rs.2,25,000/- with accused No.3 and paid the advance amount of Rs.2,00,000/- and they also did not come forward to execute the Sale Deed. During the course of pendency of the said suit, accused No.4 contended that their father Sri Ramaiah has executed a Will in the year 1992 and on verification of the said Will, they found the signature of their father, but his father was putting left hand thumb impression. They found the seal of stamp vendor - Pankajamma and during the enquiry, he came to know that accused No.1 gave the said stamp paper and in order to confirmation of getting the anti date stamp papers, PW.1 and one Narayanappa PW.4 have approached accused No.1 and obtained two stamp papers anti dated from accused No.1 and hence, the complaint is filed with regard to forgery and other offences. He also deposes that police conducted the mahazar in terms of Ex.P2 and he got marked the complaint as Ex.P1. He has also produced the documents containing left hand thumb impression of his father as Exs.P4 to 6 and identifies the Left hand thumb impression of his father. He also identifies his signature in the Mahazar in Ex.P7. They seized the empty stamp papers and are marked as Exs.P8 and P9 from the house of accused No.1 also seized two stamp papers which are marked as Exs.P10 and 11. The documents, which is in the handwriting, the scribe of the document is also marked as Ex.P13 and the other documents as Exs.P14 to 16 and he identifies his signature. The certified copy of the Will is marked as Ex.P17. PW.1 was subjected to cross-examination.

42. In the cross-examination, it is elicited that he gave the complaint - Ex.P1 before going to the house of accused No.1. The complaint was in the handwriting of a person, who wrote the same in the Taluka Office that on 17.7.1995, he went to the house of accused No.1 and prior to that he did not visit his house. He was having acquaintance with accused No.1 since he approached him earlier for purchasing of stamp paper. Accused Nos.2 and 3 have created the Will. When he approached the accused No.1, he told to come on the next day near Aswatha Katte, but the same was not mentioned in the complaint. He himself and PW.4 went together and accused No.1 came and handed over the stamp papers and he also forged the signature of his mother - Pankajamma. Accused Nos.1 and 5 counsel also further cross-examined PW.1 and elicited that they have not given any complaint against accused No.1 since, accused No.1 had promised to give anti date stamp papers. It is suggested that they did not visit the house of accused No.1 and the same was denied. Accused Nos.2 to 4 counsel also cross examined the witness and in the cross-examination, it is elicited with regard to

the pendency of the suit before the Court that there were four cases. He admits that, his father was passed away in the year 1995 itself. It is suggested that during the life time of their father, he has executed a Will in favour of accused No.4 - Ganga Gowda, accused No.5 - Vinodkumar and accused No.6 - Sujatha and the same was denied.

43. PW.2 is the witness, who speaks with regard to filing of the suit by him and he reiterates the evidence of PW.1 in his evidence. He was subjected to cross-examination. In the cross-examination, it is elicited that he went to the house of accused No.1 in December 2003 and he cannot tell the date. In the cross-examination of accused Nos.2 to 4's Counsel, it is elicited with regard to filing of two suits and also filing of Regular First Appeal before the High Court.

44. PW.3, in his evidence says that in the year 2003, he had approached accused No.5 to write an application, at that time, accused Nos.2, 3 and 4 were also present. He also read the contents of the Will and immediately he told that Ramaiah is no more. Hence, accused No.5 did not sign as scribe of the said document. The police have drawn the Mahazar in terms of Ex.P19. In the cross-examination, it is elicited that when he told that Ramaiah is no more, accused No.5 did not sign the document and he also did not sign the document. It is suggested that Ex.P4 was not in the handwriting of accused No.5 and the same was denied.

45. PW.4 is the witness, who speaks with regard to approaching the accused No.1 and obtaining anti date stamp papers and he also the signatory to the Mahazar - Ex.P2. The police have also seized the stamp papers. He identifies his signature on Exs.P21 and P22 and so also the Mahazar and, so also, his signature available in Ex.P19. He was subjected to cross-examination. In the cross-examination, it is elicited that himself and PW.1 went to the house of accused No.1 on 3.12.2003 at around 1 p.m, by that time, he told that he give the paper on the next day and on the next day, he gave the paper. He admits he did not give complaint immediately to the police when the accused gave the anti date stamp papers stating that he gave the stamp paper with anti date. It is suggested that they did not approach accused No.1 and the same was denied. Accused Nos.3 and 4 in their cross-examination got elicited that he made the statement orally before the Investigating Officer.

46. PW.5, who is the Retired Treasury Officer, in his evidence says that he gave the letter dated 24.1.2004 to the Investigating Officer. The stamp vendor-Pankajamma was having the licence bearing No.SLV 47:89-90 dated 2.8.1990, the same was valid till 31.3.1993 and in terms of the said letter, he confirmed that on 6.2.1992, they have not issued any stamp papers on denomination of Rs.5/-. The said letter is marked as Ex.P23 and he also identifies his signature as Ex.P23(a). In the cross-examination, he admits that Dy.S.P., did not visit his office, but he cannot tell whether he visited and collected the stamp vending register extract or not. It is suggested that at the instance of Dy.S.P., he is giving false evidence before the Court, the same was denied.

47. PW.6 is the Mahazar witness, seizing of these two stamp papers from the house of accused No.1 and drawing up of the Mahazar in the presence of PWs.1 and 3 and he attested the said Mahazar. In the cross- examination, it is elicited that PW.1 is his maternal uncle. The police did not ask him to make personal search of accused.

48. PW.7 is the signatory to Exs.P18 and 20, he was turned hostile.

49. PW.9, who is the material witness and he is the Assistant Director of FSL, in his evidence, he says that he was asked to give his scientific opinion. When he examined, he did not find the original Will and hence, he requested to send the original and the same was not sent saying that it is in the Court. He gave the report in terms of Ex.P5 since original was not given to him.

50. The evidence of PW.10 is with regard to identification of the left hand thumb impression of the father of PW.1 in Ex.P5 - receipt. In the cross- examination, he admits that they did not produce the receipt before the police. It is suggested that the left hand thumb impression available on Ex.P5, is not belongs to the deceased Ramaiah and the same was denied.

51. PW.11 is the Retired Police Inspector-cum- Finger Print Expert. In his evidence, he says that on 8.7.2004, he has received a sealed cover from Circle Inspector of Police and he opened the sealed cover and found it containing in all three original documents i.e.,

Ex.P5-receipt; Ex.P6-affidavit filed before Land Tribunal and Ex.P4-original Sale Deed. The Investigating Officer had requested him to give scientific report in respect of those documents and he has taken the photography and took the three enlarged photographs of those three left hand thumb impressions. After scientifically examining all those documents, he gave his opinion in terms of Ex.P29 and also he has furnished the grounds for his opinion. This witness was not subjected to any cross-examination.

52. The other witnesses are police witnesses.

PW.12 is the person, who apprehended the accused No.1. PW.13, who registered the First Information Report based on the complaint - Ex.P1.

53. PW.14 is the Head Constable. He says he apprehended accused No.1 and produced him before the Dy.S.P., It is also his evidence that accused No.2 was also apprehended and produced before the Investigating Officer.

54. PW.15 is the Circle Inspector of Police, who conducted the further investigation of the case and in his evidence he says that he has drawn the Mahazar in terms of Ex.P24 and also identified the Sale Deed as Ex.P4 and also seized articles were sent to FSL and he speaks with regard to sending of the original Will since the same was given to the Court and obtained the report from Regional Forensic Science Laboratory. After completion of his investigation, he filed the charge sheet. In the cross- examination, he admits that, he has not

recorded the statement of any witnesses or collected the documents since the stamp papers were not given to them for the purpose of investigation and he cannot say whether the stamp paper of Rs.10/- and two stamp papers of Rs.5/- each are counterfeit stamps or not.

55. The other witness is PW.16, the Scientific Officer, Forensic Science Laboratory, in his evidence, he says that the documents referred for examination in this case are Ex.P1 - Will, Ex.P13 - Consent agreement and Exs.P14, 15 and 16 are letters dated 21.10.2003, 18.12.2003 and 18.12.2003. He conducted the examination with regard to Ex.P1, the date as "6 FEB 1992" and he found in Ex.P1 - chemical eraser is detected at the place of present date in District Treasury Seal, but it has not been possible to decipher the erased contents. The body writings found in Ex.P1 and body writings found in Ex.P13 are not written by one and the same person, so also the Bikkalam signature and writings found in Exs.P1 and 13. The writings found in Ex.P1 and the writings found in Exs.P14, 15 and 16 are written by one and the same person. He was not able to express his opinion regarding the age of stamp papers. In his further evidence, he says that, he has given the reasons for his opinion in Ex.P39 and he also identifies the signature on Ex.P39 and so also in Ex.P40. It is the specific evidence that by using common oval seal and common date seal Ex.P40(a) and Ex.P40(b), the seals are put on Ex.P40, Exs.P39(c) and P39(d) are in respect of Exs.P40(a) and Ex.P40(b). According to him, the earlier date mentioned in Ex.P40(a) and Ex.P40(b) have been erased by using chemical and later the date "6 FEB 1992" is subsequently affixed. In the cross-examination, a suggestion was made, no chemical was used for erasing the date and he has given the false opinion, the same was denied.

56. The defence also examined one witness as DW.1 and he speaks that he knows Ramaiah, father of accused No.2. He says that, Ramaiah had executed a document by receiving Rs.6,000/- from him on the condition that he shall return his land to him after two years. He brought the said document executed by Ramaiah and producing the documents, objection was raised. Thereafter, the document is marked as Ex.D1. He was subjected to cross-examination. In the cross-examination, it is elicited that he does not know in the year 1993, totally how many acres of land, family of Ramaiah was owning apart from the property mentioned in Ex.D1. It is elicited that he is not able to tell in which year Ramaiah died and since how long he is not keeping good health. He has given an explanation in the cross - examination that at the time of execution of Ex.D1, Ramaiah told him that he attended evening school and has learnt to affix his signature and that while executing the Will in favour of his grand children; he affixed his signature to the Will. He further says he asked Ramaiah that earlier he was affixing his thumb impression to the documents and why now he has affixing his signature.

57. After considering the oral and documentary evidence available on record, the witnesses, who have been examined before the Court i.e., PWs.1 and 2, who are

the complainants and they have reiterated the averments of their private complaint in their oral evidence. They also relied upon the documents. The prosecution in order to prove approaching of accused No.1 by PWs.1 and 4, they have deposed that when they come to know about the accused No.1 gave the anti dated stamp paper to accused Nos.2 and 3, they have also obtained the stamp paper from accused No.1. Those documents are also marked as Exs.P8 and P9 and so also Exs.P10 and P11, which were denomination of Rs.10/- and Rs.5/-.

58. It is the specific evidence that they have approached the accused No.1 in order to confirm the supplying of the anti dated stamp paper to accused Nos.2 and 3. In the cross-examination, nothing is elicited with regard to obtaining of those stamp papers from accused No.1. It is also pertinent to note that the prosecution relies upon the evidence of PW.5, Retired Treasury Officer and in his evidence, he categorically says that he gave the report that the document dated "6 FEB 1992", which is the disputed stamp paper, which was used for preparing the Will in the name of Ramaiah, has not been issued in favour of Smt. Pankajamma, who is the mother of accused No.1. Hence, the evidence of PW.5 is very clear that on "6 FEB 1992" stamp paper was not issued to Smt.Pankajamma, but the fact that accused No.1 gave the same to accused Nos.2 and 3 has not been disputed. It is also important to note that the accused Nos.2 and 3 are relying upon the Will said to be executed by the deceased Ramaiah. The prosecution also relies upon the evidence of PW.16, handwriting expert and his evidence is very clear that the date and seal "6 FEB 1992" is tampered and chemical was used for erasing the earlier date and seal. When the consistent evidence is available before the Court with regard to tampering of date and seal that too a stamp paper which was issued by the concerned authority, is clear that accused has supplied the document anti dated in favour of accused Nos.2 and 3. It is pertinent to note that when the incriminating evidence was put to the accused No.1 he did not offer any explanation and when the ample material available before the Court regarding selling the document of stamp paper in favour of accused Nos.2 and 3 and accused Nos.2 and 3 making use of the said document for creation of the Will in the name of Ramaiah, who was no more and admittedly, he passed away in the year 1995 itself and it is clear that the stamp paper was issued in the year 2003 and further it is clear that Smt.Pankajamma, who is the mother of accused No.1 was not having the valid licence after 1993 and the same was expired in the year 1993 itself and the Court below fails to take note of consistent evidence of the prosecution witnesses that the accused No.1 himself has tampered and gave the anti dated document. The evidence of PWs.1 and 4 also, it is clear that in order to confirm the act of accused No.1 supplied the anti dated document; they also approached him and obtained the anti dated document of the year 1995 in the year 2003 from accused No.1. In the cross- examination of PWs.1 and 4 also, nothing is elicited to dis- believe the evidence of PWs.1 and 4 regarding obtaining the anti dated stamp papers from accused No.1. The Court below while acquitting accused No.1

has given the reason that the Investigating Officer did not seize the handwritings of accused No.1 and the very finding of the Trial Court is erroneous. When the evidence of P.W.16 is clear that the accused No.1 tampered the date and seal of the stamp paper, the finding of the Trial Court that his sample handwriting is not collected by the Investigating Officer is erroneous. The document which is used by accused Nos.2 to 5 for creating the Will is not in dispute that the accused No.1 himself supplied the same. The accused also not disputed in the cross-examination of prosecution witnesses that he did not supply the stamp paper. P.W.16 has categorically stated that the stamp paper is tampered and by using the chemical, the date and seal are erased. When such being the case, the trial Court ought not to have come to the conclusion that the handwriting of the accused No.1 is not collected. The Trial Court also committed an error in not considering the consistent evidence of P.Ws.1 and 4 for having obtained the anti dated stamp paper from him i.e., Exs.P.8 to 11. The Court below also not considered the evidence of P.W.5 that the said stamp paper is not supplied to the mother of accused No.1 in the year 1992. The evidence of P.W.5 is not controverted and nothing worth while was elicited in the cross-examination of P.W.5. The Court below fails to appreciate the evidence of P.Ws.1, 4, 5 and 16 in right perspective and the conclusion that no material are placed against the accused to bring within the frame of charges leveled against him is erroneous. The Court Below has committed an error in acquitting the accused No.1 and hence, the appeal filed by the State requires to be allowed.

59. Accused No.1 is also required to be convicted for the offences punishable under Sections 467, 468, 471, 473, 474 and 420 read with Section 34 of Indian Penal Code for the reasons that he not only tampered the date of stamp papers and facilitated the accused Nos.2 to 5 to fabricate the documents to utilize the same before the Court of law for the purpose of cheating, using the forged document as genuine with an intent to commit forgery by possessing the seal and documents knowing it to be forged and intending to use it as genuine. The accused knowing fully well that the licence of the mother was not renewed after 1995 and he forges the signature of the mother and delivers the Stamp Paper to accused Nos.2 and 3. The common intention has been shared by him along with other accused.

60. The other contention of the learned counsel appearing for accused Nos.2 to 5 is that the Court below has committed an error in convicting accused Nos.2 to 5 cannot be accepted. The main contention of the learned counsel for the accused is that the evidence of PWs.1 to 5 and 9 and other witnesses cannot be relied upon and the said contention also cannot be accepted. The evidence of all these witnesses is consistent as against accused Nos.2 to 5. The accused Nos.2 to 5 also denied generally incriminating evidence put to them and under Section 313 of Criminal Procedure Code and not offered any explanation and also they did not dispute the fact that they relied upon the Will claiming that the deceased Ramaiah was executed the Will and when the forged document is prepared and used to defeat the claim of the complainants in the original suits and it is

apparent on the face of the record that accused No.5 only the scribe of the said document and no doubt though he has not signed the document, but it is evident from the prosecution witnesses that he only wrote the said document and expert opinion confirms the said document and other documents are in his handwriting. Apart from that, the evidence of the prosecution witnesses is clear that the document of Will was prepared after the death of executant - Ramaiah and we have already pointed out that no dispute that the Ramaiah was passed in the year 1995 and stamp paper of the year 2003 is used as anti dated stamp paper of the year 1992 and the Court below taken note of all these aspects into consideration and meticulously examined the material available on record and rightly convicted the accused Nos.1 and 2 and there are no grounds to interfere with the order of the Trial Court.

61. The other contentions of the State that the sentence imposed by the Trial Court is inadequate. For having taken note of the material available on record, it is clear that in order to defeat the claim of complainants to execute the Sale Deed in their favour since the accused No.4 and accused No.2 have executed the sale agreement in their favour sets up the plea of executing the Will by the deceased Ramaiah. It is pertinent to note that the relationship between the complainants and the accused persons, particularly, accused Nos.2 and 3 are the children of the said Ramaiah. Having considered the civil matter was settled between the parties in Regular First Appeal and also made the payment, it is of the opinion of this Court that the sentence imposed by the Trial Court need not be interfered. No doubt, committing an offence of forgery and using of the said document before the Court of law is a serious offence and having considered the relationship between the parties and subsequent developments between the parties, we are of the opinion that sentence need not be enhanced and hence, the appeal filed by the State also liable to be dismissed.

62. In view of discussions made above, we pass the following:

ORDER

(i) Crl.A.No.847/2013 filed by the State is allowed. Accused No.1 - Ramesh is convicted for the offences punishable under Sections 467, 468, 471, 473, 474 and 420 read with Section 34 of Indian Penal Code:

(a) He is sentenced to undergo Simple Imprisonment for a period of three (3) years and to pay a fine of Rs.5,000/- (Rupees five thousand) and in default, to undergo Simple Imprisonment for a period of three (3) months for the offence punishable under Section 467 r/w Section 34 of Indian Penal Code;

(b) He is sentenced to undergo Simple Imprisonment for a period of three (3) years and to pay a fine of Rs.5,000/- (Rupees five thousand) and in default, to undergo Simple Imprisonment for a period of three (3) months for the offence punishable under Section 468 r/w Section 34 of Indian Penal Code;

(c) He is sentenced to undergo Simple Imprisonment for a period of three (3)

years and to pay a fine of Rs.5,000/- (Rupees five thousand) and in default, to undergo Simple Imprisonment for a period of three (3) months for the offence punishable under Section 471 r/w Section 34 of Indian Penal Code;

(d) He is sentenced to undergo Simple Imprisonment for a period of three (3) years and to pay a fine of Rs.5,000/- (Rupees five thousand) and in default, to undergo Simple Imprisonment for a period of three (3) months for the offence punishable under Section 473 r/w Section 34 of Indian Penal Code;

(e) He is sentenced to undergo Simple Imprisonment for a period of three (3) years and to pay a fine of Rs.5,000/- (Rupees five thousand) and in default, to undergo Simple Imprisonment for a period of three (3) months for the offence punishable under Section 474 r/w Section 34 of Indian Penal Code;

(f) He is sentenced to undergo Simple Imprisonment for a period of three (3) years and to pay a fine of Rs.5,000/- (Rupees five thousand) and in default, to undergo Simple Imprisonment for a period of three (3) months for the offence punishable under Section 420 read with Section 34 of Indian Penal Code.

(ii) CrI.A.No.848/2013 filed by the State for enhancement of sentence in respect of accused Nos.2 to 5 is dismissed;

(iii) CrI.A.No.466/2013 filed by accused Nos.2 to 5 challenging the judgment of conviction and order of sentence for the offences punishable under Sections 467, 468, 471, 473, 474 and 420 read with Section 34 of Indian Penal Code is dismissed; and

(iv) The application filed under Sections 482 and 320(8) of Code of Criminal Procedure is hereby rejected.

(v) The sentence shall run concurrently and the accused is entitled for the benefit of set off under Section 428 of Code of Criminal Procedure.