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IN THE COURT OF ADDITIONAL SESSIONS JUDGE,
KOLHAPUR, DISTRICT - KOLHAPUR
(Presided over by D.V. Kashyap)

Criminal Appeal No. 20/2022
Exh. No. 15/A

Hindurao Shamrao Shinde,
Age- 65 Years, Occ. Retired,
R/o. Sasane Colony, Lakshyatirth
Vasahat, Kolhapur.

...Appellant
(Original Complainant)

- Versus -

1. Prabhavati @ Rani Balaso Patil,
Age- 50 years, Occ. Household,
R/o. 895, C Ward, Ravivar Peth,
Kolhapur.
 2. Anandrao Govindrao Patil,
Age- 48 years, Occ. Agriculturist,
R/o. 711, A-8, Tapowan,
Tal. Karveer, Dist. Kolhapur.
 3. Nathaji Anandrao Patil,
Age- 43 years, Occ. Agriculturist,
R/o. Ghungurwadi, Post- Ghanawade,
Tal. Karveer, Dist. Kolhapur.
- ...Respondents**
(Accused nos. 1 to 3)

**Appeal u/s.372 of the Code
of Criminal Procedure**

Appearances : -

Shri. S. M. Patil for the appellant

Shri. M.S.Jagtap for the respondents.

- J U D G M E N T -

(Delivered on 4thDecember 2025)

The complainant, appellant herein, filed a private complaint against the four accused. The learned Magistrate recorded the complainant's verification statement, perused the record before him and ordered to issue process against accused nos. 1 to 3 only, respondents herein, for the offences punishable under sections 193, 199, 200, 465, 468 and 471 r/w section 34 of the Indian Penal Code. The parties are referred as per their nomenclature before the Trial Court.

02. In complaint, the complainant alleged that accused no.1 is his real sister and accused nos. 2 to 4 are their acquaintances. Constructed building on city survey no. 895-C, admeasuring 20.9 sq.meters, C Ward, Ravivar Peth, Kolhapur was owned by father of him and accused no. 1 i.e. Shamrao Ganpati Shinde. His name was appearing in the property card. Their parents Shamrao and Savitribai died on 25.10.1996 and 29.03.2007. There were three sons and four daughters as their legal heirs. During her lifetime Savitribai had kept some amount in fixed as well as saving accounts in Ravi Co-operative Bank Ltd., Kolhapur. After her demise all her legal heirs filed an application for getting succession certificate before Civil Judge (Junior Division), Kolhapur. The application was allowed on 25.10.2012. The amounts kept in the Ravi Co-operative Bank Ltd., Kolhapur were got mutually distributed by all the legal heirs.

03. Though accused no. 1 had knowledge of other legal heirs of deceased Shamrao and Savitribai, in order to grab the house property, she prepared a false affidavit, stating that she is the only legal heir of deceased Shamrao and Savitribai. Accused nos. 2 and 3 put their identification signatures on the affidavit. Accused nos. 2 and 3, though knew that accused no. 1 had other brothers and sisters, gave false statements and tendered forged documents before the City Survey Officer, Kolhapur. On the basis of affidavit and false statements name of only accused no. 1 was mutated in the property card. She also gave false information to the Executive Magistrate. In February 2023 the complainant got its knowledge, when he visited the City Survey Office, Kolhapur. He made application there on 01.04.2013 under the Right to Information Act and procured all the documents. He came to know about the misdeeds of the accused. He went to Laxmipuri Police station to lodge first information report against the accused but he was turned down there by the Police by stating that the dispute between the parties was of civil nature.

04. Above circumstances entailed the complainant to file a private complaint, wherein he alleged against the accused that they, in furtherance of common intention, gave false evidence, fabricated false evidence, corruptly used true evidence knowing to be false or fabricated, made false statement in declaration, used that declaration knowing to be false, did criminal breach of trust, cheating, executed fraudulent deed of transfer containing false statement of consideration, dishonestly removed property, did

forgery of valuable security and used forged document as genuine.

05. The accused appeared before the Court. The learned Magistrate recorded complainant's evidence before framing of the charge against the accused as per section 244 of the Code of Criminal Procedure. On behalf of the accused the complainant was cross-examined. The learned Magistrate heard both the parties as per section 244 of the Code of Criminal Procedure and did not consider the accused to be discharged as per section 245 of the Code of Criminal Procedure. On 06.02.2019 he proceeded to frame charge against the accused for the above stated offences. The accused pleaded not guilty and claimed trial. The complainant thereafter did not lead further evidence and filed evidence closed pursis at Exh.59 on 26.04.2019. Thereafter, by way of Exh. 60, the complainant informed the Magistrate that his evidence before the charge be read as evidence after charge. On the basis of complainant's evidence statements of the accused came to be recorded on 06.06.2019 and all the incriminating circumstances appearing against them were put to them in the evidence. The accused denied them.

06. Learned Additional Chief Judicial Magistrate, Kolhapur, by way of judgment and order dated 11.07.2019, passed in Reg. Cri. Case No. 745/2013, acquitted the accused of the offences punishable under Sections 193, 199, 200, 465, 468 and 471 r/w section 34 of the Indian Penal Code, vide Section 248(1) of the Code of Criminal Procedure.

07. The complainant is aggrieved by the above judgment and order and preferred the instant appeal as per Section 372 of the Code of Criminal Procedure on the grounds that the learned Magistrate did not appreciate the oral as well documentary evidence on record and failed to consider the same. The learned Trial Court wrongly observed that mere preparing an affidavit does not amount to forgery when the accused/ respondents did not deny the act committed by them. The complainant has specifically stated in his testimony that the respondents prepared a false affidavit and cheated him. Thus, the complainant prayed to allow the appeal by setting aside judgment and order dated 11.07.2019, passed in R.C.C. No. 745/2013 and convict the accused/ respondents.

08. Heard learned Advocate Shri. S. M. Patil for the appellant and Shri. M. S. Jagtap for the respondents.

09. Perused the memorandum of appeal and record and proceeding in Reg. Cri. Case No. 745/2013. Following points arise for my determination; I have recorded findings on them for the following reasons-

Sr. No.	Points	Findings
1	Whether the learned Magistrate legally acquitted the accused for the charges framed against them ?	Yes, partly.
2	Whether the impugned judgment and order require interference at the hands of this Court ?	Yes, partly.
3	What order?	As Per Final Order.

:: REASONS ::

As to Point no.1 :-

10. The learned Magistrate issued process against the accused for the offences punishable under Sections 193, 199, 200, 465, 468 and 471 r/w section 34 of the Indian Penal Code. Order of the learned Magistrate to issue process against the accused for the offences punishable under Sections 193, 199 and 200 of the Indian Penal Code was not legal in view of the bar contained in section 195 of the Code of Criminal Procedure. This bar does not authorize a private person to make complaint for the offences of these sections. Complaint of such offences is required to be filed in writing by the Court or such officer of the Court or other Court to which that Court is subordinate. The complainant was not falling within the category of such persons. He was not empowered to file the complaint against the accused under these sections. The learned Magistrate did not look into this aspect and issued process against the accused for these offences, which was illegal. Thus, interference is not required in the learned Magistrate's order of the acquittal of the accused of the offences punishable under Sections 193, 199 and 200 of the Indian Penal Code.

11. Now, coming to the acquittal of the accused of the offences punishable under Sections 465, 468 and 471 r/w section 34 of the Indian Penal Code.

12. Section 465 of the Indian Penal Code provides for punishment for forgery. Forgery is defined in section 463 of the Indian Penal Code, which says that who ever made any false

document or false electronic record or part of a document or electronic record, with intent to cause damage or injury to any person, or to support any claim or title, or to cause any person to part with property, or enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.

13. Section 468 of the Indian Penal Code provides for the forgery for purpose of cheating. Whoever commits forgery, intending that the document or electronic record forged shall be used for the purpose of cheating commits offence of forgery for the purpose of cheating.

14. Section 471 of the Indian Penal Code says that 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 commits offence under this section.

15. According to the complainant, accused no. 1, being his real sister, was aware that all the legal heirs of her parents were alive still she executed false and fabricated affidavit and got mutated only her name in respect of the house property and thereby did forgery, used the forged affidavit as genuine for purpose of cheating inspite of the knowledge that it was forged.

16. There is no dispute between the complainant and accused no. 1 about their relationship as brother and sister interse. There is also no dispute between them about death of their

parents. There is also no dispute between the parties that all the successors had filed an application for getting succession certificate and the complainant, accused no. 1 and their other five siblings were declared as successors. Thus, it has become undisputed that the complainant, accused no. 1 and their five siblings are the successors of their parents Shamrao Ganpati Shinde and Savitribai Shamrao Shinde, who died on 25.10.1996 and 19.03.2007 respectively (their death certificates are at Exh. 29 and 30).

17. The complainant led his oral evidence in support of the complaint. He also placed reliance on number of documents, which included application filed for getting succession certificate, order passed below it and the documents received to him from Town Planning Officer under the Right to Information Act.

18. He deposed specifically that building standing on City Survey No. 895-C, admeasuring 20.9 sq.meters at C Ward, Ravivar Peth, Kolhapur was owned by his father and his father's name was appearing in the property card. This evidence of the complainant has remained unchallenged in the cross-examination. As death of father and mother is undisputed, after their death names of all their children should have been mutated in the revenue record.

19. The complainant further deposed that accused no. 1 mutated only her name by executing false affidavit, wherein she stated that she is the only legal heir of deceased Shamrao Ganpati Shinde and Savitribai Shamrao Shinde. He further deposed that accused nos. 2 and 3 gave their statements before the Town Planning Officer, Kolhapur, wherein they stated that the

information submitted by accused no. 1 was true and correct. This evidence of the complainant is also not challenged in the cross-examination. The entire cross-examination of the complainant revolves around the facts that he left the house after his marriage, accused no.1 started living there, other siblings were also not living in the house, accused no. 1 only renovated the house, the complainant did not help financially her for the same, he did not look after the parents. In para no. 8 of the cross-examination it was suggested to the complainant that after mutating name of accused no. 1 in the property card he did not make complaint anywhere. The complainant has admitted this. He denied that accused no. 1's name was only mutated in the property card as she looked after mother in her last days and she told her to get her name mutated. This tenor of cross-examination does not displace the fact that the accused no. 1 mutated only her name in the property card by suppressing the fact of existence of other legal heirs of her parents.

20. The affidavit executed by accused no. 1 before Executive Magistrate, Tal. Karveer, Dist. Kolhapur on 05.10.2012 states that after death of her parents she is the only legal heir of them. She specifically stated in the affidavit in following words- "वरीलप्रमाणे आम्ही मयतास सरळ, रितसर व कायदेशीर वारस असून अन्य कोणीही वारस नाही. सबब, मला अन्य कोणीही बहिण, भाऊ वारस नाहीत. सदरचे अफीडेव्हीट सिटी सर्व्हे ऑफीस कोल्हापूर येथे वारस नोंद करण्याकरिता केले आहे."

This affidavit at Exh. 31 has not been questioned or challenged by any of the accused. By way of Exh. 32, accused no. 1 tendered death certificates of parents, property card, identity card and affidavit (executed before Executive Magistrate, Kolhapur) before City Survey Officer, Kolhapur and stated on oath that her name be mutated in the property card. In pursuance of Exh. 32, Exh. 35 was submitted before the City Survey officer, Kolhapur on 04.02.2012, wherein accused no. 1 again reiterated that she is the only legal heir of her parents and her name be mutated. Accused nos. 2 and 3 gave their identification signatures below Exh. 35 and corroborated version of accused no. 1, stating that she is the only legal heir of her parents and her statement is true and correct. By relying the documents, tendered by accused no.1, her name was mutated vide Mutation Entry no. 9747 on 07.12.2012. This is evident from Exh. 37 and 38.

21. The documentary evidence on record clearly establishes the case of the complainant that accused no. 1, by depriving rights of her siblings, got mutated only her name in the property card by making forged affidavit at Exh. 31, she used this affidavit intending to cheat Executive Magistrate, Tal. Karveer, Dist. Kolhapur and pretended the forged affidavit as genuine. Accused nos. 2 and 3, in furtherance of common intention with accused no. 1, made false statement in Exh. 35 and stated falsely that accused no. 1 is the only legal heir of her parents.

22. The learned Magistrate, while delivering the judgment, referred documents filed on behalf of the complainant at Exhibits

32 and 43 and came to the conclusion that it did not reveal that how the complainant was cheated. The learned Magistrate further observed that the complainant did not make complaint to the office where accused no.1 executed the affidavit. The learned Magistrate further observed that it was expected from the complainant to bring strong evidence on the record. The learned Magistrate further observed that the complainant did not wait for the order in his favour to get his name mutated and hurriedly filed the complaint. The learned Magistrate further observed that the dispute between the parties is of civil nature only. All these observations of learned Magistrate are not legal. When there was documentary evidence in the form of forged affidavit of the accused no.1, which was not disputed by her, on which basis her name was mutated in the property card, it was incumbent on the part of learned Magistrate to hold that all the accused, in furtherance of common intention, did forgery within the meaning of section 463 of Indian Penal Code and committed offence punishable under section 465 read with 34 of the Indian Penal Code. The learned Magistrate should have held that all the accused cheated the public servants like Executive Magistrate and City Survey Officer by way of forged affidavit and dishonestly used that affidavit as genuine and committed offences under sections 468 and 471 read with 34 of the Indian Penal Code.

23. Above discussion leads this Court to interfere in the judgment and order of the learned Magistrate by holding that all the accused are guilty of the offences punishable under sections 465, 468 and 471 r/w section 34 of the Indian Penal Code and they

are required to be punished accordingly. Points 1 and 2 are answered accordingly.

24. Here, I have taken pause to hear respondents /accused nos.1 to 3 on the point of sentence.

Kolhapur

(D.V. Kashyap)

Date: 04/12/2025

Additional Sessions Judge, Kolhapur.

25. Learned advocate for the respondents/accused submitted that all the accused are of advanced age, there are no criminal antecedents to their discredit, they be sentenced to pay fine only. It is also submitted that accused no.1 a widow and her only son is unemployed. If she is sentenced to imprisonment, she will face hardship. The accused have personally made no submission on the point of sentence.

26. Learned advocate for the appellant/complainant submitted that maximum punishment be awarded.

27. Section 465 of the Indian Penal Code provides for imprisonment for either description for a term which may extend to three years, or with fine or with both. Section 468 of the Indian Penal Code provides for punishment with description a term which may extend to seven years, and shall also liable to fine. Section 471 of the Indian Penal Code provides for punishment in the same manner as the accused had committed forged such document or electronic record i.e. punishment provided under section 465 of the

Indian Penal Code can be awarded under Section 471 of the Indian Penal Code.

28. It appears that accused no.1 is a widow and she has been living destitute life. If she is sentenced to imprisonment she will certainly face hardship in her advanced age. Accused nos.2 and 3 might have helped the widow lady because of her compulsion. They might not have thought that this may land them in criminal prosecution. There is no record before the Court that the accused are previously convicted or prosecuted for any criminal offence. The complaint was filed against the accused in the year 2013. They are been facing trauma of criminal prosecution since 12 years. All these circumstances lead this Court to take lenient view and award minimum sentence of imprisonment with fine to all the accused for the offence punishable under section 468 read with 34 of the Indian Penal Code and sentence of fine only for the offences punishable under sections 465 and 471 read with 34 of the Indian Penal Code. In answer to point no.3, following order is passed -

ORDER

1. The appeal is partly allowed.
2. The Judgment and Order dated 11/07/2019, passed in Reg. Cri. Case No. 745/2013, acquitting the accused of the offences punishable under sections 193, 199, 200 read with 34 of the Indian Penal Code, vide section 248(1) of the Code of Criminal Procedure, is confirmed.

3. The Judgment and Order dated 11/07/2019, passed in Reg. Cri. Case No. 745/2013 acquitting the accused of the offences under sections 465, 468 and 471 r/w section 34 of the Indian Penal Code, vide section 248(1) of the Code of Criminal Procedure, is set aside and they are convicted for the same vide section 248(2) of the Code of Criminal Procedure.
4. The accused are sentenced to pay fine of Rs.3,000/- each for the offence punishable under section 465 read with 34 of the Indian Penal Code; in default to suffer simple imprisonment for 15 days.
5. The accused are sentenced to imprisonment till rising of the Court and to pay fine of Rs.5,000/- each for the offence punishable under section 468 read with 34 of the Indian Penal Code; in default to suffer simple imprisonment for 20 days.
6. The accused are sentenced to pay fine of Rs.3,000/- each for the offence punishable under section 471 read with 34 of the Indian Penal Code; in default to suffer simple imprisonment for 15 days.
7. Out of recovered fine, an amount Rs.10,000/- be paid to the complainant/appellant towards the compensation.
8. Accused to surrender their personal bonds, their sureties are discharged.

9. The accused to appear before the learned Trial Court to serve substantive sentence on 07-01-2026.
10. If the accused remain absent before the Trial Court on above fixed date, warrant for their arrest be issued as per Section 418(2) of the Code of Criminal Procedure (458 of the Bharatiya Nagarik Suraksha Sanhita) to execute substantive sentence.
11. Record and proceedings in Reg. Cri. Case No. 745/2013 be sent to the Trial Court alongwith copy of the judgment.
12. Copy of the judgment be given to the accused, free of costs.

Kolhapur

Date: 04/12/2025

(D. V. Kashyap)

Additional Sessions Judge, Kolhapur.