CASE COMMENT: NAKUL KOHLI V. STATE, 2010 SCC ONLINE DEL 2328.

Gowri Nair [1] & Shruti Shrivastava[2]

I. INTRODUCTION

The case of Nakul Kohli v. State is an important precedent by the Delhi High Court that reformed the statutory understanding of forgery in the digital technology. The major legal argument concerned on the issue whether a photocopy could construe as "making a false document" provided under Section 464 of IPC, or if it was only "secondary evidence" not admissible or sufficient for framing of charges. The word "makes" in the Indian Penal Code is wider to include the photocopies and printings which was ruled by Justice Mukta Gupta.

II. FACTS OF THE CASE

The present case stems from FIR No. 71/2005 registered at Police Station Cell, Lodhi Colony, Delhi. The Case originated from a complaint filed by the victim against a travel agent that he was fraudulently inducing innocent people desirous of going to the United States of America by charging unreasonably large amount of money under the false representation of obtaining visa for them.

The investigation gathered traction when police officers involved the victim named Jigar Modi in investigation to assist in recovery operation. On the day of the occurrence, a trap was laid down, which resulted into arrest of the Petitioner. During conducting personal search, during the search and seizure officer recovered a coloured photocopy of an American visa which was issued in the name of "Upendra Kumar Karsan Bhai" from right pocket of the Petitioner's pant, which was later seized. The photocopied document was seized as adverse evidence.

After the arrest of the accuse, petitioner purportedly confessed that he, in coordination with co-accused individuals, had intentionally Persuaded Jigar Modi and his friends to pay a total amount of Rs. 6,10,000. The Investigation found a specific modus operandi, the petitioner along with co-accused, named Ashish

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Sharma (who operated with the fake names as Rahul or Neeraj), Established and operated an office at Vardhman Tower in Preet Vihar, Delhi. They wrongfully represented to victims that another associate was an official of U.S. Embassy. Under this fraudulent offence, they involved multiple persons to pay huge amount of money to "procure" visas.

Other victim witnesses – Sher Singh, Gurpreet Singh, and Avtar Singh along with his son Kamalpreet Singh participated in the investigation. The witnesses given consistent testimonies, considering each of them handed over Rs. 1 lakh and their original documents along with the passports to the Petitioner and co-accused for visa purpose. Though the accused persons neither arranged the said visa nor returned back the money or passports of the victims to the crime.

The Recovered evidence of coloured photocopy was send to the US Embassy in New Delhi for verification. On 16th May 2005, the U.S. Embassy formally communicated that no visa bearing No. 20056955325107 had ever been issued to Upender Kumar Karsan Bhai and declared the document as fraudulent. Moreover, the Government Examiner of Questioned Documents (GEQD) examined by comparing the seized document with an original one and held that the document marked 'Q1' (recovered from accused Nakul Kohli) was Spurious in Nature."

After the filing of charge sheet and evidence collected, the learned Chief Metropolitan Magistrate (CMM) framed the charges against the Petitioner under Section 419, 420, 471, 474 and 120B IPC. not satisfied by the framing of charges petitioner filed a revision petition before the learned Additional Sessions Judge (ASJ), though the same order was dismissed on dated 12th November, 2009. Therefore, the Petitioner approached the High Court, particularly challenging the charges under Section 471 and 474 IPC, arguing that a photocopy of particular document could not legally considered a "forged document" for the application of these sections.

III. ISSUES

ISSUE 1: Whether the use of photocopy of not genuine document can amount to an act of forgery under Section 464 of the IPC or whether it constitute only to cheating under Section 415 IPC?

ISSUE 2: Whether the photocopy of the document is admissible as evidence under Section 64 and 65 of the Indian Evidence Act, 1872, at the stage of framing of charges and accordingly whether the charges under Section 471 and 474 IPC can be maintained solely on the basis of a photocopy?

ISSUE 3: Whether the term "Marking" a false document under Section 464 of IPC is limited only to the act of signing, sealing and Execution of a document, thus not including photocopying or printing in its scope?

IV. ARGUMENTS IN BRIEF

The counsel on behalf of the petitioner did not challenge the sections 419, 420 and 120B[3] rather challenged the charges under section 471 and 474 of IPC. This led to the emergence of two distinguished arguments. Firstly, the petitioner raised the contention that charge under sec 471of IPC was not applicable as the document in question was a photocopy. To attract the offence under sec 471of IPC, the document must be forged and the forgery under sec 464[4] requires the document to be signed, sealed or executed. The petitioner contended that the document in question was a photocopy which does not constitute a false document under sec 464[5]. The petitioner relied on the case of *Pramatha Nath v State*[6] which stated that printing or writing does not come under the ambit of making false document under sec 464 of IPC. Secondly, the petitioner's counsel, relying on case of *Shashi Lata Khanna v State of Delhi*[7], the incriminating document is not admissible under sec 64 and 65 of Indian Evidence Act[8] as they are secondary evidence thereby forming the inability to form charges based on the evidence.

The counsel on behalf of the state supported the framing of charges. The raised the contention that the photocopy of the visa is primary evidence as it is the instrument of fraud and it came under the ambit of sec 463, 464,471 and 474[9] read with sec 29[10]. These provided a wide range to encompass the contention that forged photocopy was used as a genuine copy. The counsel argued that a reasonable suspicion is only

[3] Indian Penal Code, 1860, §§ 419, 420, 120B.
[4] Indian Penal Code, 1860, § 464.
[5] Supra Note No. 2.
[6] 52 Crl. L.J. 1480.
[7] 2005 (2) JCC 1220.
[8] Indian Evidence Act, 1872, §§ 64–65.
[9] Indian Penal Code, 1860, §§ 463, 464, 471, 474
[10] Indian Penal Code, 1860, § 29.

needed for a prima facie case at the stage of framing charges and not proof beyond reasonable doubt.

V. JUDGMENT

The judgment given by J. Mukta Gupta dismissed the petition and upheld the charges under section 471[11] and 474[12]. The judgment provided a comprehensive and meticulous elucidation of the law, thereby untangling the webs of ambiguity within the law of forgery. The court stated that the term "makes" in sec 464 [13] cannot be narrowly interpreted. The term cannot be aligned with mere signing, sealing and executing rather it provides a full operative meaning. The court disagreed with the judgement of the single judge bench of Calcutta High Court and delivered that restricting false document to signing, sealing and executing would render the term "makes" superfluous[14] that contravene the existing method of interpretation which states that no word in a legislation is added without any aim. The court rendered the Calcutta High Court Judgment ineffective, finding it inconsistent with illustration (c) and (d) under sec 464[15] and also not fitting with the jurisprudence reiterated by Bombay, Patna and Mysore High Courts. The court with help of *Province of Bihar v. Surender Prasad Ojha* [16]and *L.K Sidappa v. Lalithamma*[17] held that broader interpretation of the term "makes" under sec 464 is the correct position of law.

The judgment laid emphasis on the contention that with advancement of colour photocopying and scanning technologies, reproduction of false document and fraudulent activities has become easier and more sophisticated. The subject matter in this case, a colour photocopy of a visa, was used to deceive and extort substantial amounts of money from the victims. This squarely falls within the meaning of false document. This misrepresentation by the accused of the photocopy as a genuine document, constitutes forged document under sec 471[18]. Based on evidentiary argument presented before the court, it was held that the question of whether a photocopy is primary or secondary document is irrelevant at the stage of framing

[11] Indian Penal Code, 1860, § 471.
[12] Indian Penal Code, 1860, § 474.
[13] Supra Note No. 2.
[14] 2010 SCC OnLine Del 2328.
[15] Supra Note No. 2.
[16] AIR (38) 1951 Patna 86.
[17] 1954 Crl. L.J. 1235 (Mysore).
[18] Supra Note No. 9.

charges. The integral requirement is regarding the suspicion of the involvement of the accused in such an offence and how strong the suspicion is. Further, it was held that the instrument of fraud, that is the photocopy, the offending article, is the primary evidence irrespective of the general rules of the Evidence Act on secondary documents. The court backed this contention by holding that the case of *Shashi Lata Khanna*[19] was misconceived which stated that the original forged document was not seized thereby rendering the photocopy inadequate but in the present case the photocopy itself was the instrument of fraud which was recovered from the accused himself.

In the finality of the judgment, the court held that the allegations along with offending article- the photocopy- and its confirmation as false document from the US Embassy and GEQD provides the necessary grounds for application of the charges under sec 471[20] and 474[21]. Therefore, the petition before the court was dismissed holding that modern forms of reproduction of false documents falls within the ambit of Indian laws governing production evidences.

VI. CRITICAL ANALYSIS

The Judgement of *Nakul Kohli v. State*[22] which represents a substantial judicial intervention to reform the application of the Indian Penal Code (IPC) in the light of emerging technology. Although the decision prescribes essential clarification on the status of digital copies, it also preserves certain doctrinal questions subject to further discussion. The finding of the court complies with objective approach to statutory interpretation, providing that legal definitions do not become superseded. The Court rightly identified that the word "makes" in Section 464[23] is not only Antecedent to "sings, seals or executes" but is a separate act. By examining the word "makes" to include photocopying and printing, the affirmed the principle that provisions of the law are always essential.

Justice Mukta Gupta settled the inconsistency between several High Courts by upholding the comprehensive definition of "document" provided under Section 29[24].

[19] Supra Note No. 5.
[20] Supra Note No. 9.
[21] Supra Note No. 10.
[22] Cri LJ 4536.
[23] Supra Note No. 2.
[24] Supra Note No. 8.

The court clearly deviated from the narrow interpretation in *Pramatha Nath v. State*,[25] that "making" a fraudulent document under Section 464 [26] is limited to acts of signing, sealing or executing, thus exclude making entire photocopies. The court decisively and correctly dismissed this view. In the case of *Emperor v. Krishtappa Khandappa*,[27] in which the Chief Justice Macleod stated said that a document under Section 29 of IPC includes any matter stated by letters, figures, or marks meant to be used as evidence, and not necessarily needed to be signed or sealed.

The court moreover strengthened its position by referring to judgments *of Bihar v. Surendra Prasad Ojha, Ranjit Sinha v. The State* and *L.K. Siddappa v. Lalithamma*,[28] showing that its conclusion was not a limited deviation but part of established line of judicial reasoning.

The court made a significant difference regarding the Indian Evidence Act, 1872. It said that when a photocopy of a document or an article is offending which was used to commit the offence of fraud, it is no longer remains a photocopy of a document but the primary evidence to the crime. In the case of *Shashi Lata Khanna v. State of Delhi*,[29] the distinction was mentioned, where the prosecution has used a photocopy as an alternative of an original document that had been shown to the investigation officer but not seized, a paradigmatic instance of secondary evidence.

Regardless of its strengths, the judgment has been censured for excluding certain constituent elements of the law under inadequately analysed. Although the Court confirmed the charges, it did not thoroughly analyse the particular requirements of Section 474 IPC[30] relating the "possession" of the forged documents. The case focused majorly on the act of "making" under section 464 of IPC instead of focusing on nuances of differing possession "descriptions" of documents mentioned in Section 466 and 467 of IPC.[31] The court rather than prioritizing section 463 of IPC[32] for

[25] Supra Note No. 4.
[26] Supra Note No. 2.
[27] AIR 19 Bom 327.
[28] Bihar v. Surendra Prasad Ojha, AIR (38) 1951 Patna 86; Ranjit Sinha v. The State, AIR 1963 Patna 262; L.K. Siddappa v. Lalithamma, Crl. L.J. 1235 (Mysore).
[29] Supra Note No. 5.
[30] Supra Note No. 10.
[31] Indian Penal Code, 1860, § 466, 467.
[32] Indian Penal Code, 1860, § 463.

forgery, focused on Section 415[33] of IPC for cheating, which weakens the legal difference between an ordinary fraud and a forged document.

While the court has expanded "makes" to include photocopying, it failed to get an opportunity to provide a more critical, technologically neutral framework. As the technology going towards deepfakes and entirely digital records, a wider definition beyond "printing" would be more precedential for future cases.

Despite of the mentioned gaps, *Nakul Kohli v. State*[34] makes a significant and timely input to Indian Criminal Jurisprudence. It was first established in the Delhi High Court, that has refined Colour photocopy of a fraudulent forged document can constitute "making" a false document under Section 464[35], that type of photocopy whenever used as primary evidence for offence of fraud for the purpose of criminal trial. The judgement demonstrates a comprehensive judicial approach, that the purpose of the law is to adapt the emerging technologies, which is an essential principle for courts applying historical legislation to contemporary realities i.e. interpreting 19th century legislation in 21st century. In the same manner, the decision is not correct but necessary.

VII. CONCLUSION

The decision in *Nakul Kohli v. State* marks a significant step in modernising the law of forgery by ensuring that statutory provisions remain effective despite technological advancements. By adopting a purposive interpretation of Section 464 of the Indian Penal Code, the Delhi High Court rightly recognised that colour photocopies used to deceive and facilitate fraud can constitute "false documents" when employed as instruments of crime. The judgment closes a potential loophole that could have allowed offenders to evade liability by relying on advances in reproduction technology. At the same time, the ruling reinforces that criminal law must evolve alongside changing methods of document fabrication without departing from established principles of statutory interpretation. Nevertheless, the judgment leaves certain doctrinal issues, particularly concerning the precise scope of Section 474 and the treatment of emerging digital technologies such as digitally etc.

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[33] Indian Penal Code, 1860, § 415.
[34] Supra Note No. 20.
[35] Supra Note No. 2.