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PROBLEMS OF QUALIFYING FORGERY JOB TITLE CRIME

Submission Date: April 10, 2023, Accepted Date: April 15, 2023,

Published Date: April 20, 2023

Crossref doi: <https://doi.org/10.37547/ijlc/Volume03Issue04-04>

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ABSTRACT

In conclusion, the crime of forgery is not a symptom of some form of theft of property. It is a piecemeal crime that encroaches on its independent object. For this reason, the method of using the forgery of office in the robbery of other people's property, after the completion of the crime of forgery and theft of the property of others, regardless of whether it was done in the process of its implementation or before its implementation, the actions of the accused should be qualified according to the set of articles on forgery of office and robbery of other people's property.

KEYWORDS

Position, evidence, qualification, crime, order, article.

INTRODUCTION

Qualifying the forgery position is carried out according to certain rules. The rules for qualifying the forgery position are the ways and methods provided for in the application of the criminal law, the orders of the Plenums of the Supreme Court of the Republic of Uzbekistan, as well as the ways and methods created in other judicial practice and the theory of criminal law.

L. D. Gauxman divided the rules used in qualifying the forgery evidence in a criminal case into three groups: general, personal and special rules [1]. The specific features of qualifying forgery position and distinguishing it from structurally similar crimes are based on these rules.

Position forgery as an independent crime is rarely seen. Its danger lies mainly in the fact that it is usually combined with other crimes, first of all, with the crime of robbing other people's property by using the position [2].

Although the Criminal Code enumerates different ways of robbing other people's property according to the form of work, a single link has not yet been created when comparing property damage and forgery to the criminal-legal assessment. At the same time, there are two main points of view in the theory of criminal law regarding the qualification of such crimes.

Proponents of the first point of view, if employed as a way of facilitating or concealing forgery and any other crime, including the plundering of the property of others, considers that the entire act should be qualified by the summary of the articles of the Criminal Code, which stipulate responsibility for these offenses [3].

According to the second proponents' point of view, if the forgery position is left as a method or means of plundering the property of others, then it must be covered by the last mentioned crime and therefore does not require additional qualification [4]. Forgery position or the use of forged documents did not determine the direct transfer of other people's property to certain persons, rather, we can see that only when this goal is a means of concealing the traces of a crime, the combination of crimes - theft of someone else's property and the crime of forgery position committed in a specific way [5].

However, supporters' point of view that this composition of the forgery crime is covered by the composition of the robbery of other people's property give arguments that are not relevant to the meaning of the issue under consideration [6]. In order to solve it

correctly, it is necessary to follow the general rules of qualification according to the totality of crimes. According to him, in the event that the accused has actually committed two independent crimes provided for in different articles of each criminal law, responsibility for the set of crimes is canceled only if one of the secondary acts is a constitutional sign of the composition of the other crime of dangerous aggression.

It is known that the forgery position is not considered a sign of some form of the crime of looting other people's property. It is a crime that attacks its independent object. For this reason, the method of using the forgery position in the robbery of other people's property, regardless of whether the forgery position is committed after the completion of the crime of robbery of other people's property, in the process of its implementation or before its implementation, the actions of the accused should be qualified according to the summary of the articles on the forgery position and on the robbery of other people's property.

This conclusion was clarified in the order of the Plenum of the Supreme Court of the Republic of Uzbekistan dated May 21, 2004. According to the 8th paragraph of this order, if an official has deliberately entered false information and records in official documents in order to mitigate or hide the crime of robbery committed by him, it is clarified that his act should be classified according to the set of crimes provided for in Articles 167 and 209 of the Criminal Code [7].

For example, citizen "B" is an official who has been working since December 11, 2017 as the director of "ELITA" limited liability company, which belongs to "Jizzakhpakhtasanoat joint-stock company". He did not ensure that the seed was stored at the level of

standards and requirements set by the State Standard of the Republic of Uzbekistan “Cotton seed” technical conditions of the State Standard of the Republic of Uzbekistan 663-2017, Law “About Cereals”, the President’s order of the Republic of Uzbekistan dated November 28, 2017 No. PO-3408 “On measures to fundamentally improve the management system of the cotton industry”, the Law on the “Procedure for the Establishment and Use of the Insurance Seed Fund” approved by the order of the Cabinet of Ministers in April 2014. Regardless of the fact that the Joint-Stock Company was entrusted with the task of storing seeds and delivering them to farms, he did not fulfill his duties as required. As a result, the warehouse worker of the association allowed 622,557.7 kg of seeds worth 2,548,322,938 soums, 46,037.0 kg under the responsibility of the warehouse worker S. 240,428,261 soums, total 668.594, 7 kg. 2,788,751,198 soums worth of seeds to become unusable and caused a lot of damage to state property.

“B” continued his criminal activities and entered into a criminal conspiracy with “U”, a warehouse worker. He sold 1,243.2 kilograms of 7,818,484.8 soums of C65-24 selection seeds, 65,276,491 of 19,153.9 kilograms, 2 soums of S65-24 selection grade, 1,481.7 kilograms worth 7,075,117.5 soums Bukhara-102 selection grade and 15,105.5 kilograms worth 67,597.11 soums of An-Boyavut-2 selection grade, totaling 36984.3 kilograms worth 147,767,206 soums to unknown people whose identity was not identified in the investigation. That person entered official reports and added false information and notes that the seeds are stored in the society, and robbed another person by embezzling a huge amount of funds totaling 147,767,206 soums. “B” continued criminal activities, pursued malicious and nefarious intentions, and made a criminal conspiracy together with the chief accountant of the society Sh. He repeatedly falsified applications for employment of

20 persons who did not work in the society, employment contracts, orders of the director of the society on employment, as well as signs for checking the arrival and departure of employees, added fake information about the fact that the employees worked for 8 hours every day in the signboards, transferred a total of 232,805,252 soums of wages to the plastic cards opened in the bank in their name, and took these money equally among themselves, robbed someone else by embezzling a large amount of money. He was found guilty by the court of committing the crimes listed in clause 1 of Article 207 of the Criminal Code, Clause “a” of 3rd Section of Lawcode 167, Clause “a” of 2nd Section of Lawcode 209, Clause “a” of 2nd Section of Lawcode 205 [8].

If the forgery position was used as a method or tool to facilitate or conceal any other crime, including the theft of another’s property, there are no legal scholars who think about how to qualify the accused’s act. For example, F. Z. Khalikov writes: “If the consequences of the forgery position are grounds for charging a person with another crime (for example, looting state or public property), then the accused’s act is classified as a set of crimes” [9].

According to B. V. Zdravomyslov, “Forgery for the purpose of looting someone else’s property is covered by the normative content of the criminal law related to forgery of documents, because it includes, among other things, theft of someone else’s property through the use of official representation” [10].

In our opinion, the crime of robbing another person’s property does not include falsification of documents, because falsification of documents is not considered a method of robbery in itself. Forgery does not lead to possession of property if it is done without proper use of the document. For this reason, it is necessary to

qualify the use of such documents in the robbery of other people's property according to the set of crimes.

Job falsification can be done not only with robbery crimes, but also with other types of crimes, and sometimes it is a method or means of their operation.

In cases where job falsification is committed along with other crimes against the State administration, the interests of the State service and the interests of the service in local self-government bodies, problems arise regarding the competition of norms and the qualification of the real complex of crimes. The problem of separating the collection of criminal misdemeanors and the competition of criminal-legal norms has not yet been fully resolved. As some authors noted, the collection of crimes would have provided an opportunity to clearly distinguish between the actual situations and the competition of criminal-legal norms, and to prevent many mistakes made by courts and investigative organizations in the qualification of different categories of crimes [11].

During the study of criminal cases, preliminary investigation organizations and courts qualify forgery and other crimes contrary to the State administration, the interests of the State Service and the interests of service in local self-government bodies, as provided for in the criminal-legal norms of various chapters of the criminal law shows that these norms face severe difficulties when they compete with each other in resolving the question of the existence or absence of agglomeration of crimes.

Sometimes a public dangerous act committed by an official corresponds to the signs provided for in two, and in some cases - three articles of the Criminal Code. For this reason, the features of the qualification of the act in the case of competing norms related to

smuggling crimes, such as abuse of power or delegation of power, bribery, embezzlement of the authority of an official, require a separate analysis.

When determining the role and importance of the composition of the crime of forgery position and its relationship with other official crimes, it is necessary to proceed from the following. The forgery position has two aspects: on the one hand, it is a special type of crime of abusing power or representation of a position provided for in Article 205 of the Criminal Code; on the other hand, it is an official crime that has its own forms.

The fact that the crime of forgery position is considered a special component in the abuse of the powers of the government or office is the basis for considering the misuse of power or representation of a position as a "reserve" component, provided for in Article 205 of the Criminal Code. The special norm clarifies the signs of the crime and differentiates responsibility, it is more effective than the general norm from the point of view of prevention. The fact that people know that the act they are thinking of committing is considered a crime in the criminal code, in general, has a warning effect in many ways [12].

It should also be noted that, in practice, there are cases where actions similar to forgery positions from the outside should be qualified not according to Article 205 of the Criminal Code, but according to Article 209. As some authors have noted, such qualification is required in cases where forgery is considered a method of abuse of power or authority and is combined with the purpose and intent of the guilty official [13]. In such cases, when the whole and the department compete, the general rule of qualifying crimes should be applied. According to this rule, it is necessary to always apply a standard that covers all the factual signs of the committed act.

In such cases, forgery position is observed as a method of abuse of power or office representation, and in the words of T. B. Boshova, “the guilty person is only one side of criminal activity” [14]. For example, if writing a fake document is qualified as forgery, other actions of the guilty will not be given the necessary legal assessment.

If the forgery is not directly defined as abuse of power or representation of a position, but acts as a means of abuse of power or representation of a position, it is appropriate to qualify such actions under the summary of Articles 205 and 209 of the Criminal Code. It will not be enough to qualify cases where an official conceals a deficiency that arose due to the abuse of his official position by confusing reporting and reporting documents as abuse of power or official position only under Article 205 of the Criminal Code. It is more correct if such actions are qualified as abuse of office representation and forgery position [15].

For example, an official (head and members of the internal control commission, inspector) does not promise to hide the robbery in advance, but knowingly (later, instead, for the purpose of obtaining funds from the perpetrator or based on his personal relationship with him) hides the crime detected during financial control. On the one hand, in such cases, the guilty does not perform the task of informing the chief who prepared the investigation or investigation about the detected violations, that is, he uses the powers of the position for the opposite purpose. On the other hand, it violates the obligations to determine, control and ensure the reliability of the inspection materials and the completeness of the conclusions stated in the inspection document, by means of document inspection of the robbery identified as the guilty, added false information into the verification document, i.e. job forgery occurs [16].

In this and many other cases, job falsification is expressed in one or more of the actions provided for by law, in the case of abuse of power or representation of a position, it can cover a wider range of undesirable actions that are against the law according to its practical form.

Sometimes, in the practice of judicial investigation, the issue of forgery position is related to another type of abuse of power or forgery position - bribery. For example, an official gives a forged document instead of a bribe, that is, he takes a bribe using the forgery of his position, that is, he commits an act that is considered a crime. In such cases, the real summation of crimes is in effect, and it is necessary to give it a legal assessment when qualifying the crime [17]. This rule is mentioned in general at the same time.

According to the law, bribery is a crime committed in the interests of malice. In this case, the official must use his official position or, instead of doing it with the interests of the person offering the bribe or not doing it, alone or through an intermediary, it is expressed in receiving culturally valuable things or receiving property benefits, knowing that it is illegal.

In the order of the Plenum of the Supreme Court of the Republic of Uzbekistan dated May 21, 2004, if the forgery position was committed with the participation of other persons who were not the subjects of the crime of officialdom, the actions of such participants, if they were not participants in the crime of robbery, it is explained that it should be qualified not by Article 228 of the Criminal Code, but by Articles 28, 209 of the Criminal Code [18].

Legal literature also distinguishes a separate group of official crimes - alternative - official crimes. The essence of these crimes is determined by this, they can be

committed by officials as well as by non-officials (using their official position) [19]. From the point of view of the problem being analyzed, the structure of the crime of smuggling provided for in Article 246 of the Criminal Code can be an example of alternative-position crimes. The crime referred to in Article 246 is often committed by using documents whose forgery is already known or by adding false information into documents. In this case, knowing that it is a crime to make a forged document or to add false information into it (the document), therefore, at the same time, offering it to the employees of the customs body as the main document, is the basis for qualification with Article 246 of the Criminal Code and Articles 209 or 228 of the Criminal Code.

In our opinion, it is wrong to qualify this act in this way. The reason is that the use of a forged document is directly highlighted as a special rule in the provision of Article 246. Therefore, it is not necessary to qualify such an act with articles 209 or 228. Taking this into account, the Plenum of the Supreme Court of the Republic of Uzbekistan of September 6, 2013 “On judicial practice in cases of violation of the law on customs and smuggling” No. 18 is supplemented with paragraph 121 of the following content fit for purpose:

“121. A person who knowingly draws up a forged document or knowingly enters false information into a document or a forged document and presents it to the customs authorities as a genuine document is subject to criminal liability under Article 246 of the Criminal Code of the Republic of Uzbekistan. In this case, it is not necessary to further qualify the person with articles 209 or 228 of the Criminal Code of the Republic of Uzbekistan.”

If the falsification of the position was committed with the purpose of helping another person to carry out

smuggling, the accused must be prosecuted for the crimes provided for in Article 209 of the Criminal Code and Article 246 of the Fifth Division of the Criminal Code (for helping to commit the crime of smuggling). To sum up the above, it can be said that in all the criminal elements considered, the signs of their operation are valid as a competitive factor.

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