



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 114 OF 2026

. Shankar Kishanrao Rathod
Age: 68 years, Occu.: Retired Headmaster,
R/o. Hanegaon, Tq.Degloor,
District : Nanded. Appellant

Versus

1. Tejerao Chatru Pawar
Age: 61 years, Occu.: Nil,
R/o. Sevadas Nagar,
Hanegaon, Tq.Degloor,
District Nanded.
2. The State of Maharashtra
Through Police Station Officer,
Police Station Markhel,
Tq.Degloor, District Nanded. Respondents

.....
Mr.Vishwanath P.Golewar, Advocate for Appellant.
Mr.Krishna Rodge, Advocate for Respondent No.1.
Mr.N.D.Raje, APP for Respondent No.2.

.....
CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 23-09-2026
Pronounced on : 30-09-2026

JUDGMENT :

1. In the instant appeal, there is challenge to Judgment and order dated 21-02-2023 passed by learned Additional Sessions Judge, Biloli, in Criminal Appeal No.34 of 2018 acquitting present respondent No.1

from charge under Section 381 of the Indian Penal Code (IPC), arising out of Judgment and order of conviction dated 09-07-2018 passed by learned Judicial Magistrate First Class (JMFC), Degloor in R.C.C. No.139 of 2009.

2. Before learned trial Court, case set up by prosecution was that, respondent No.1/accused, by use of duplicate key, had opened cupboard and stolen muster roll / attendance register from the School and was running away from the School premises. Report to that extent was received by Police Station Officer at Markhel Police Station, who registered Crime bearing No.51 of 2009 for offence under Section 381 of the IPC. Trial was conducted before learned JMFC, Degloor vide R.C.C.No.139 of 2009 and by Judgment and order dated 09-07-2018, learned JMFC was pleased to convict accused.

Feeling aggrieved by the same, accused/respondent No.1 approached the Court of learned Additional Sessions Judge, Biloli by filing Criminal Appeal No.34 of 2018 and succeeded in the same as he was acquitted vide Judgment and order dated 21-02-2023. Hence, the instant appeal.

3. Heard both sides.

4. Learned counsel for appellant pointed out that, prosecution has adduced cogent, reliable and convincing evidence about accused coming to School premises, entering office and while others were busy in morning prayer, by using duplicate key, he opened cupboard and removed the muster roll register without permission and consent and secretly was seen leaving the School premises. The learned counsel for appellant pointed out that, the said act amount to theft. That, apart from complainant, teachers and staff, who had seen the above act of accused, have deposed to that extent in the Court. That, learned trial Court had rightly appreciated the same and also convicted the accused. According to him, there was no infirmity or illegality in the said Judgment. However, learned First Appellate Court unnecessarily overturned the above Judgment of conviction and acquitted the accused without assigning any sound reasons. According to him, complainant's evidence was supported by evidence of three teachers and their evidence remained intact, but the same has been incorrectly appreciated by the learned First Appellate Court. For above reasons, he prays to set aside the Judgment and order of the learned Additional Sessions Judge, Biloli and to restore the Judgment and order of conviction passed by the learned JMFC, Degloor.

5. In answer to above, learned counsel for respondent No.1 supported the Judgment and order of the learned First Appellate Court and prays to dismiss the appeal for want of merits.

6. Re-appreciated the entire evidence.

PW1 Shankar Kishanrao Rathod seems to be informant, who set law into motion vide report Exhibit 12; **PW2** Fulsing Goma Rathod, **PW3** Dasharath Ramji Chavan, **PW5** Nisar Husain Abdul Raheman seem to be Teachers, **PW4** Sriram Damla Chavan, seems to be Lab Technician and **PW7** Prabhakar Kundalikrao Bhalke seems to be Lecturer and they have testified at Exhibit Nos.11, 17, 18, 20, 19 and 28 respectively; **PW8** Maheboob Jalal Baig seems to be Investigating Officer.

Here, learned trial Court upheld conviction but learned First Appellate Court overturned the same and acquitted the accused.

Primarily, offence is of committing theft, which is dealt by Section 378 of the IPC. To attract the said charge, the essential ingredients could be summarized as under :

Firstly, accused must have dishonest intention to take the property.

Secondly, the property must be movable.

Thirdly, the property must have been taken out of possession of another resulting into wrongful gain by one and wrongful loss to

another.

Fourthly, property must be moved in order to taking it by deception and lastly, taking must be without ones consent.

7. Law to above requirement is dealt by the Hon'ble Apex Court in the case on ***K.N.Mehra v. State of Rajasthan***, MANU/SC/0030/1957. Further, it is settled position that there has to be *mens rea* and dishonest intention and further removal without consent. Law to this extent is dealt by the Hon'ble Apex Court in the case of ***Pyare Lal Bhargava v. State of Rajasthan***, AIR 1963 SC 1094.

Having dealt with above settled position, here available evidence is put to scrutiny. Before learned trial Court, prosecution has adduced evidence of as many as eight witnesses. There is no dispute that accused was working as a Peon in the very School of which informant was Head Master. Rest of the witnesses are teaching and non-teaching staff.

On complete re-appreciation of their testimonies, it is noticed that they all are consistent about occurrence taking place on 16-09-2009 during School hours.

PW1 Shankar in his evidence stated that, at around 10:00 a.m. accused was seen opening the cupboard with a duplicate key, moving out the attendance register and leaving the place. Testimony of

informant is finding support from PW2 Fulsing, PW3 Dasharath, PW4 Sriram. These witnesses, who are teachers and lab technician respectively, are natural witnesses being staff of the School. They have all categorically deposed about seeing accused removing register from School cupboard. In their cross-examination, nothing damaging has been brought except timing of the occurrence, and who all are present around. The act of removing the register from cupboard of School has apparently brought on record. Questioning by informant to accused how register is being removed when he had keys, itself signifies the act of accused was without consent of informant Head Master, who was incharge of school administration. Once he was not aware of the purpose of opening the cupboard and removing muster register, the offence of theft is complete. Accused has not only removed the register but he fled with the same and therefore, act of taking away it with dishonest intention is also made out. Prosecution witnesses are direct eye witnesses.

8. The tenor of the cross-examination also shows that case was tried to be advanced that there was false implication as a result of rift between accused and management. It was brought out in cross-examination that several litigations were pending, but mere suggestion to that extent would not be sufficient to probabalize his

defence. Here, as stated above, accused was seen doing the act of removing register by using duplicate key when original key was with PW1 informant and all prosecution witnesses are unanimous on the same. Therefore, above defence holds no substance.

9. Learned trial Court has correctly appreciated the evidence, dealt with legal requirements and on finding evidence to that extent and availability of essential ingredients, rightly convicted the accused. On the contrary, learned First Appellate Court seems to have given undue importance to the variance in the timings, presence of the informant in the School and differences between management and accused, to render case of prosecution doubtful. However, such approach of First Appellate Court was apparently incorrect. The direct evidence in the form of testimony of PW1 Shankar, PW2 Fulsing, PW3 Dasharath and PW4 Sriram has not been correctly appreciated. First Appellate Court also seems to have lost sight of the availability of essential requirements emerging from act of accused. Resultantly, when it is demonstrated by cogent evidence that accused removed register from the School cupboard without consent of PW1 Shankar, informant, and fled with it, the offence is complete. Therefore, in the light of above discussion, appellant succeeds. Accordingly, following order is passed :

ORDER

- I. The Criminal Appeal is allowed.
- II. The Judgment and order dated 21-02-2023 passed by the Additional Sessions Judge, Biloli in Criminal Appeal No.34 of 2018 is quashed and set aside.
- III. The Judgment and order dated 09-07-2018 passed by the Judicial Magistrate First Class, Degloor in R.C.C. No.139 of 2009 is hereby confirmed.

[ABHAY S. WAGHWASE, J.]