IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.
CRIMINAL APPELLATE JURISDICTION.

Criminal Revision Application No.8 Of 2001.

State Bank Of India.
Branch at Udgir, Tal. Udgir, Dist. Latur.
Through Its Branch Manager. :: **Petitioner.**

Versus

(1) Shivaji s/o Kondiba Rasal
Age : 35 Years., Occ.: Formerly part time
Sweeper.
R/o.: Banshilki Road, Udgir, Dist. Latur.

(2) The State of Maharashtra.
Through Police Station, Udgir,
Dist. Latur. :: **Respondents.**

Appearance =>

Mr. P.B. Paithankar, Advocate for the Petitioner.

Mr. S.A. Ambad, Additional Public Prosecutor for the State of Maha.

CORAM : V.M. DESHPANDE, J.

DATE : 8th JANUARY, 2015.

JUDGMENT :-

The State Bank of India, Branch - Udgir, Dist. Latur. is before this court to challenge the Judgment and Order passed by the learned Judicial Magistrate, F.C., Udgir on 9th October, 2000 in Regular Criminal Case No.51 Of 1995 whereby Respondent No.1 – Shivaji s/o Kondiba Rasal was acquitted for the offence punishable under Section/s 381, 420 of the Indian Penal Code.

[2] After having heard Mr. P.B. Paithankar, learned counsel for the applicant, Mr. S.A. Ambad, Additional Public Prosecutor for the State of Maharashtra and after going through the record it is clear that following is the prosecution case.

[3] First Informant – Prakash Karmase was the Branch Manager of State Bank of India, Branch Udgir on 9th February, 1994 when he lodged the First Information Report. According to the prosecution, on 5th February, 1994 cheque bearing No.759459 of Rs.66,000/- of Sunil Trading Company was submitted for its clearance by Balaji Yerawar. He gave said cheque to the concerned clerk and obtained Token bearing number T-27. Cheque was passed and it was given to Accountant - Dhanajay Than-Tharate. Thereafter, cheque has gone to the Cash Officer Mr. Shaikh for its payment. Mr. Shaikh obtained Token T-27 from Balaji and made payment of Rs.66,000/- to Balaji.

[4] According to the prosecution, Mr. Shaikh forgotten to made an endorsement and seal "PAID" on the said cheque, as there was rush in the bank on that day. The prosecution case further states that account of 5th February, 1994 thereafter calculated and closed on 7th February, 1994. That time, it was revealed that excess payment of Rs.66,000/- was paid. First Informant enquired with the staff and came to know that double payment of cheque No.759559 was made. Prosecution case further states that said cheque was observed carefully and it was revealed that date 7th February, 1994 was overwritten on the date 5th February, 1994. Upon enquiry it came to the knowledge of the first informant that Ankush Tukaram Gaikwad has withdrawn said amount. He, therefore, made enquiry with the Ankush and came to know that accused – present Respondent No.1, who was peon-cum-sweeper has given Token T-27 to Ankush and asked Ankush to obtain amount from the Cashier and accordingly, Ankush has withdrawn said amount and it was given to Shivaji at the staircase of the Bank. According to the prosecution, at the time of enquiry, Ankush and his two to three friends came there alongwith Balika Rasal, wife of accused and she gave Rs.51,000/- to the Bank. Thus, according to the prosecution on 7th February, 1994 Respondent No.1 - accused has stolen the cheque and Tokan No. T-27 from the office of the bank and has withdrawn amount of Rs.66,000/- by cheating the bank. Hence, crime was registered vide CR No.9/94 against Respondent No.1 for the offences punishable under Section/s 381, 420 of the Indian Penal Code.

[5] Charge was framed against the accused. He denied the charge and claims for his trial.

[6] It is an admitted fact that the accused was part time peon-cum-sweeper of that bank and Sunil Trading Company, Udgir was having current account having No.7/7052. According to the evidence of the Branch Manager on 5th February, 1994 when the cheque of Sunil Trading Company was received for the payment that time, there was no sufficient amount in the account, therefore, the current Account Clerk Narsingh Suryawanshi referred said cheque to the Branch Manager PW No.1, who passed the said cheque and ordered to pay amount of cheque Exh.No. 23 and accordingly on 5th February, 1994 amount of Rs.66,000/- was paid towards the cheque Exh.No. 23 as per his order.

[7] PW No.1 has admitted in his cross-examination that token issued to the customer is received back at the counter of paying cashier. Having separate cabin prepared for the cashier and entrustment of the cash with the cashier is admitted position. The Branch Manager has admitted that after receipt of the token by paying cashier, the custody and responsibility of same is with paying cashier till the accounts are tallied. Paying cashier has to obtain signature of concerned person in the register while returning the token. PW No.1 has admitted that on 5th February, 1994 it was essential on the part of the cashier to stamp the cheque as "PAID" and to cancel it and as per the Rules and it was responsibility of the concerned clerk to tally the entries from his own registers. According to PW No.1 paying cashier is prima facie responsible for the transaction in respect of cheque Exh.No.23. However, it is admitted that he has not filed any complaint or report with the Higher Authority or Police against the paying cashier.

[8] From the evidence, it is clear that on 05/02/1994 all the cheque were collected and tokens received were given in the custody of Accountant after closure of the day. On 7th February, 1994 the Accountant had given custody of tokens to the concern person as per the allotment.

[9] PW No.1 Branch Manager has admitted that as per the Rule, Exhibit - 23 should have been in the custody of the Accountant from 5th February, 1994. Not only that, he has admitted that cheques are used to be kept in the cupboard and cannot be taken out except the Accountant. He has further admitted that token is never issued unless cheque is received.

[10] In the context of above, worth to note is that the accused - Respondent No.1 has lodged complaint against PW No.1 in the year 1993 with the Regional Office. Another complaint was also lodged against him with the Union by the Accused.

[11] Though according to the prosecution case, Ankush Tukaram Gaikwad has withdrawn amount, said Ankush, who is material witness, was not examined by the prosecution. Further according to the First Information Report and the prosecution case, Balika, has produced Rs.51,000/- is also not examined by the prosecution, nor the Investigating Officer has examined. Though according to the prosecution, the accused has stolen cheque and token T-27, it is established on record that cheques are kept in the cupboard and cannot be taken out except the Accountant.

[12] The learned trial court has rightly given importance to such facts. Further there is delay of two days in lodging the First Information Report. Report was given on 9th February, 1994. In that view of the matter, court below has correctly reached to the conclusion that the prosecution case is rendered doubtful. After having gone through the reasons supplemented by the trial court, it is amply clear that the court below has evaluated the prosecution evidence and case in its true perspective. View taken by the learned court below in acquitting the Accused – Respondent No.1 is justified. The learned counsel for the applicant failed to point out any perversity in the impugned Judgment and Order. Consequently, Criminal Revision Application is dismissed.

Criminal Revision Application dismissed.

(V.M. DESHPANDE, J.)