

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

CRIMINAL REVISION APPLICATION NO. 253 OF 2001

Badshah Dagadu Bagwan,
age 55 years, occ. Unemployed,
r/o Kharwandi Kasar,
Tq. Pathardi, Dist. Ahmednagar

...Applicant

VERSUS

The State of Maharashtra

...Respondent

.....
Shri R.D.Sanap, advocate for applicant absent
Shri S.A.Ambad, A.P.P. for respondent
.....

CORAM : V.M.DESHPANDE, J.

DATED : 5th January, 2015

ORAL ORDER : -

1] None for the applicant. Heard learned Additional Public Prosecutor for the respondent/State.

2] The applicant was charged by the learned Chief Judicial Magistrate, Ahmednagar in Regular Criminal Case No. 375 of 1995 on 19.1.1996 that the applicant has committed an offence punishable under Sections 409, 467 and 477A of the Indian Penal Code. The charge is available at Exh.10 on

record of the court below.

3] Perusal of the charge shows that the applicant has forged certain documents purported to be the valuable security, namely Recurring Deposit Account books and thereby he has committed an offence punishable under Section 467 of the Indian Penal Code. The charge further reveals that the applicant being a public servant with willful intention altered and falsified the Recurring Deposit Account books and thereby committed an offence punishable under Section 477A of the Indian Penal Code.

4] In so far as offence under Section 409 of the Indian Penal Code is concerned, the charge was that the applicant during the period of 30.8.1990 to 10.5.1991 was entrusted with amount of Rs.4390/- in Recurring Deposit account and he has committed criminal breach of trust in respect of the property so entrusted.

5] In order to bring home the charge, the prosecution has examined three witnesses. PW 1 is one Budhan Shaikh and PW 2 is Babasaheb Khedkar. PW 3 is Police Head Constable B. No. 1111 Baban Dhanwat.

6] Learned Chief Judicial Magistrate vide judgment, dated 28.11.1997 acquitted the applicant for the offence punishable under Sections 467 and 477 of the Indian Penal Code, however, the learned Judge of the trial court found that the prosecution has successfully proved the case against the applicant for the offence punishable under Section 409 of the Indian Penal Code, and therefore, he convicted the applicant and sentenced him to suffer rigorous imprisonment for three months.

7] Feeling aggrieved thereby, the applicant preferred criminal appeal bearing Criminal Appeal No. 82 of 1997. Though the applicant was acquitted for the offence punishable under Sections 467 and 477A of the Indian Penal Code, the prosecution chose not to prefer any appeal against the said acquittal and as such the finding given by the learned Judge of the trial court in so far as Sections 467 and 477A of the Indian Penal Code is concerned has attained finality. Learned Sessions Judge also vide judgment, dated 12.6.2001 dismissed the appeal and confirmed the conviction under Section 409 of the Indian Penal Code.

8] The record shows that Shri R.D.Sanap, advocate was appointed to represent the present applicant through legal aid. However, when the matter was called out today for its final

hearing, Shri R.D.Sanap, advocate is absent.

9] The court has extensively heard Shri S.A.Ambad, learned Additional Public Prosecutor for the respondent/State. With his able assistance, the court has perused the record and proceedings of both the courts below.

10] The first information report (Exh.22) is lodged by PW 1 Budhan Shaikh. PW 1 Budhan Shaikh, at the relevant time was Inspector of Post Office at Ahmednagar. The first information report would reveal that certain complaints were received at his office from one Smt. Mirpagar. The first information report reveals that on the basis of the complaint lodged by Smt. Mirpagar, the first informant Budhan Shaikh visited the post office Mungaswade. It is to be noted that the present applicant was the Post Master of Post office Mungaswade. The first information report further reveals that he made an inquiry and in the inquiry he found that the present applicant Badshah Dagadu Bagwan has prepared the bogus record. It is to be noted that the charge in so far as preparation of the bogus account and falsification of the account was not proved against the present applicant and for that the applicant was acquitted. Further, the said acquittal was not challenged by the State by preferring the appeal. In so far as the offence punishable under Section 409 of the Indian Penal Code is

concerned, the prosecution was under obligation to prove the entrustment of the amount to the present applicant. The prosecution has not examined any of the account holder to point out that any amount was entrusted to the present applicant. The prosecution has examined PW 2 Babasaheb Khedkar. His evidence also reveals that he has no personal knowledge. He testified on the basis of information given to him by his son Raju. Said Raju is also not examined. Further, there is no evidence that Raju has sent money order from Mumbai. In fact, the learned trial Judge has also disbelieved PW 2 Babasaheb. PW 3 is Baban Dhanwat, who has only registered the first information report.

11] Therefore, the entire case of the prosecution hinges around the evidence of PW 1 Budhan Shaikh, who is the first informant. Admittedly PW 1 Budhan Shaikh has no personal knowledge. Further, his entire complaint/first information report is based on the complaint lodged with him by Smt.Mirpagar, who is not examined by the prosecution. The prosecution in the present case has utterly failed to prove its case beyond reasonable doubt. There is no evidence to show that any valuable security was entrusted to the present applicant.

12] In that view of the matter, the applicant cannot be convicted for the offence punishable under Section 409 of the

Indian Penal Code. Hence, present Criminal Revision Application is allowed. The judgment and order, passed by the Chief Judicial Magistrate, Ahmednagar, dated 28.11.1997 in Regular Criminal Case No. 375 of 1995 together with the judgment delivered by learned Joint District Judge and Additional Sessions Judge, Ahmednagar, dated 12.6.2001 in Criminal Appeal No. 82 of 1997 are hereby quashed and set aside. The applicant is acquitted for the offence punishable under Section 409 of the Indian Penal Code.

[V.M.DESHPANDE, J.]

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