

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL REVISION APPLICATION NO. 64 OF 2002

Raichand Bhanji Shaha,
Age 70 years, Occu. Business,
R/o. New Mohanda, Hingoli,
Tq. Hingoli, District Parbhani.

....Petitioner.

Versus

1. Prakashchandra s/o. Siddhnath
Chaurasiya, Age 50 years,
Occu. Business, R/o. Sadar Bazar,
Hingoli, Tq. Hingoli, Dist. Hingoli.

2. The State of Maharashtra

....Respondents.

Mr. N.S. Jaju h/f. Mr. A.S. Bajaj, Advocate for petitioner.

Mr. B.S. Kudale, Advocate for respondent No. 1.

Mrs. R.K. Ladda, APP for State.

CORAM : T.V. NALAWADE, J.

DATED : 17th June, 2015.

JUDGMENT :

1. The revision is filed to challenge the judgment and order of Criminal Appeal No. 7/1999, which was pending in the Court of Additional Sessions Judge, Hingoli. The appeal was filed against the judgment and order of criminal case filed by police against present respondent No. 1 for offence punishable under section 341 of Indian Penal Code. The Judicial Magistrate, First Class, Hingoli had convicted and sentenced respondent No. 1 in SCC No. 612/1996 and the sentence of fine of Rs. 250/- was given. The Sessions Court has set aside its judgment and order

of conviction. Both the sides are heard.

2) In the F.I.R. given to police on 7.5.1996, present petitioner had contended that he was illegally restrained from entering the shop premises which was in his possession as a lessee by the accused by putting lock on the door of the shop on the night between 30.4.1995 and 1.5.1996. He gave explanation regarding delay caused in giving the F.I.R. that police were busy in other duty and they had asked him to give F.I.R. subsequently when their urgent work would be over. Before the J.M.F.C., the plea was recorded for offence punishable under section 341 of Cr.P.C. The State/prosecution examined the complainant, the panch witnesses and Investigating Officer.

3) It appears that the learned J.M.F.C. considered not only the evidence given by the present petitioner and the evidence given by the Investigating Officer, but he placed reliance on some record of civil proceeding like Exhs. 26 to 36 and 40 to 42 and also Exhs. 53 and 54. This record was not filed with the chargesheet. This record was given exhibit, but it was not confronted to accused No. 1 during his statement recorded under section 313 of Cr.P.C. The accused had denied that he had put up the lock on the door of the shop and he had restrained

the informant from entering the shop.

4) On the basis of aforesaid documents of civil proceeding, the learned J.M.F.C. has held that there was admission under section 21 of Evidence Act of the accused in civil proceeding that he had put up the lock on the premises. This Court has gone through the record. The application for temporary injunction was filed by the accused/landlord and in the application, he had contended that prior to 30.3.1996 he had put up the lock on the premises and there was likelihood of breaking open of the lock by the present petitioner/tenant. The petitioner was party to that proceeding. It is not the case of petitioner that somebody had witnessed the accused putting lock on the night between 30.4.1996 and 1.5.1996. This circumstance could have been considered in proper perspective by the Trial Court after putting it to the accused when the statement of accused was recorded under section 313 of Cr.P.C. This was not done and so, the circumstance was wrongly used by the Trial Court against the accused.

5) The recovery of keys of one lock at the instance of the accused is another circumstance which was used by the learned J.M.F.C. The Investigating Officer has given evidence that

the accused produced the keys before him and the keys were seized under panchanama. The panch witnesses under the seizure panchanama have turned hostile. Though it was cognizable case, it was bailable offence and as per the record, it was not the recovery under section 27 of Evidence Act and the keys were not recovered during personal search of the accused, if he was arrested. In any case, there is no substantive evidence to show that these were the keys of the lock which were found on the premises. On this point also, the learned J.M.F.C. has considered the report prepared by the bailiff produced in the civil court which is to the effect that the bailiff used the keys handed over by the police to open the lock. The bailiff was not examined and even the record prepared by the bailiff was not put to the accused during his statement recorded under section 313 of Cr.P.C. In view of these circumstances, the learned Additional Sessions Judge has given benefit of doubt to the accused and he is acquitted. There was dispute of civil nature and there were aforesaid circumstances.

6) The learned counsel for petitioner placed reliance on the two reported cases like **2006 (1) Mh.L.J. (CRI) 185 Bombay High Court [State of Maharashtra Vs. Dnyandeo Sudam Waghmare]** and **1963 (2) Cri.L.J. 543 Allahabad**

High Court [Laloo Pd. Vs. Kedarnath Shukla and Anr.]. In the first case, The Apex Court has laid down that the admissions given by the accused in civil proceeding like in the plaint can be used in criminal proceeding by using section 21 of Evidence Act. In the civil proceeding, the High Court had held that in a case filed for offence under section 341 of I.P.C. if the accused admits that he has put up the lock on the premises of the tenant, conviction can be given to him for offence punishable under section 341 of I.P.C. There cannot be any dispute over these observations made by this Court and Allahabad High Court. The facts and circumstances of the present case are altogether different. They are already discussed. The view taken by the Sessions Court is a possible view. Considering the scope of the revision, this Court holds that it is not possible to interfere in the decision of the Sessions Court. The submissions made by the learned counsel for the petitioner that matter can be remanded back to give an opportunity to accused to explain the things, cannot be accepted at this stage.

7) In the result, the petition stands dismissed.

[T.V. NALAWADE, J.]

SSC/