IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.374 OF 2014

The State of Maharashtra, Through
PSI P.K.Pawar, Crime Branch, Pune.

...APPLICANT/ Appellant (Ori.Complainant)

VERSUS

Narayan Nimbaji Wakchaure,
Age Major, Occu. Service,
r/o. Kalpana Gharkul, In front of
Sahyadri College, Sangamner,
Dist. Ahmednagar.

...RESPONDENT (Ori.Accused)

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Mr. S.G.Karlekar, APP for appellant.
Mr. S.T.Shelke, Advocate, for respondent.

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CORAM: R.M.BORDE AND P.R.BORA, JJ.

Date: 14th July, 2015

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JUDGMENT (Per P.R.Bora, J.)

1. The State has filed the present appeal challenging judgment and order passed by the learned Special Judge, Sangamner, in Special Case No.2/2000 delivered on 14.6.2013. In the

aforesaid Special case, the respondent herein was prosecuted for the offenses punishable under Sections 409 and 420 of Indian Penal Code and under Section 13(1)(c) of the Prevention of Corruption Act, 1988. The learned Special Judge has acquitted the respondent accused from all the offenses charged against him. The acquittal so recorded is challenged in the present appeal.

2. **Prosecution case in brief:**

The respondent accused was serving as the Senior Clerk in the Accounts Department in the Office of Sub Divisional Soil Conservation Officer (Land Development), Sangamner, during the period between 1.7.1982 to 16.12.1985. The Bill Register and Token Register were entrusted to him and used to be in his custody. The respondent accused used to prepare the abstract bills and after following the prescribed procedure, used to submit the said bills to Sub Treasury Office and further used to get encashed the said bills from the Bank. It was alleged that in the period between 5.7.1985 to 16.8.1985, the respondent accused prepared three Bogus bills; first, on 5.7.1985 for Rs.70,000/-; second, on 23rd July, 1985, that too of Rs.70,000/-; and third bill on 16.8.1985 for amount of Rs.50,000/-; submitted the said bills in the Sub Treasury Office, Sangamner, and got encashed the aforesaid bills from the State Bank of India without taking appropriate entries of the said bills in the Cash Book or Token Register, and thus, misappropriated the said amount. The FIR in this regard was lodged on 24.11.1990 by one Sopan Dattu Shelar, the then Soil Conservation Officer (Land Development), Sangamner, at Police Station, Sangamner. On the basis of the report so lodged, the crime was registered against the respondent accused for the offenses under Sections 409 and 420 of IPC and Section 5(1)(c) of the Prevention of Corruption Act and the investigation was set in motion. During the course of investigation, the investigating officer recorded statements of several witnesses and collected several documents. After completing the investigation, chargesheet was filed in the Court of Judicial Magistrate, First Class, Sangamner, who in turn, committed the case to the Court of Sessions. The case was then registered as Special Case and was forwarded to the Special Court for trial. The learned Special Judge framed charge against the respondent accused on 28.7.2003. The charge was explained to the accused whereupon the accused pleaded not guilty, and claimed to be tried. In order to prove the guilt of the accused, the prosecution examined as many as 20 witnesses and placed on record several documents. The defense of the respondent / accused was of total denial and false implication. The learned Special Judge, after having assessed the oral and documentary evidence brought before him, acquitted the accused for want of sufficient evidence.

3. Shri S.G.Karlekar, learned A.P.P., submitted that though the prosecution has adduced cogent and sufficient evidence, proving the culpability of the accused in commission of the offenses charged against him, the improper appreciation of the said evidence by the learned Special Court has resulted in acquittal of the respondent accused. Learned A.P.P. further submitted that the prosecution has sufficiently proved that the respondent accused was the custodian of the Cash Book, Bill Book and the Token Register. He further argued that the prosecution has also proved that the respondent accused prepared the Bogus Bills and encashed the amounts of the said bills without taking entries of the said bills in the concerned registers and thus, misappropriated the said amount. Learned A.P.P. further submitted that the finding recorded by the learned Special Court on the point of sanction is also erroneous and deserves to be set aside. Learned A.P.P. took us through the evidence of the prosecution witnesses and prayed for allowing the appeal thereby holding the respondent accused guilty for the offenses

alleged against him and to adequately punish him.

Shri S.T.Shelke, learned Counsel for the respondent accused, supported the impugned judgment and prayed for dismissal of the appeal.

4. We have carefully considered the submissions advanced by learned A.P.P. and the learned Counsel for the respondent accused. We have perused the impugned judgment and the entire evidence on record. Apparently, it does not appear to us that the learned trial Court has committed any error in acquitting the accused. Since the offense of criminal breach of trust was alleged against the respondent accused, it was the foremost burden on the prosecution to prove that the accused was entrusted with the Cash Book, Bill Book and the Token Register. The prosecution has, however, utterly failed in proving that the respondent accused was the custodian of the aforesaid documents. PW 3 Laxman Jadhav, who was examined by the prosecution to prove that the Cash Book, Bill Book and the Token Register used to be in custody of the respondent accused and by using his said position, he mis-utilized the aforesaid documents has clearly admitted in the cross examination that the Bill Book, Token Register and the Cash Book always used to be in the custody of the Assistant Superintendent. The said witness further admitted that the Cash Book used to be

maintained by the Assistant Superintendent.

5. Secondly, though it was the case of the prosecution that without there being any indent from the concerned officers, the respondent accused prepared Bogus abstract bills, got it sanctioned from the Sub Treasury Office and eventually encashed the amount of the said bill from the Bank, the prosecution has failed in bringing on record any cogent and sufficient evidence to prove the said allegations.

Through the evidence of PW 1 Trimbak Narsayya Pedram, PW 2 Vasant Varunkar, PW 3 Laxman Jadhav, PW 4 Sudhakar Gaikwad, PW 5 Pandharinath Misal and PW 6 Murlidhar Chikhale, the prosecution has brought on record the entire procedure starting from preparation and submission of the indent by the Agricultural Supervisors till en-cashment of the bill amounts from the State Bank of India. As revealed from the said evidence, the Agricultural Supervisors used to submit indent regarding proposed work to be carried out. The said indent used to be verified by the Sub Divisional Soil Conservation Officers. After its sanction by him, the said indent used to be given to the Senior Clerk and thereupon he used to prepare abstract contingent bill in duplicate. On preparation of abstract contingent bill, its entry used to be taken in the Bill Register as well as in the Token Register. Usually, the

Supervisor used to take the bill along with the Token Register to the Sub Treasury Office. The Treasury Officer used to pass the bill after scrutinizing the same. On passing that bill by the Sub Treasury Officer, the Agricultural Officer used to take the said bill to the State Bank of India and used to collect the amount of the bill from the Bank. It has also come on record that before signing the bill, the Sub Divisional Soil Conservation Officer used to verify and scrutinize the particulars of the said bill. It has also come on record that the Sub Treasury Officer before sanctioning any bill, used to verify the signatures of the Drawing and Disbursing Officer on the said bill and then only used to pass the said bill. As has further come on record, the Sub Divisional Soil Conservation Officer was the Drawing and Disbursing Officer at the relevant time. Every bill was, thus, bound to possess his signature. One more aspect which has come on record needs to be considered. It was the practice to send the bills at the hands of the messenger. In the evidence of Sudhakar Gaikwad, PW 4, who was working as Sub Treasury Officer at Sangamner at the relevant time, it has come on record that whenever any bill used to be sent with messenger, authority letter in Form No.46 of Maharashtra Treasury Rules (M.T.R.), used to be attached with the said bill. As further deposed by the said witness, MTR 46 always used to be submitted in duplicate and it used to contain the name of the person who is authorized to submit the bill. The said witness has further deposed that one copy of MTR 46 used to be retained in the Office of the Treasury and one copy used to be attached to the bill for further passing of the payment order. It has been further stated by the said witness that unless the second copy of MTR 46 is attached to the bill, the Bank was not making payment against the said bill. It has also come on record in the evidence of the said witness that after making payment, the Bank used to retain the second copy of MTR 46 on its record.

6. We have purposely reproduced the evidence as above, describing the entire process of preparation, submission and encashment of the bill so that we can better appreciate whether any such cogent evidence has come on record showing that the bills prepared by the respondent accused were Bogus and whether, in fact, the same were encashed by him. The allegation against the respondent accused that he prepared Bogus bill, apparently, appears unsustainable in view of the fact that the said bills were bearing the signatures thereon of the Drawing and Disbursing Officer i.e. the Sub Divisional Soil Conservation Officer or else the said bills would not have been passed by the Sub Treasury Officer.

Similarly, the said bills could not have been encashed by the State Bank of India had they not been accompanied by MTR 46 form in duplicate. As has come on record through the evidence of prosecution witnesses, more particularly, PW 5 Pandharinath Misal, MTR 46 used to bear the name and signature of messenger along with the signature of Drawing and Disbursing Officer. When the bills were encashed, it is evident that they were accompanied by MTR 46 form. It is not the case of the prosecution that the bills were forged by the respondent accused by putting false signature of the Drawing and Disbursing Officer thereon or that the Form MTR 46 was forged by the respondent accused putting thereon also the forged signatures of the Drawing and Disbursing Officer.

In the above circumstances, it appears doubtful that any Bogus bill would have been prepared and submitted by the respondent accused, and would have been encashed by him from the State Bank of India. The prosecution has failed in bringing on record any clinching evidence to prove that the concerned amounts were withdrawn by the respondent accused. Through the evidence of Murlidhar Chikhale (PW 6) the prosecution has attempted to bring on record that the concerned amounts were withdrawn by the respondent accused. The said witness in his cross examination has, however, clearly admitted that the facts stated by him that the accused withdrawn an amount of Rs.70,000/- on 5.7.1985, Rs.70,000/- on 23.7.1985 and Rs.50,000/- on 16.8.1985, were stated by him only at the instance of Police.

7. Another attempt was made by the prosecution to bring on record the said fact by examining PW 16 Prakash Madhukar Kasar and PW 17 Dilip Govindrao Bhagwat who, at the relevant time, were working in the State Bank of India, Sangamner branch. We have gone through the evidence of both the said witnesses and we find that the said evidence cannot be relied upon to derive the conclusion that it was the respondent accused who had withdrawn the concerned amount. PW 17 Dilip Bhagwat has admitted in his cross examination that the fact stated by him that the accused came to him for encashment of the bills on 23rd July, 1985, and 16th August, 1985, was based on the entry in the Payment Register. For a moment, even if it is assumed that the amounts were withdrawn by the respondent accused from State Bank of India, the prosecution has failed in bringing on record any further evidence to show that the said amounts were not taken note of or entry thereof was not taken in the concerned Register.

8. After having carefully considered the entire evidence on record, it is revealed that

though the prosecution has examined as many as 20 witnesses, the culpability of the accused cannot be said to have been proved beyond reasonable doubt. The necessary documents on the basis of which the guilt of the accused could have been proved are not brought on record. The documents which have been brought on record do not conclusively prove the guilt of the accused. In such circumstances, we do not find any error in the finding recorded by the learned Special Judge that the prosecution has failed in proving the charges levelled against the accused.

9. In so far as the finding recorded by the Special Court on the point of sanction, since nothing has been submitted on behalf of the appellant, we do not wish to make any comment on the said aspect.

10. Since we did not find any infirmity in the finding of acquittal recorded by the trial Court, the appeal fails and is accordingly dismissed.

(P.R.BORA)
JUDGE

(R.M.BORDE)
JUDGE

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