

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 494 OF 2002

The State of Maharashtra,
through Police Station Officer,
Police Station, Basmath,
District Hingoli

APPELLANT

VERSUS

Baburao s/o Shivramji Narwade,
Ae : 35 years, Occu. Agri.,
R/o Kothari, Tq. Basmath,
District Hingoli

RESPONDENT

AND

CRIMINAL APPEAL NO. 498 OF 2002

The State of Maharashtra,
through Police Station Officer,
Police Station, Basmath,
District Hingoli

APPELLANT

VERSUS

Baburao s/o Shivramji Narwade,
Ae : 35 years, Occu. Agri.,
R/o Kothari, Tq. Basmath,
District Hingoli

RESPONDENT

Mrs. B.B. Gunjal, A.P.P. for the appellant/State
in both the appeals

Mr. M.V. Ghatge, Advocate holding for Mr. S.R. Bagal,
Advocate for the respondent in both the appeals

CORAM : M.T. JOSHI, J.

DATE : 25/03/2015

ORAL JUDGEMENT:

1. Heard both sides.

2. Aggrieved respectively by the acquittal of the present respondent from the offence punishable under section 468 of the I.P. Code and the inadequate sentence awarded to him for the offence punishable under section 420 of the I.P. Code, recorded by the learned Judicial Magistrate First Class, Basmath, vide judgement and order dated 18th May, 2002, passed in Regular Criminal Case No. 30 of 1990, the State has preferred the present appeals.

3. The appellant-prosecution case, in short, is as under:-

. That during the relevant period, the respondent was the sarpanch of village Kothari. The complainant's father, namely, Baburao Ganpati Narwade was the beneficiary under the scheme of raising a plant of gobar-gas and for that purpose, he was to receive a subsidy of Rs. 1440/- from the concerned Panchayat

Samiti. On 11th August, 1989, the present respondent being the sarpanch of the village collected the cheque in the name of said Baburao Ganpati Narwade. He, however, directly encashed the same from the District Central Cooperative Bank, Branch at Basmath by forging the signature of said Baburao Ganpati Narwade. Upon enquiry, these facts were found by the complainant i.e. son of said Baburao s/o Ganpati Narwade. He, therefore, filed complaint with the police on the basis of which the crime came to be registered.

4. During the investigation, the cheque in question was seized from the bank, the specimen and handwriting of the present respondent as well as of the beneficiary i.e. Baburao Ganpati Narwade were collected by the Investigating Officer. All these documents were sent to the examiner of documents of the Maharashtra State. The statements of other witnesses were recorded and the chargesheet was filed.

5. Before the learned Judicial Magistrate First Class, in all ten witnesses were examined. The respondent also examined another beneficiary of the

scheme i.e. DW1 Shankar Gulgule. He deposed that in all thirteen beneficiaries of the scheme were not having bank account and therefore, upon receipt of the cheques from the Panchayat Samiti, he had endorsed his own cheque in favour of the respondent as he (respondent) had account in the bank and after the cheques were encashed by the respondent, the amount was paid to him. He deposed that during all these transactions, Baburao Ganpati was also with him, who also had endorsed the cheque in favour of the respondent in his presence.

6. The learned Judicial Magistrate First Class came to the conclusion that it has been proved that the present respondent has cheated the complainant and/or his father by not making the payment under the cheque. However, the offence punishable under section 468 of the I.P. Code i.e. forging a security or a document for receiving the money dishonestly is not proved and therefore, the respondent was acquitted of the said offence.

7. Upon conviction for the offence punishable under section 420 of the I.P. Code, the present

respondent was directed to suffer simple imprisonment till rising of the Court and to pay a fine of Rs. 2000/- and the amount of Rs. 1440/- i.e. the money seized during the investigation was directed to be returned to the complainant - Balaji s/o Baburao Narwade. Hence, the present appeals by the State.

8. The learned A.P.P. submitted that when the learned court came to the conclusion that the case of cheating is proved, the necessary conclusion would be that the signatures were forged to receive the money and therefore, the offence punishable under section 468 of the I.P. Code is also meted out. In the alternative, learned A.P.P. submitted that the sentence awarded for the offence punishable under section 420 of the I.P. Code, directing the respondent-accused to suffer simple imprisonment till rising of the court is very meager sentence, taking into consideration that the amount under the welfare scheme was grabbed by the respondent - sarpanch of the village.

9. On the other hand, Mr. M.V. Ghatge, learned counsel for the respondent, submits that once it is found that the offence punishable under section 468 of

the I.P. Code is not proved, the offence punishable under section 420 of the I.P. Code would not attract. He submits that the evidence of the handwriting expert examined by the State would show that there was no definite opinion regarding the endorsement purported to have been made by the father of the complainant. The complainant's father has deposed that he as well as DW-1 Shankar Gulgule were to receive the amount under the scheme but they did not receive it. On the other hand, the very defence witness was specific in stating that both of them had endorsed the cheque and thereupon, the amount was received by them. In the circumstances, Mr. Ghatge submitted that both the appeals be dismissed.

10. On the basis of above material on record and the submissions advanced on behalf of both sides, the following points arise for my determination :-

(I) Whether the prosecution has proved that on 11th August, 1989, the present respondent, in the capacity of sarpanch of the village, forged the signature of Baburao s/o Ganpati Narwade on the cheque for the purpose of cheating and

thereby committed an offence punishable under section 468 of the Indian Penal Code ?

(II) Whether the sentence awarded by the learned Judicial Magistrate First Class for the offence punishable under section 420 of the I.P. Code is justified ?

My finding to the above point No. (I) is in the negative and to the point No. (II) is in the affirmative. Both the appeals are, therefore, dismissed for the reasons to follow :-

R E A S O N S

11. Of all the oral evidence, we have the deposition of PW9 Deepak Manohar Wagale – Assistant Examiner of Documents, Maharashtra State. It would show that while the specimen signature of the present respondent could be compared to his own signature below the cheque, so far as the signatures purported to be of Baburao Ganpati Narwade i.e. the father of the complainant with the specimen signatures of Baburao

Ganpati Narwade, collected by the Investigating Officer, the expert was not sure. He deposed that for want of sufficient identifying characteristics, he was unable to give any opinion as to whether the specimen signature marked as Exh. Q-1 (b) is comparable to the signatures at Exh. S-1 to S-6 and S-7 i.e. sample signatures made either by Baburao Ganpati or the present respondent. Since there was no definite opinion that the signature appearing on the cheque purported to be of Baburao Ganpati were either made by very same Baburao Ganpati or by the present respondent, no conviction for the offence of forging of the signatures, punishable under section 468 of the I.P. Code, could have been recorded by the learned Judicial Magistrate First Class. The reasons forwarded by the learned Judicial Magistrate First Class for acquitting the respondent from the offence punishable under section 468 of the I.P. Code, therefore, need no interference.

12. As regards the sentence for the offence punishable under section 420 of the I.P. Code, the learned Judicial Magistrate First Class has accepted the case of the present respondent that it was his first

offence and that he was the only bread earner of the family. It was submitted that he was having social status and was working as sarpanch of the village for fifteen years and was director of one sugar factory. In the circumstances, though present respondent submitted that he should be released on executing a bond of good behaviour, the learned Judicial Magistrate First Class has directed that the respondent shall suffer simple imprisonment till rising of the court and to pay fine of Rs. 2000/-. Considering all the material on record, I do not find that the sentence imposed by the learned Judicial Magistrate First Class requires any interference by this Court. In the circumstances, both the appeals fail. Hence, the following order:-

13. Both the appeals are dismissed. The bail bonds executed by the respondent shall stand cancelled.

[M.T. JOSHI]
JUDGE