

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.
APPELLATE SIDE JURISDICTION

CRIMINAL APPEAL NO. 171 OF 2004

The State of Maharashtra,
Through Police Station, Itwara,
Nanded.

... APPELLANT
(Ori. Complainant)

VERSUS

Balaji Sambhaji Ingale,
Age : 30 yrs., Occu. Service,
R/o: Purna Road, Nanded,
District Nanded.

... RESPONDENT
(Ori. Accused)

...
Mr. A. R. Borulkar, APP for Appellant / State.

Mr. S. S Rathi, Advocate for Respondent.
...

CORAM : **INDIRA K. JAIN, J.**

DATE : 28th October, 2015.

JUDGMENT:

. Appellant / State of Maharashtra has preferred this
appeal against judgment and order dated 20th November, 2003

passed by the learned Judicial Magistrate First Class, Nanded in Regular Criminal Case No.267 of 2000. By the said judgment and order, learned Magistrate acquitted the sole Accused of the offences punishable under Sections 465 and 469 of the Indian Penal Code.

2 For the sake of convenience Respondent / Accused shall be referred in his original status as he was referred before the Trial Court.

3 The gist of prosecution case may be stated as follows:

- i. On 2nd August, 1999 Deputy Superintendent of Police, Nanded received a letter sent by one V. S. Shinde making certain accusations against Rajaram Kondiba Mudholkar, Headmaster of Sharda Bhuwan Primary School, Old Mondha Nanded. It was alleged in the letter that R.K.Mudholkar being a journalist treated subordinate teachers working in the same school like bonded labour. He was detaining teachers in

school on some or the other pretext. After school hours he was misbehaving with lady teachers. He threw chilli powder in the eyes of a lady teacher and assaulted her. Police recorded statement and closed the file.

It was further written in the letter that R.K.Mudholkar used to abuse Education Officer and offence was registered against him in Vazirabad Police Station, Nanded.

The next allegation in the letter was that R.K.Mudholkar developed intimacy with the family of lady teachers due to which they did not marry. He wrote scandalous and defaming letter in respect of marriageable daughters due to which several marriages were spoiled or broken. R.K.Mudholkar reported against three teachers belonging to backward class and on his report those teachers were removed from service. Letter further contained that one day lady teacher would commit suicide due to such treatment given by

R.K.Mudholkar.

- ii. On receiving letter, Deputy Superintendent of Police forwarded the same for inquiry to PSO Vazirabad, Nanded. PSO Kadam conducted inquiry. After verifying letter R.K.Mudholkar disclosed that it was written by Accused and he had strong suspicion against him as he made a report against him for simultaneously working as Personal Assistant to MLA and teacher in the school and further drawing salaries from both the establishments thereby cheating the Government.
- iii. On 4th September, 1999 Rajaram Mudholkar made a complaint to Chief Judicial Magistrate, Nanded. Investigation under Section 156(3) of the Code of Criminal Procedure was directed. Crime No.6 of 1999 under Sections 465 and 469 of the Indian Penal Code was registered against the Accused.

iv. PSI Nimbalkar took over investigation. Statements of witnesses were recorded. The specimen of handwriting, signatures and figures of Accused were taken and sent to Handwriting Expert Aurangabad seeking expert opinion. Accused was arrested. On receiving report from handwriting expert charge-sheet was submitted to the Court.

4 Trial Court framed charge against the Accused vide Exhibit 4. Accused pleaded not guilty and claimed to be tried. His defence was of denial and false implication.

5 In support of its case prosecution examined in all 6 witnesses. Considering the evidence adduced by prosecution Trial Court found that guilt of Accused was not established. In the result Accused was acquitted. Being aggrieved State has come up in the present appeal.

6 Heard the learned counsel for parties. On perusal of facts and evidence on record and for the below mentioned reasons

this Court is of the opinion that the order of acquittal recorded by Trial Court cannot be said to be based on incorrect, illegal or perverse findings as prosecution has failed to bring home guilt of the Accused beyond reasonable doubt.

7 Prosecution case is mainly based on the evidence of PW-1 Complainant Rajaram Mudholkar, PW-2 Chhaya Temborniwar working in the same school as teacher and PW-4 Sanjay Kathar. The case of prosecution was initiated on the basis of letter dated 26th July, 1999 sent by one Vijay Shinde to Deputy Superintendent of Police, Nanded. Complainant disclosed to Police that he had strong suspicion against Accused as in the past he reported against him for working at two different places and drawing salaries from both the departments thereby cheating the Government. The specimen of handwriting, signatures and figures of Accused were taken and sent to handwriting expert.

8 Evidence of PW-4 Sanjay Kathar plays vital role in the present case with a view to ascertain the authorship of the letter in question. PW-4 Sanjay Kathar was working as examiner of

documents C.I.D. Maharashtra State Aurangabad. He received letter dated 6th October, 2000 from Deputy Superintendent of Police, Nanded for expert opinion. He examined the documents under various magnifications like hand magnifier simple microscope, ultra lanes. Those documents were examined in various lighting conditions such as direct oblique light, transmitted light and ultra violet light. On thorough examination PW-4 Sanjay Kathar opined vide Exhibit 20 as under:

“Resultant upon a careful examination, I am of opinion that the red encircled writing marked by me Exs. Q-1 and Q-2 is in the handwriting of the person who write the Ex. S-1 to S-6 and N.

2/ In absence of adequate common, identifying characteristics it has not been made me possible to express any definite opinion as regards its identity or otherwise when the red encircled signatures marked by me as Exs. Qs compared with the Exs. S-7 to S-12.”

9 On going through the opinion given by PW-4 Sanjay Kathar it is uncertain whether Accused wrote the disputed letter. Needless to state that mere proof of the handwriting of a document

would not tantamount to proof of all the contents or the facts stated in the document. If the truth of the facts stated in a document is in issue mere proof of the handwriting and execution of the document would not furnish evidence of the truth of the facts or contents of the document. The truth or otherwise of the facts or contents so stated would have to be proved by admissible evidence, i.e. by the evidence of those persons who can vouchsafe for the truth of the facts in issue.

10 In view of settled legal position Trial Court found that for want of corroboration and since evidence of expert is not definite it would not be possible to connect the Accused with disputed letter. Admittedly prosecution has not examined any witness to prove the contents of letter. No reason is assigned for the same. In the absence of proof of contents of letter in question Trial Court was right in holding that the said letter cannot be read in evidence. Letter which was foundation of prosecution case if goes away nothing remains to connect the Accused with the alleged commission of crime.

11 With the assistance of learned counsel for parties this

Court has gone through the evidence in detail. Reasons recorded by Trial Court are found in consonance with the evidence. No perversity is noticed in the findings recorded by the Trial Court. No interference is warranted. Hence the following order-

ORDER

Criminal Appeal No. 171 of 2004 is dismissed.

[INDIRA K. JAIN, J.]

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