

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

CRIMINAL WRIT PETITION NO.342 OF 2003

Maharashtra Krushi Udyog
Karmachari Sahakari Pat
Pedhi Ltd., Pachora, through
its Chairman Krushna s/o Laxman
Wadnere, C/o Krushi Udyog
Fertilizer Factory, Bhadgaon road,
Pachora, District Jalgaon

..Petitioner
(Orig. Complainant)

Versus

1. Walmik s/o Dagadu Patil,
Age 44 years,
R/o Nachankhed,
Taluka Pachora,
District Jalgaon

2. State of Maharashtra

..Respondents
(Resp.No.1 original
accused)

Mr L.V. Sangit, Advocate for petitioner
Mr S.R. Palnitkar, A.P.P. for respondent No.2

CORAM : N.W. SAMBRE, J.

DATE : 10th September 2015

ORAL JUDGMENT

Heard Mr Sangit, learned Counsel for the petitioner and learned Assistant Public Prosecutor for respondent No.2 - State.

2. The present petition is by the original complainant, who has lodged a complaint against the accused No.1 - respondent No.1 herein alleging that he has committed offence punishable under Sections 408 and 465 of the Indian Penal Code. Pursuant thereto Regular Criminal Case No.10/1990, in the Court of Judicial Magistrate, First Class, Pachora was initiated.

3. It is claimed that the accused being Secretary of the Maharashtra Krushi Udyog Karmachari Sahakari Pat Pedhi Ltd., Pachora has forged the documents and has caused loss of Rs.71,747/-.

4. Learned Magistrate, in Regular Criminal Case No.10/1990, upon appreciation of the evidence, was pleased to acquit the respondent No.1-accused of the offence punishable under Sections 408 and 465 of the Indian Penal Code, pursuant to Section 248 of the Code of Criminal Procedure by judgment dated 7th April 1997. It is needless to say that the criminal proceedings were arising out of the audit report of 1988 alleging defalcation for a period from 30th October 1986 to 10th September 1987 of Rs.71,747/-.

5. The revision at the behest of one Arun Choudhari against the order of acquittal vide Criminal Revision No.252/1999 also came to be dismissed by order dated 8th March 2001 passed by 2nd Additional Sessions Judge, Jalgaon as such, present petition.

6. Mr Sangit, learned Counsel for the petitioner would urge that learned Judicial Magistrate, First Class, Pachora and learned Additional Sessions Judge, Jalgaon have given perverse findings of acquittal, as according to him, the fact as regards the posting of the accused as a Secretary was not in dispute. So as to substantiate his contention, he has taken me through the evidence that was brought on record. In the light of the said evidence, I have perused the findings recorded by both the Courts below and noted that the judicial Magistrate First Class has considered and evaluated the evidence into depth and has

reached to conclusion of acquittal. While doing so, learned Magistrate has scrutinised and analysed the evidence minutely and in detail and has pronounced the verdict of acquittal. The revisional Court, pursuant to the said finding of acquittal recorded, has also in brief analysed the evidence and confirmed the said findings.

7. Both the Courts below have considered that the handwriting of the various persons, including Banduji Soma, R.R. Nardemal, Daradiyamal and Babulal Neware on the loan applications was duly admitted, which was rightly exhibited.

8. Though Babulal Neware has denied the signature on the loan application, however, admitted the receipt Exh.99. Similar is the case about Daradiyamal - PW-17, who admits the application for loan Exh.31.

9. In view of the presumption of innocence in favour of the accused, which has further strengthen upon recording of finding of acquittal by both the Courts below, in my opinion, it is not open for this Court, in the extra-ordinary jurisdiction to re-appreciate the same at the behest of the petitioner in absence of any serious perversity.

10. As such, the petition fails, stands dismissed. Rule discharged.

(N.W. SAMBRE, J.)

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