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

CRIMINAL APPEAL NO. 580 OF 2003

State of Maharashtra,
Through Public Prosecutor,
High Court Bench at Aurangabad. ... **APPELLANT**
(Ori. Complainant)

V E R S U S

Vasant Narayan Rathod,
Age 65 yrs, Occu. Nil,
R/o Plot No.38, Sudarshan Colony,
Dhule. ... **RESPONDENT**
(Ori. Accused)

…

Mr. S. B. Yawalkar, APP for Appellant / State.

Mr. A. P. Yenegure, Advocate for Respondent.

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W I T H

CRIMINAL REVISION APPLICATION NO. 249 OF 2003

Dhule Motor Owners Cooperative
Consumers Society, Dhule,
Through its Secretary,
Rajkumar Omprakash Bhasin,
Age: Yrs, Occu : As a Secretary,
Agra Road Near, Old Malegaon Naka,
Dhule, Dist : Dhule. ... **APPLICANT**
(Ori. Complainant)

V E R S U S

1) Vasant Narayan Rathod (Rana)
Age 63 yrs, Occu. Nil,
R/o. Hudco, Chitod Road,
Dhule, Tq. & Dist. Dhule.

2) The State of Maharashtra. ... **RESPONDENTS**

…

None for Applicant.

Mr. A. P. Yenegure, Advocate for Respondent No.1

Mr. S. B. Yawalkar, APP for Respondent No.2 / State.

...

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

DATE : 30th October, 2015.

<u>JUDGMENT</u>:

. Appellant / State of Maharashtra has preferred Criminal Appeal No.580 of 2003 against the judgment and order of acquittal passed by II Additional Sessions Judge, Dhule on 19th November, 2002 in Criminal Appeal No.9 of 1999.

2 Criminal Revision Application No.249 of 2003 is filed by original Complainant Dhule Motor Owners Cooperative Consumers Society being aggrieved by the order of acquittal passed against original Accused No.1.

3 For the sake of convenience Respondent is referred in his original status as Accused as he was referred before the Trial Court.

4 Facts as are necessary for deciding the present appeal and revision application may be stated as follows:

i. On 20th March, 1995 Complainant Rajkumar Bhasin, Secretary of Dhule Motor Owners' Co-operative Consumer Society lodged FIR with Azadnagar Police Station, Dhule alleging therein that during audit of Society carried for the period from 1st April, 1993 to 31st March, 1994 Auditor M/s. Mundada & Mundada Associates noticed that an entry in respect of cash payment of Rs.35,000/- to Bharat Petroleum Corporation was made in cash book without voucher or receipt and the said entry was false and bogus. It was revealed during audit that payment of Rs.35,000/- was never made to Bharat Petroleum Corporation by the Society. It was alleged that Accused No.1 Vasant Rathod was

Manager of Society and he was responsible for committing criminal breach of trust and misappropriation of an amount of Rs.35,000/-

ii. Crime No.94 of 1995 under Sections 408 and 468 of the Indian Penal Code was registered. On the basis of audit report and statements of witnesses recorded during investigation charge-sheet was submitted before the Chief Judicial Magistrate, Dhule.

iii. Charge was framed against the Accused at Exhibit 11. Accused pleaded not guilty and claimed to be tried. The defence was of total denial and false implication. Accused No.1 raised specific defence that cash of Rs.35,000/- was paid to the driver towards octroi charges and receipt in respect of payment of octroi was forwarded to Bharat Petroleum Corporation, Manmad Depot. Accused submitted that since payment of Rs.35,000/- was made towards octroi charges entry was taken in the cash book.

iv. Prosecution examined in all 4 witnesses. PW-1 Bhimrao Mhasane was salesman of Society, PW-2 Complainant Rajkumar Bhasin was Secretary of Dhulia Motor Owners' Co-operative Consumer Society, PW-3 Vinod Mundada carried audit of said Society for the period from 1st April, 1993 to 31st March, 1994 and PW-4 Mohanlal Bafna was Chairman of Society. Considering the evidence of prosecution witnesses Trial Court held Accused No.1 guilty of the offence punishable under Section 408 of the Indian Penal Code and sentenced him to suffer rigorous imprisonment for two years and fine of Rs.2000/- in default rigorous imprisonment for one month. Accused No.1 was however acquitted of the offence under Section 468 of the Indian Penal Code. Accused No.2 Gajanan Desai Assistant Manager of the Society was acquitted by the Trial Court.

v. Being aggrieved by the order of conviction Accused Vasant preferred Criminal Appeal No.9 of 1999 before the Sessions Court, Dhule. Vide order dated 19th November, 2002 Sessions Court reversed the findings of Trial Court and held Accused not guilty of the offence punishable under Section 408 of the Indian Penal Code and consequently acquitted the Accused.

vi. It is this judgment and order of Sessions Court which is under challenge in the present appeal. Complainant Society being aggrieved has preferred criminal revision application as stated above.

5 Heard the learned counsel for parties at length. Perused record. On careful appreciation of contentions raised on behalf of Appellant/State and Respondent and on the basis of facts and evidence brought on record for the below mentioned reasons this Court is of the opinion that no illegality or perversity can be attributed to the reasonings and findings recorded by Sessions Court in Criminal Appeal No.9 of 1999 acquitting Accused Vasant.

6 Prosecution case is based on audit report. PW-3 Vinod Mundada a Chartered Accountant carried audit of Society for the period from 1st April, 1993 to 31st March, 1994. He stated that on verification of cash book, ledger and other account books it was found that in cash book at page No.103 an amount of Rs.35,000/- was shown as debited in the name of Bharat Petroleum Corporation towards octroi. There was no voucher or receipt in respect of debit entry of Rs.35,000/-. It was revealed during discussion that Bharat Petroleum Corporation never accepted cash amount. After completing the audit, report vide Exhibit 17 was submitted and as there was no voucher in support of entry in cash book it was inferred that cash amount was misappropriated.

7 It is pertinent to note that audit report Exhibit 17 was admitted in evidence of Complainant Rajkumar Bhasin. In law PW-3 Vinod Mundada was the competent witness to prove the audit report.

8 The crux of audit report is that Bharat Petroleum Corporation never accepted cash amount and therefore, debit entry made in cash book regarding payment of Rs.35,000/- in cash to Bharat Petroleum Corporation without voucher or receipt was an

incorrect entry leading to an inference that an amount of Rs.35,000/- was misappropriated.

9 In this connection prosecution has produced photostat copy of letter Exhibit 20 from the Corporation. Through this letter an attempt was made to show that Corporation never received the amount. No representative of Corporation was examined to prove the contents of letter. Primary evidence i.e. original letter was not brought before the Court. To base conviction Trial Court relied upon photostat copy of letter Exhibit 20. In this background Sessions Court observed that appreciating photostat copy without proper proof was contrary to the provisions of law and letter Exhibit 20 could not lend support to prosecution case. No fault can be found with the observations of the Sessions Court as they are strictly in accordance with the provisions of Indian Evidence Act.

10 Another important fact which cannot be lost sight of is that the Society was a registered institution having its Chairman, Managing Committee and other office bearers for supervision and administration. In that capacity members of Society has dominion and control over the property of Society. The office bearers of

Society were verifying the accounts daily and in that background Sessions Court held that Accused cannot be held guilty for alleged misappropriation. This Court finds no perversity, illegality or incorrectness in the reasonings recorded by the Sessions Court and therefore not inclined to interfere in the judgment and order of acquittal. Accordingly the following order:

O R D E R

I. Criminal Appeal No.580 of 2003 and Criminal Revision Application No.249 of 2003 are dismissed.

II. Bail bonds of Accused stand cancelled.

[INDIRA K. JAIN, J.]

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