

2. I have heard Mrs.S.V.Gajare the learned Additional Public Prosecutor for the appellant/State. I have heard Mr.PD.Dalvi the learned counsel for the respondent. With their assistance, I have gone through the entire evidence adduced during the trial and the impugned Judgment of acquittal delivered by Mr.N.S.Lohare, the Judicial Magistrate, First Class, Radhanagari, Dist.Kolhapur.

3. In the view that I am taking after hearing the learned Additional Public Prosecutor and the learned counsel for the respondent, it is not necessary or desirable to discuss the evidence that was adduced by the prosecution during the trial. It is because after considering all the relevant aspects of the matter and upon perusing of the record, I am of the opinion that the impugned Judgment and Order should be set aside and the matter should be remanded back to the Magistrate.

4. The Judgment of acquittal delivered by the Magistrate makes a peculiar reading. The judgment consists of seven typewritten pages. It has 13 paragraphs. Up to paragraph 12, the Magistrate has only reproduced - in his words - what was the evidence of the different witnesses examined by the prosecution. In paragraph 12, he has spoken about the documents that were tendered in evidence, marked and exhibited. Thereafter, the Magistrate in the same paragraph recorded that he had carefully observed the evidence adduced before the Court and then gave his

reasoning leading to acquittal. The reasoning being extremely brief is worth reproducing here :

“There are so many doubts occurs in prosecution evidence. There are omissions and improvements in prosecution evidence. The evidence of complainant is not at all corroborated by any independent evidence. The evidence before court is not sufficient to hold the accused guilty of the offence. Benefit of doubt goes to the accused. Prosecution has miserably failed to prove the guilt of the accused beyond reasonable doubt.”

5. In my opinion, the Judgment delivered by the Magistrate is no Judgment in the eyes of law. The Judgment is supposed to contain the point or points for determination, the decision thereon and the *reasoning* for the decision. In this case, actually no reasoning at all for the decision have been given by the Magistrate. The portion reproduced above is the only reasoning in the 7 pages judgment and it is easy to see that only general statements, which can be put in any Judgment of acquittal, have been made. The Magistrate has spoken about there being 'omissions and improvements' in the prosecution evidence without discussing or mentioning *even a single omission or improvement*. Further, the Magistrate has wrongly observed that the evidence of the complainant (First Informant) was 'not at all corroborated by any independent evidence'. During the trial three more persons were examined, who claimed to have witnessed the incident and

corroborated the testimony of the First Informant. If their testimonies did not agree with the testimony of the First Informant what were the points of difference, ought to have been mentioned by the Magistrate, and the effect of this difference should have been discussed. The same has not been done. Since the part of the Judgment reproduced above is the only reasoning in the entire judgment and the decision of acquittal of the respondent is supported by such reasoning, the approach of the Magistrate in the matter was clearly perverse.

6. In view of such unusual and perverse reasoning, I have thought it necessary to examine the record more meticulously. I find from the roznama that the final arguments were heard by the Magistrate on on 28/06/1995 and the case was adjourned for judgment to 12/07/1995. However, the matter was being adjourned from time to time and the Judgment actually came to be delivered on 21/12/1996, which is about a year and half from the date of conclusion of the final arguments. Interestingly, on 07/08/1995 Magistrate appears to have been passed an order calling for the report from the District Probation Officer. The roznama shows that such report was received on 21/11/1995. Such report was found in the record and proceedings, and it was apparently not at all opened. In any case, the roznama does not show that such report was opened or perused by the Magistrate. (I have opened the cover during the course of hearing of the

present appeal and after perusing the report, the same has been again resealed in the same cover/envelope and has been kept along with the original record that has been received from the trial Court.) Since the Judgment of acquittal has been recorded without any discussion of the evidence and by making bald, vague and general statements about their being 'so many doubts, omissions and improvements' without mentioning even one of the 'several doubts or omissions or improvements' - and that too, after taking one and half year, to contemplate and deliberate over the matter, such a Judgment cannot be allowed to stand.

7. Undoubtedly, it would be possible for this Court to examine the matter, as if it were the trial Court, and, as if decision about the guilt or otherwise of the respondent is to be for the first time, given by this Court. However, considering all the relevant aspects of the matter, such a course does not appear to be desirable. The proper course would be to set aside the impugned Judgment and remand the matter back to the Magistrate with a direction to re-hear the arguments as may be advanced by the parties in support of their respective contentions, and to deliver a Judgment in accordance with law.

8. In the result, the appeal is partly allowed.

9. The Judgment and Order of acquittal as recorded by the Magistrate is set aside.

10. The matter is remanded back to the Magistrate, who after giving an opportunity to the prosecution and to the accused to advance arguments, peruse the entire evidence and record of the case, and deliver a Judgment in accordance with law.

11. The learned Magistrate shall deliver the Judgment in the aforesaid manner, within a period of four months from the date of receipt of record and proceedings by him.

12. It may be made clear that no conclusion has been arrived at and no opinion has been expressed by this Court as to whether the appellant is guilty or not guilty. Such conclusion is to be arrived at by the Magistrate.

13. Appeal is disposed of accordingly.

14. Record and proceedings be sent back forthwith.

(ABHAY M. THIPSAY J.)