

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.587 OF 1998

THE STATE OF MAHARASHTRA)...APPELLANT

V/s.

SURESH MARUTI KESARKAR & ORS.)...RESPONDENTS

Mr.Deepak Thakre, APP for the Appellant – State.

Ms.Madhavi Tavanandi, Advocate for the Respondents.

CORAM : ABHAY M. THIPSAY, J.

DATE : 31st JULY 2015.

JUDGMENT :

1 The respondents were prosecuted on the allegation of having committed offence punishable under Section 379 of the Indian Penal code (IPC) read with Section 34 thereof. The Judicial Magistrate First Class, Gadhinglaj, after holding a trial, found them not guilty and passed an order of acquittal. The State

of Maharashtra is aggrieved by the said order of acquittal, and has, therefore, after obtaining leave of this court, filed the present appeal praying that the order of acquittal be set aside and the respondents be convicted and sentenced.

2 I have heard Mr. Deepak Thakre, the learned APP for the State. I have heard Ms. Madhavi Tavanandi, the learned counsel for the respondents. I have gone through the entire evidence adduced during the trial. I have carefully gone through the impugned judgment.

3 The prosecution case was to the effect that Kishor Chikode had installed an electric motor pump on his well. It was of Batliboy Company having sky blue colour. Kishor Chikode had purchased the same from the shop of Sainath Krushi Agency at Gadhinglaj. The electric motor pump was stolen about fifteen days prior to 1st May 1997. Kishor, however, did not lodge any report with the police. The police at Ajara Police Station, Uttur Out Post, recovered a number of electric motor pumps pursuant to

the disclosure statement made by some of the persons, who had been apprehended on suspicion. Pursuant to the seizure, Kishor was called at Uttur Police Station, and among the motors that were there, he could find his motor. He, then, lodged a report with the police.

4 The prosecution examined only two witnesses during the trial. The first witness is the First Informant – Kishor Chikode – and the second witness is – Bhairu Savant – who is a panch in respect of the alleged disclosure statement made by respondent no.1, and recovery of two electric motors, pursuant to the said disclosure statement.

5 The evidence of Bhairu Savant shows that police had called him and told him that electric motors had been recovered from respondent no.1 and the absconding accused Bhairu Powar – respondent no.2, and that, these motors had been seized; and that panchnama in respect thereof was to be drawn.

6 The learned Magistrate observed that, the First Information Report had been lodged after showing the electric motor at Ajara Police Station, and therefore, that the description of the electric motor has been given in the FIR, and that, it tallies with what had been recovered, had no relevancy at all. The learned Magistrate was absolutely right in observing so. The evidence of Bhairu Savant was of no consequence, but the learned Magistrate, it appears, took the evidence of Investigating Officer – Ajagekar, who, though was not examined in the present case, had been examined in some other case. The Magistrate need not have done so. The evidence of Bhairu Savant (PW2) was totally insufficient to show that the recovery of electric motor had been pursuant to any disclosure statement made by respondent no.1. On the contrary, the evidence shows that the electric motor had already been recovered by the police. Since the Investigating Officer was not examined in this case as a witness, his evidence need not have been taken into consideration, but even after taking his evidence, as recorded in some other case into consideration,

the learned Magistrate came to the conclusion that the case against the respondents had not been proved at all.

7 The learned Magistrate was absolutely right in coming to this conclusion. As a matter of fact, no other conclusion was possible.

8 The view of the Magistrate leading to acquittal, is proper and legal.

9 The appeal filed by the State of Maharashtra, being without any merit, deserves to be dismissed.

10 The Appeal is dismissed.

(ABHAY M. THIPSAY, J.)