

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No.407 OF 2000

The State of Maharashtra. : APPELLANT

...VERSUS...

1. Kashinath Bapu Kalantri,  
R/o. Pariwar Sadan, 3<sup>rd</sup> Floor,  
Road No.22, Kisan Nagar No.3,  
Wagle Eastate (West), Thane 400 604.

2. Laxman Sitaram Kalantri,  
R/o. Dynaneshwar Nagar,  
Chawl No.26, Room No.2,  
Wagle Estate, Thane.

3. Ramchandra Pandurang More,  
R/o. Pariwar Sadan, 4<sup>th</sup> Floor,  
Room No.26, Road No.22,  
Kisan Nagar No.3,  
Wagle Estate, Thane 400 604.

: RESPONDENTS

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Mr. D.P. Adsule , Addl. Public Prosecutor for the Appellant.  
Mr. Prakash Naik, Advocate for the Respondent No.1.  
Ms. Racheeta Dhuru, Advocate for the Respondent Nos.2 and 3.  
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CORAM : S.B. SHUKRE, J.

DATE : 29<sup>th</sup> JULY, 2015.

ORAL JUDGMENT :

1. This is an appeal preferred against the judgment and

order dated 9.3.2000 passed by the Metropolitan Magistrate, 6<sup>th</sup> Court, Mazgaon, Mumbai in Case No.74/P/97 thereby acquitting the respondent Nos.1 to 3 of the offences punishable under Sections 408 and 414 of the Indian Penal code.

2. Briefly stated facts of the case are as under ;

The alleged offences of criminal breach of trust by a servant and assisting of the servant in disposing of the property misappropriated took place between 1.4.1995 and 31.3.1995. It is alleged that during this period of time, the respondent No.1 was in the employment of the complainant M/s. Gopalchand Puri and Brothers, Mazgaon, Mumbai and being incharge of the godown, respondent No.1 was entrusted with the dominion over the property belonging to the complainant. It is the case of the complainant that this property consisting of sanitary wares and other related articles was dishonestly misappropriated by respondent No.1 and then disposed of by him with the assistance of respondent Nos.2 and 3 as well as one absconding accused. When misdeeds of respondents and the absconding accused were noticed by the complainant, same was discovered by the complainant on inspection of the stock register, the complainant lodged a complaint against the respondents and absconding accused with

Police Station Byculla. The matter was investigated and as sufficient material was found against the respondents and the absconding accused, the Police filed a charge-sheet against them.

3. A charge for the offences punishable under Sections 408 and 414 of the Indian Penal Code was framed against the respondents and accused, who were present before the Court and as they pleaded not guilty to the same, they were tried by the learned Magistrate in accordance with law.

On merits of the case, learned Magistrate found that the offences with which the respondents were charged in the present case were not proved beyond reasonable doubt and, therefore, by his judgment and order dated 9.3.2000 acquitted the respondents of the said offences. Not being satisfied with the same, the State is before this Court in the present appeal.

4. I have heard learned Addl. Public Prosecutor for the State and learned counsel for the respondents. I have carefully gone through the record of the case as well as the impugned judgment and order.

5. On perusal of the impugned judgment and order it is seen that the learned Magistrate has found that the initial facts requisite for proving of the offences charged against the

respondents have not been proved by the prosecution in the instant case. Learned Magistrate has found that it was absolutely essential for the prosecution to basically prove the fact that the respondent No.1 or accused No.1, was, at the relevant time, incharge of the godown and was entrusted with the dominion over the property misappropriated. Learned Magistrate found that although it was proved by prosecution that during the relevant period of time, respondent No.1 was working in the godown, but he was so working just as several other persons were working and that there was absolutely no evidence brought on record to show that apart from his working there, he was also incharge of the godown. Learned Magistrate further found that although there was evidence to show that respondent No.3 or the accused No.3 sold some tiles to PW 5- Mansukhlal Premji Gala, at which time respondent No.1 was also present, this fact by itself would not be sufficient to hold that the tiles were misappropriated by respondent No.1 and, therefore, the sale of tiles by respondent No.3 amounted to assisting the respondent No.1 in disposing of the property. Learned Magistrate further found that the evidence regarding discovery of tiles was also unreliable as panch witnesses were not examined and the admissions given by PW 5- Mansukhlal Premji Gala show that

he was detained at the Police Station for one night and, therefore, his evidence as regards his selling the misappropriated goods can also not be believed without corroboration.

6. Upon careful scrutiny of the evidence available on record, I find that the conclusions so drawn by the learned Magistrate are completely based upon the evidence and do not appear to be result of consideration of any inadmissible evidence or some extraneous material. There is no evidence available on record to show that at the relevant time respondent No.1 was incharge of the godown in question. There is also a great doubt about the shortfall of the property in the godown allegedly noticed by PW 1. Although, PW 1 has stated that one stock register was maintained by him, same was not produced before the Court. Thus, if basic facts of respondent No.1 being incharge of the godown was entrusted with the dominion over the property and exactly what property was misappropriated have not been proved, inevitable conclusion would be that the offences of criminal breach of trust by a servant as well as assisting the servant in disposing of the misappropriated property could not be proved. Learned Magistrate was, therefore, right in recording a finding of innocence of respondent Nos.1 to 3 with respect to offences punishable under

Section 408 and 414 of the Indian Penal Code. The view taken by the learned Magistrate is plausible and cannot be said to be perverse or arbitrary. Therefore, I find that no case has been made out by the prosecution for making any interference with the impugned judgment and order.

7. The appeal stands dismissed.

(S.B. SHUKRE, J.)