

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.644 OF 1998

THE STATE OF MAHARASHTRA)...APPELLANT

V/s.

BHAIRU KRISHNA POWAR & 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 Gopal Savant (PW1) had installed a jet pump to fetch water from his bore-well. About two months before 2nd May 1997, the pump was stolen. Gopal Savant, however, did not lodge any report with the police. He then learnt that certain electric motor pumps had been seized at Uttur Out Post of Ajara Police Station. Gopal Savant was called there. He was shown the electric motor pumps and he could identify his jet pump. The said pump had been seized

pursuant to the information disclosed by respondent no.1 to the police on 4th May 1997.

4 The prosecution examined only two witnesses during the trial. The first is the First Informant – Gopal Savant – and the second is – Bhairu Savant – a panch, in respect of the alleged disclosure statement made by respondent no.1, pursuant to which the jet pump was said to have been recovered from the house of respondent no.3.

5 The learned Magistrate observed that the evidence of Gopal Savant was not reliable as he had not lodged any report with the police about the theft of his jet pump and had admitted that he had been called by the Head Constable Ajagekar, attached to Uttur Out Post of Ajara Police Station, who had seized a number of electric motor pumps. The First Information Report (FIR) was lodged as soon as the jet pump was seen by Gopal Savant at Uttur Out Post. The learned Magistrate observed that, therefore, no reliance could be placed on the evidence of Gopal Savant.

6 The learned Magistrate also observed that the evidence of the recovery of a jet pump pursuant to a disclosure statement allegedly made by respondent no.1 - Bhairu Powar – had not been satisfactorily proved. In the circumstances of the case, the learned Magistrate refused to place reliance on the prosecution evidence.

7 The view of the matter, as taken by the Magistrate, was proper and legal. Since, the FIR had been lodged after the property had already been recovered, no reliance about the identification of that property, as the stolen property, could have been placed. Moreover, the disclosure statement was allegedly made only by respondent no.1. The view of the Magistrate leading to acquittal, is proper and legal.

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

9 The Appeal is dismissed.

(ABHAY M. THIPSAY, J.)