

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.628 OF 1995

SHRI K.A.IRANI (Since Deceased))
Through Legal Heir MS.M.D.PATEL)...APPELLANT

V/s.

MAHENDRA D. THAKKAR AND ANR.)...RESPONDENTS

Mr.C.G.Gawnekar, Advocate for the Appellant.

Mrs.P.J.Kanani, Advocate for Respondent No.1.

Mrs.S.Gajare-Dhumal, APP for the Respondent - State.

CORAM : ABHAY M. THIPSAY, J.

DATE : 27th JULY 2015.

JUDGMENT :

1 The original appellant had filed a complaint against
respondent no.1 herein alleging commission of an offence
punishable under Section 406 of the Indian Penal Code (IPC).
The Metropolitan Magistrate, 19th Court, Esplanade court, by a
judgment and order dated 14th March 1995 acquitted respondent
no.1. Being aggrieved thereby, the original complainant, after

obtaining special leave of this court, filed the present appeal. During the pendency of the present appeal, the original complainant passed away, and he is now represented by his legal heir – Ms.M.D.Patel.

2 I have heard Mr.C.G.Gawnekar, the learned counsel for the appellant. I have heard Mrs.P.J.Kanani, the learned counsel for respondent no.1.

3 For the sake of convenience and clarity, the appellant shall hereinafter be referred to as 'the complainant' and respondent no.1 as 'the accused.'

4 The learned counsel for the appellant submitted that the facts of the case, as alleged by the original appellant, have been properly reproduced in the impugned judgment. He has taken me through the impugned judgment, more particularly, through the reasoning of the learned Magistrate, by which he came to the conclusion that respondent no.1 was not guilty.

5 Briefly stated, the allegation leveled by the complainant against the accused was that certain properties that were entrusted to the accused by the complainant as the complainant's agent were misappropriated by him.

6 The firm of the complainant had procured an order from the Maharashtra State Co-operative Marketing Federation Limited, Bombay, (hereinafter referred to as the 'Marketing Federation') for the supply of about 5,000/- metric tons of Jowar which was required to be procured from the States of Rajasthan and Madhya Pradesh. The procurement was to be done within sixty days. That, on the representations made by the accused that he would procure the said quantity of jowar on behalf of the complainant's firm, the complainant undertook the responsibility of supply of jowar to the Marketing Federation. That, the complainant appointed the accused as the agent of his firm, for the purpose of meeting the target of procuring the jowar. The complainant and the other partner of his firm, executed in favour

of the accused, a Power of Attorney, appointing him as their lawful attorney. The accused was authorised to place orders in Rajasthan and Madhya Pradesh for the supply of jowar to meet the target. He was also authorised to prepare bills to be drawn on the Marketing Federation, at Rajasthan and Madhya Pradesh under his own signature. He was also authorized to operate the bank account of the complainant in the branch at Kota, Rajasthan. The accused was entrusted with the responsibility of sending the jowar by loading the consignment in the railway wagons and directing the supply as per the list provided by the Marketing Federation.

7 The accused was provided with initial expenses of Rs.2,000/- for going to Kota and making preliminary preparations for procuring jowar. That, the accused, however, had a dishonest intention and neglected his duty of procuring the necessary quantity of jowar. The period for procuring jowar was got extended by the complainant but even in the extended period, the requirement could not be met. That, the complainant's deposit of Rs.1 Lac, as made by him to the Marketing Federation, was

therefore, forfeited. The complainant then inquired into the matter and noticed several irregularities committed by the accused. The complainant also allegedly found that the accused had purchased jowar for the complainant's firm from his own firm and had then supplied the same to the Marketing Federation. The price which was charged by the accused to the complainant's firm was exorbitant.

8 Upon considering the evidence adduced before the learned Magistrate, the learned Magistrate came to the conclusion that the complainant had failed to prove any misappropriation or criminal breach of trust by the accused. The Magistrate observed that the theory of the complainant having appointed the accused as an agent was not acceptable. The Magistrate held that the transactions between the accused and the complainant were the transactions between two principals. The observations of the Magistrate are found in paragraphs 10, 11, 12 and 13 of the impugned judgment.

9 The learned counsel for the complainant submitted that he does not wish to advance any oral arguments to challenge the conclusions arrived at by the learned Magistrate.

10 Under these circumstances, after considering the nature of the complaint and the reasoning of the learned Magistrate, I do not find any infirmity in the reasoning of the learned Magistrate. In any case, the view of the matter, as taken by the Magistrate, is a possible view. Since no arguments have been advanced to show how the view of the Magistrate is patently erroneous, or not a possible view, there is no scope for interfering with the order of the Magistrate.

11 The appeal is dismissed.

(ABHAY M. THIPSAY, J.)