

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 59 OF 2002

The State of Maharashtra ... Appellant
(Orig. Complainant)
V/s.

Kashinath Mahadeo Chavan
Age : 64 years., Occu. : Nil,
R/at. Village Pasarani,
Taluka - Wai, District - Satara ... Respondent

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Mr. A. S. Shitole, APP for the Appellant - State.
Mr. Manoj Patil i/b. Mr. S. R. Borulkar, Advocate for the
Respondent.

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CORAM : S.B. SHUKRE, J.

DATED : OCTOBER 19, 2015.

ORAL JUDGMENT :-

This is an Appeal preferred against the judgment and order dated 21st July, 2001, passed in Regular Criminal Case No.5 of 1997, by the learned Judicial Magistrate First Class, Wai, District Satara, thereby acquitting the respondent of the offence punishable under Sections 408 and 477-A of the Indian Penal Code (hereinafter referred to as "IPC", for short).

2 Briefly stated, the facts of the case are as under:

The respondent was alleged to be Secretary of Lohar Vividh Karyakari Seva Society Ltd., accounts of which were audited in the year 1994. The accounts which were audited related to the period from 1st April, 1993 to 31st March, 1994. The Auditor made some observations in the audit report that there was a shortfall of amount of Rs.72,035/- in the accounts of the Society and in his opinion, this much of amount was misappropriated by committing criminal breach of trust and falsification of account by the respondent. However, no FIR was filed against the respondent immediately after submission of the audit report. It was filed after expiry of a period of about one and half years from the submission of the audit report. The investigation was carried out and after completion of the same, the charge-sheet was filed against the respondent before the concerned Court of Judicial Magistrate First Class at Wai. Taking into account the fact that a *prima facie* case was made out against the respondent, the learned Magistrate framed charge for the offences punishable under Sections 408 and 477-A of the IPC against the respondent. The respondent pleaded not guilty to the same and claimed to be tried.

On merits of the case, the learned Magistrate found that this was a case of no evidence against the respondent and, therefore, the learned Magistrate by his judgment and order dated 21st July, 2001, acquitted the respondent of the offences with which he was charged in the present case. Not being satisfied with the same, the State is before this Court in the present Appeal.

3 I have heard the learned A.P.P. for the State and the learned counsel for the respondent. I have carefully gone through the record of the case including the impugned judgment and order.

4 It is seen from the record that the extracts of the accounts and other relevant documents which were seized in the presence of panchas had not been properly proved by the prosecution. It is not in dispute that the panch witness in whose presence the documents were seized was not examined. The investigating officer, who was the author of the panchanama, was also not examined. The learned Magistrate was, therefore, right in observing that the accounts in the instant case have not been proved. Then, no evidence has been brought on record by the

prosecution establishing the fact that at the relevant time, the respondent was indeed the Secretary of the Society as neither any appointment letter nor any resolution of the society was produced in evidence. There was also no evidence available on record showing that the respondent was in any manner entrusted with the work of handling of money or was incharge of the books of accounts. Therefore, the learned Magistrate has rightly concluded that this being a case of no evidence against the respondent, the respondent deserves to be acquitted of the offences charged against him. No interference with the impugned judgment and order is warranted. The Appeal deserves to be dismissed. The Appeal stands dismissed.

(S. B. SHUKRE, J.)