

CRIMINAL REVISION APPLICATION NO. 268 OF 2014

V/s.

Mr.S.H.Yadav, APP for State.

DATE : 16th DECEMBER, 2015.

Heard.

2. This Revision Application is moved by the original complainant. She filed Criminal Complaint with the Dahanu Police Station alleging offence punishable under Section 420 a/w Section 34 of the Indian Penal Code (IPC) against the Respondent-Accused. They were arrested, remanded to Police custody and after completion of investigation, Charge-

sheet was filed. Evidence was recorded, but the learned Magistrate acquitted the accused. Even the Sessions Judge dismissed the Appeal against acquittal. It is in such circumstances, the case has come before me.

3. The facts which are alleged and not proved in the trial Court are as under;

The Applicant-Complainant deposed that she handed over various amounts totaling to Rs.15 Lacs (Rs. Fifteen Lacs) to Respondent-Accused No.1 who happened to be her cousin. He assured her that he would invest the amount in various securities such as immovable property, shares etc. He also represented to her that he is doing business of share broker and was representing a well-known firm by name "Motilal Oswal Share Brokers". Believing his assurance, the amounts were given from time to time. She further stated on oath that every time she handed over amount in cash to Respondent-Accused No.1, he would bring to her Ledger copy of statement of her account, which he had opened in her name. When the Applicant-Complainant demanded the amount back with profits, the R-A-1 refused to acknowledge receipts of any amount, etc. She alleged that

since beginning the accused had fraudulent intention not to return the amount to her. During deposition the Applicant mentioned almost all the facts referred to above. She produce before the Court a photo copy of 'Ledger copy' of the account which she referred in her deposition. This was the only document she had to indicate that there had been transactions with Respondent-Accused No.1. The Court below refused to admit this document as evidence, mainly because this was a photo copy and the original was not called before the Court. Unfortunately, for the Applicant-Complainant, though the police had arrested Respondent-Accused No.1 and had remanded him to police custody, no documentary evidence was recovered from him. Having regard to the depositions narrated above, one must also look into the line of cross-examination. The cross examination of the Respondent-Accused suggested to the Applicant-Complainant that the Respondent-Accused did not even know her.

4. The Court below did not accept her evidence, mainly because there was no documentary proof to indicate that she had handed over amounts to Respondent-Accused

No.1. Both the Court's below, in my view, erred in not accepting the 'Ledger Copy' which the Applicant-Complainant produced. It was a document coming from the prosecution witness, this was the original document (for the witness) and, therefore, the Court ought to have accepted it on record. Once this document is accepted, the deposition of the Applicant-Complainant becomes believable. Once her deposition and her case is believed, it would be for the Respondent-Accused to explain as to why the document and the Applicant-Complainant's case should not be believed. It appears to me that the Court's below not only erred in not accepting the document on record as evidence but also erred in not believing the evidence which came on record mainly through deposition of the Applicant-Complainant.

5. I am, therefore, inclined to allow this Writ Petition utilizing power under Section 397 of the Cr.P.C.. Since the record indicates that there is sufficient evidence against the Respondent-Accused, I am inclined to remand the case back to the trial Court.

- (a) The Revision Application is allowed.
- (b) The impugned judgments/orders are set-aside.
- (c) Criminal Case R.C.C. No. 44 of 2006 stands remanded to the trial Court for further trial.
- (d) The learned Magistrate is at liberty to record further evidence, if necessary, and record statement of the accused under Section 313 of Cr.P.C. and then deliver the Judgment on merits.

(A.V.NIRGUDE, J.)