

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPEAL NO.353/2002

(State of Maharashtra ..vs.. Madhusudan Gopalrao Sapkal & anr.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. Laddhad, A.P.P. for appellant.

CORAM : A.B. CHAUDHARI, J.

DATE : JULY 1, 2015.

Heard learned A.P.P. for the appellant-State. None appears for the respondents, though served. Perused the impugned judgment and order recorded by the learned trial Judge.

The learned trial Judge has recorded following reasons in paragraphs 10, 11 and 12 of the judgment, which read thus:

“10. It is to be noted here that the Xerox copies are placed on record and the same are not also exhibited so as to read it in evidence. Nor it is a case of the prosecution that the originals are lost so as to prove the said copies of the original by secondary evidence. It is also not done by the prosecution because the cash and finance department of the District and Sessions Judge, Nagpur could not produce the original. The

effort is made by examining P.W.2 Bhimrao to prove that a stamp paper of Rs.10/- denomination was purchased by the accused no.1 but the version of P.W. 2 Bhimrao damaged the case of the prosecution more, P.W.2 Bhimrao in his deposition has categorically admitted that he knows the accused but has not stated at all the original of the stamp paper placed on record as article 'F' was purchased by the accused no.1 or any of the accused. Not only this he dismantled case of the prosecution when he in his cross examination admitted that the register is maintained by him wherein the entries about the sell of the stamp paper are taken and the signature of the person in whose name the stamp are obtained in the register. However, the prosecution has not even recorded the statement of P.W.2 Bhimrao nor any effort is made by the prosecution to call for the said register so that it can be proved as to who had purchased and signed the said stamp paper original of article 'F'.

11. It is worth mentioned here that P.W.4 P.I. Kuthe has specifically stated that he has not recorded the statement of any of the witness from cash and finance department of the District and Sessions Judge, Nagpur. To sum up

or the only conclusion that can be drawn is that the prosecution has miserably failed to prove the original or the xerox copies of the either of the document alleged to have been submitted by the accused no.1 to the cash and finance department of the office of the District and Sessions Judge, Nagpur.

12. *Needless to say that the accused no.1 has been in service and still is in service as stated before me. It is also admitted fact that the entire amount of loan with interest, penalty etc. has been paid by the accused no.1 and thus it cannot be said that there has been any wrongful loss caused to the government or any wrongful gain to the accused no.1 which is essence of the offence of cheating. On the contrary, the repayment has been made by the accused no.1 in due course and as per the requirement of the office of the district and Sessions Court, Nagpur.”*

The charge was that the loan was obtained by District Court employee, Nagpur by submitting fabricated document of sale 14.04.1992. The said document in original was produced before the trial Judge and what was produced was a photocopy thereof. The trial Judge refused to exhibit it. The

prosecution did not take any step to lead secondary evidence by following appropriate procedure. The alleged fabricated document was heart and soul of the prosecution case. The prosecution, therefore, miserably failed to prove its case.

Upon reading of the reasons above in that behalf, I find no merit in the present appeal. Hence, following order is passed.

ORDER

- (i) Criminal Appeal No. 353/2002 is rejected.

JUDGE