

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL REVISION APPLICATION NO. 38 OF 2003

The Kopargaon Sahakari Sakhar
Karkhana Ltd., Gautam Nagar,
Post. Kolapewadi, Tq. Kopargaon,
Dist. Ahmednagar

Through its Managing Director

...Petitioner

versus

1. Vasant Gajanan Deokar,
Age: 42 years, Occu: Service,
R/o. Kopargaon, Tq. Kopargaon,
Dist. Ahmednagar

2. Bhausahab Baburao Abhale,
Age: 41 years, Occu: Agri.,
R/o. Kopargaon, Tq. Kopargaon,
Dist. Ahmednagar

3. Santosh Fakira Landage,
Age: 32 years, Occu: Service,
R/o. Kopargaon, Tq. Kopargaon,
Dist. Ahmednagar

4. Fakkad Tatyaba Kale,
Age: 44 years, Occu: Agri.,
R/o. Kopargaon, Tq. Kopargaon,
Dist. Ahmednagar

5. Bhagawat Shankar Jorvekar,
Age: 32 years, Occu: Labour,
R/o. Vighanadi, Tq. Sinnar,
Dist. Nashik

6. The State of Maharashtra

...Respondents

None for the applicant

Mr. A. R. Kale, A.P.P. for respondent/State

CORAM : N.W. SAMBRE, J.

DATE : 2nd APRIL, 2016

ORAL JUDGMENT :

This is part heard matter. When the matter is called out, none appears for the applicant. With the assistance of learned A.P.P., this Court proceeded to decide present revision application against the acquittal.

2. Perused the original record.

3. It is required to be noted that the respondents-accused are charged for the offence punishable under Sections 408, 477-A, 411 read with Section 34 of the Indian Penal Code. The applicant herein is the complainant. It is claimed that the complainant, Chief Security Officer in Co-operative Sugar Factory, noticed that the respondents-accused made conspiracy by taking away coal used for the purpose of firing boiler meant for manufacturing paper in sugar factory and sold the same to accused No. 5.

4. Pursuant to the complaint, offence came to be registered on 29/12/1990 against the accused persons and charge was framed against accused Nos. 1 to 4 vide Exhibit-46 and against accused No. 5 vide Exhibit-52 on 04/09/2000. Trial against accused No. 6 was

separated.

5. In support of prosecution case, in all nine witnesses were examined, i.e. PW-1 Dnyanba Tukaram Bhagat, employee working in Raw Material Division at Exhibit-66, PW-2 Arjun Bhimaji Tambe, a trainee watchman at Exhibit-68, PW-3 Madhav Sukhdeo More, security person at Exhibit-71, PW-4 Dnyanoba Bhagwant, Account Clerk at Exhibit-72, PW-5 Dattatraya Punjaji Chavan, Cashier at Exhibit-73, PW-6 Vijaykumar Maruti Kasale, Clerk at Exhibit-74, PW-7 Shivaji Rajaram Wabale, Assistant Accountant at Exhibit-78, PW-8 A.S.I. Suresh Haribhau Raut, who has reduced the complaint in writing at Exhibit-83 and PW-9 P.S.I. Karale, the Investigating Officer, at Exhibit-84.

6. The documentary evidence as are taken into account are complaint at Exhibit-85, occurrence report at Exhibit-86, seizure panchnama at Exhibit-87, xerox copy of the report of the sugar factory regarding the outgoing and incoming of the vehicles at Article-A, xerox copy of acknowledgment slip dated 26/12/1990 regarding Truck No. MWP-1355 at Article-B, weighing register of sugar factory at Article-C. The statement of accused recorded under Section 313 of Code of Criminal Procedure are at Exhibits-88, 89, 90, 91 and 92.

7. It was expected of the prosecution to establish, pursuant to the allegations in the complaint, that accused Nos. 1 to 4 have entrusted the property to accused No. 5, for which, there was a domain of the complainant factory.

8. It is noted that the complainant was not examined before the Court below as he was indisposed. PW-1 Dnyanba, in his evidence stated that after the incident in question happened, he reported the same to the General Manager and submitted report regarding the same. The report speaks of submission of cash payment slip, acknowledgment slip etc. However, it is required to be noted that the said documents are at all not produced on record. The documents Articles-A, B and C as discussed above, which were produced, are not original but photostat copies. In view thereof, offence punishable under Section 408 of the Indian Penal Code is not established.

9. PW-2 Arjun, panch witness to the seizure panchnama, turned hostile. No other witness was examined so as to prove the seizure panchnama. As such, seizure of material itself was not proved.

10. It is further required to be noted that PW-3 Madhav,

security person has failed to identify accused No. 2 though it is claimed that accused No. 2 was occupying truck in question carrying load of coal from the factory and was witnessed by him. The other witnesses have failed to prove the offence of criminal breach of trust. Apart from above, it is required to be noted that there is delay of 3 days in lodging F.I.R. and the Investigating Officer has also failed to investigate the issue as regards quantity of coal procured from Mahalaxmi Coal Co. Nagpur and receipt thereof in the complainant factory.

11. In the background of above, in my opinion, the judgment of acquittal is rightly recorded by trial Court. As such, no case for interference is made out. The revision application fails and stands dismissed. Rule is discharged.

Sd/-
[**N.W. SAMBRE, J.**]