IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.5112/2012

The State of Maharashtra,
through Shivajinagar Police Station,
Latur.

...Applicant..
(Org.complainant)

Versus

1] Saheb s/o Premaji Kapure,
age 42 yrs., occu.service,
r/o Nandanvan Colony, Aurangabad.

2] Liyakat s/o Abbas Shaikh,
age 55 yrs., occu.service,
r/o Kesar Jawalga. Tq.Omerga
Dist.Osmanabad.

...Respondents...

.....

Shri K.S. Patil, APP for applicant.
Shri Abhay Rathod, Advocate for respondent no.1.
Shri V.D. Gunale, Advocate for respondent no.2.

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CORAM: R.M. BORDE &
K.L. WADANE, JJ.

DATE: 18.04.2016

ORAL JUDGMENT (Per Wadane, J.) :

1] This is an application with a prayer to grant leave to file an appeal u/s 378(1) and (3) of the Code of

Criminal Procedure, 1973, against the order passed by the learned Additional Sessions Judge, Latur, dated 13.7.2012 in Criminal Appeal Nos.24/2010 and 31/2010.

2] The respondent nos.1 and 2 herein are the original accused. They were prosecuted for the offence punishable u/ss.420 and 409 r/w 34 of the Indian Penal Code vide Regular Criminal Case No.470/2002.

3] Brief facts of the case are as follows:-

a] The respondent no.2 – Liyakat Abbas Shaikh was working as a Cashier during the period from 19.4.1994 to 26.4.2002 and the respondent no.1 Sahib Kapure was serving as a District Malaria Officer, who was a Drawing and Disbursing Officer.

b] The charge against them is that though they have deducted the amount towards recurring deposit, LIC premium, society and small savings from the salaries of the employees, they have not transferred the deducted amount to the account of the concerned employees and thereby they have committed the offence of misappropriation of Rs.9,06,200/-.

4] After conclusion of the trial, the learned Chief Judicial Magistrate, Latur, has convicted both the respondents. The respondent no.1 was convicted and sentenced to suffer rigorous imprisonment for three years and to pay fine of Rs.2,00,000/-. The respondent no.2 was convicted and sentenced to suffer rigorous imprisonment for one year and to pay fine of Rs.5,00,000/-, in default to suffer simple imprisonment for six months.

5] Being aggrieved by the judgment and order passed by the learned Chief Judicial Magistrate, Latur, both the respondents have preferred different criminal appeals namely Criminal Appeal Nos.24/2010 and 31/2010.

6] The learned Additional Sessions Judge, by common judgment and order dated 13.7.2012 has acquitted both the respondents. Hence, the State has filed present application to grant leave to file appeal.

7] We have heard the arguments of Shri K.S. Patil, APP for applicant; Shri Abhay Rathod, Advocate for respondent no.1 and Shri V.D. Gunale, Advocate for respondent no.2. We have also perused the record.

8] It is material to note that the respondents are charged for the offence punishable u/s.420 and 409 of the Indian Penal Code i.e. misappropriation of the Government amount and in order to establish the offence against the respondents, the prosecution has examined in all 10 witnesses. We have perused the entire evidence and gone through the observations of the learned Additional Sessions Judge and the relevant record.

9] It is material to note that no audit was conducted to know the actual amount, which the respondents are alleged to have deducted from the salary of the concerned employees and the same was not deposited in the account of various employees under various heads. Furthermore, it appears from the record that 3 / 4 persons from clerical cadre have inspected the entire record and they found that there was no cash available in the office as per the entries in the three cash books. Only three cash books were seized, however, such inspection was carried out in absence of both the respondents herein. Therefore, in fact there was no opportunity for them to explain about the availability of the amount and the balance shown in the cash book. Furthermore, the employees examined on behalf of the prosecution were unable to tell even their account number and how much amount is deducted by the respondents. Only three cash books are seized by the investigating officer. However, there is no documentary evidence on record to show that the so called deducted amount was not transferred and deposited in the account of the employees. The entire evidence adduced on behalf of the prosecution is absolutely vague and incomplete. In such circumstances, the learned Additional Sessions Judge has rightly taken into consideration all these aspects. Therefore, on appreciation of the available evidence, we are of the opinion that no different view can be possible than the one taken by the learned Additional Sessions.

10] In view of above, no case is made out by the applicant to grant leave to file appeal. Hence, the criminal application is rejected.

(K.L. WADANE, J.) **(R.M. BORDE, J.)**