

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

Criminal Appeal No.362 of 2015

Venutai Uttamrao Khandare

..VS..

State of Mah. Through P.S.O. Akot, and another.

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

Court's or Judge's orders

Mr. Vipul Bhise, advocate for appellant.

Mr. J.Y. Ghurde, APP for respondent no.1/State.

CORAM : N.W. SAMBRE, J.

DATED : 22nd JULY, 2016.

The learned Magistrate acquitted the accused of an offence punishable under section 405 and 406 of the Indian Penal Code vide order dated 19th March, 2011 in Regular Criminal Case No. 58/2007.

After acquittal, the State preferred appeal before the learned Sessions Judge which came to be dismissed on 2.1.2014 by the learned Sessions Judge, Akot. As such, present appeal by the complainant.

In support of the appeal, the learned counsel for the applicant-complainant would submit that the appreciation of evidence particularly the witnesses of the complainant is inappropriate and incorrect by both the courts below and as such committed an error. He would then submit that the said witness Raju Bute was an eye witness to the incident in question for giving hand loan and as the said fact is proved, the presumption has to be drawn that the amount was entrusted to the accused by the complainant and there is compliance of Section 405 of the Indian Penal Code.

According to him, by an inappropriate appreciation of the evidence, the acquittal is ordered.

It is required to be noted from the order of the Magistrate that the stamp papers came to be issued in favour of the son and daughter of the complainant. Complainant Venutai has admitted that the amount was paid to the accused, however, the stamp papers were delivered to the said witness Venutai by the witness Raju in absence of respondent accused. What was an occasion for Raju to deliver said stamp papers is not brought on record.

Both the courts below while appreciating the evidence of the witness Venutai and Raju have noted that Raju who happened to be ex-employee of the accused has acted in support of the complainant by delivering the stamp papers. The prosecution as was brought into action by the State was properly looked into by the learned Magistrate and in the light of the testimony of these two witnesses inferred that there was no entrustment of property under section 405 of the Indian Penal Code.

In an appeal, the learned Sessions Judge has re-appreciated the entire evidence and noted that earlier the accused had initiated proceedings against the complainant in the commercial matter. It is out of the said differences, the complainant taking help of the ex-employee of the accused has initiated the proceedings in question.

In view of the cumulative effect of the evidence of the complainant Venutai and witness Raju and other documentary evidence, in my opinion, the acquittal as ordered does not call for any interference. The appeal preferred by complainant as such fails and hence rejected.

JUDGE

CERTIFICATE

I certify that this Judgment uploaded is a true and correct copy of original signed order.

Uploaded by : R.B. Hirekhan.
P.A.

Uploaded on : 25-07-2016.