IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 161 OF 2001

The State of Maharashtra
Through Police Station Officer,
Police Station Manwath,
Tq. Pathri, Dist. Parbhani ....**Appellant.**

Versus

1. Vasant s/o. Bapurao Bhagwate,
Age 48 years, Occu. Service,
R/o. Hingoli, Dist. Hingoli,
Spl. Recovery Officer, Rural Bank,
Parbhani, R/o. Lalit Kulabhawan,
Kadrabad, Dist. Parbhani.

2. Shrikrishana s/o. Bhanudas Jadhav,
Age 40 years, Occu. Service,
R/o. Kolha, Tq. Pathri, Nanded,
Dist. Nanded.

3. Manikrao s/o. Shankarrao Bhise,
Age Major, Occu. Agri.,
R/o. Kolha, Tq. Pathri, Dist. Parbhani. ....**Respondents.**

Mr. S.W. Munde, APP for appellant/State.

Mrs. V.S. Ghanekar h/f. Mr. N.S. Ghanekar, Advocate for respondent Nos. 1 and 2.

Mr. S.B. Bhapkar, Advocate for respondent No. 3.

CORAM : T.V. NALAWADE AND
SUNIL K. KOTWAL, JJ.
DATED : AUGUST 02, 2017

JUDGMENT : [PER T.V. NALAWADE, J.]

. The appeal is filed to challenge the judgment and order of R.C.C. No. 227/1989, which was pending in the Court of Chief Judicial Magistrate, Parbhani. The Trial Court has acquitted the respondents of the offence punishable under sections 409 r/w. 34 of Indian Penal Code (hereinafter referred to as 'IPC' for short).

2) Respondent No. 3 was the Chairman of Kolha Krushak Sarva Seva Sahakari Sanstha, Kolha, a Co-operative Society registered under the provisions of Maharashtra Co-operative Societies Act. Respondent No. 2 was the Managing Director of this institution at the relevant time and respondent No. 1 was the Manager. During audit, it was noticed that on 19.5.1981 the amount of Rs.75,000/- was withdrawn by these accused persons from the account of the institution and zink tin sheets worth Rs. 80807.96 were purchased from Steel Authority of India Limited. This material was dispatched by loading it in truck No. MHT/3891. But, after taking delivery of this material, the accused persons did not make entry of this material in the stock register of the institution and they misappropriated the tin sheets worth Rs.80807.96. Notice of show cause was issued against them, but they did not reply the notice. Then the auditor gave report to police. After making investigation, chargesheet came to be filed against the accused for the offence punishable under sections 409 r/w. 34 of IPC. Charge was also framed for this offence to which the accused pleaded not guilty.

3) Prosecution examined in all five witnesses to prove the offence. The Trial Court has acquitted the accused by holding that

actually delivery of the material to the institution is not proved by the prosecution and as the custody of the material was not given to the accused persons as per the record, they are acquitted. This Court has carefully gone through the oral and documentary evidence. Mohammad Anwar (PW 1) had given the report. He had conducted the audit of the institution and copy of it is produced at Exh. 42. Authorisation was given to him by District Special Auditor to file complaint and it is at Exh. 43. The report given by him to police is proved. He had prepared the report of particulars to fix the liability and that document is proved as Exh. 44.

4) Prosecution examined one Pandurang Gurav (PW 2), who was in service as Assistant Manager. He has tried to say that accused No. 1 had collected the material from Maharashtra Krushi Vikas Udyaog Mahamandal, Mumbai, supplier of the zink sheets and had put his signature in token of receipt of material. He has deposed that the value of this material was around Rs.75,000/-. There is only this oral evidence. But such receipt or document showing signature of accused No. 1 or any other accused is not produced on the record.

5) Mohammad Saifoddin (PW 3) was working with the District Special Auditor and his evidence is similar to the evidence of first informant. Additional evidence is given that order was placed by the institution of the accused of purchase of zink sheets worth Rs.

1.85 lakh and such correspondence was made by the said supplier. He has deposed that there was the record to show that amount of Rs. 75,000/- was paid to supplier on 19.5.1981, but there was no record to show that the delivery was taken and the entry of the material was made in stock register. Thus, there is entry in the record to show that amount was paid, but there was no record with the society to show that the delivery of the material was given and it was accepted by the institution or any of the three accused. There is evidence of Investigating Officer on the investigation in respect of the aforesaid allegations. To prove the offence punishable under section 409 of IPC, it was necessary for prosecution to establish that the supplier had actually given the delivery of material. When delivery is made, the delivery challan record is prepared and one copy remains with the supplier. Further, there must be employees, in the godown of the institution, who were entrusted with the duty to make entry in the stock register. They could have also said something. Admittedly, there was no entry in the stock register and there is no record of delivery of articles by supplier. Due to these circumstances, this Court sees no reason to interfere in the decision of the Trial Court. In the result, the appeal stands dismissed.

[SUNIL K. KOTWAL, J.] **[T.V. NALAWADE, J.]**

ssc/