

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

**Criminal Revision Application No. 260 of 2004**

\* Bhagwat s/o Ramdas Patil,  
Age 52 years,  
Occupation : Service,  
R/o Pachora, District Jalgaon. .. **Petitioner.**

**Versus**

1) Shivdas Mahadu Jadhav,  
Age 65 years,  
Occupation: Retired,  
R/o Pachora, District Jalgaon.

2) State of Maharashtra. .. **Respondents.**

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Shri. R.N. Chavan, Advocate, holding for Shri. Vijay  
Sharma, Advocate, for petitioner.

Shri. J.R. Shah, Advocate,s for respondent No.1.

Shri. K.D. Munde, Additional Public Prosecutor, for  
respondent No.2.

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**CORAM: T.V. NALAWADE, J.**

**DATE : 11 JANUARY 2017**

**ORAL JUDGMENT:**

1) Learned counsel for the petitioner is allowed to  
add additional relief of setting aside the order of making  
payment of compensation to the accused by the  
complainant. Amendment to be made immediately.

2) The revision is filed to challenge the decision given in Criminal Revision No.370/2000 which was pending in the Court of the 4<sup>th</sup> Ad-hoc Additional Sessions Judge, Jalgaon. Both sides are heard.

3) The aforesaid revision was filed against the present petitioner by respondent No.1 Shivdas to challenge the order of issue process made by learned Judicial Magistrate First Class. The application filed by petitioner for recall of the order of issue process which was issued in R.C.C. No.86/1993 by the Judicial Magistrate, First Class, Pachora was rejected by the Judicial Magistrate. At the relevant time such proceeding like application for recall of issue process was entertained and so the order was challenged by filing revision. The Sessions Court has allowed the revision and order is made of recalling the process. It can be said that the decision is as good as setting aside the order of issue process.

4) Present petitioner had filed present complaint against Shivdas who was Head Master of the school. Petitioner was also working in the same school as Head Clerk. Allegation was made that the premium of life

insurance which was deducted from the salary of the employees of the school for the month of November 1991 was not sent to LIC office and it was sent in 1993 and during this period the premium amount of Rs.11,563/- remained in the account of the Head Master and thereby he committed offence of criminal breach of trust. Order of issue process was made only under section 408 of Indian Penal Code.

5) Learned Judge of the Sessions Court has observed that the ingredients of criminal breach of trust mentioned in section 405 of the Indian Penal Code are not made out. It is observed that the amount remained in the account of the school and there was some mistake committed both by the school employee and also the LIC office and due to that no dishonest intention can be gathered as against the accused.

6) The submissions made and the record show that on 19-12-1991 the school had sent cheque of Rs.11,563/- to the LIC office as the premium of the employees for the month of November 1991. This cheque

was encashed. First time in 1993 LIC office informed that this cheque was appropriated as premium for October 1991 and so the premium for November 1991 was not yet paid. After that the school again sent cheque in respect of the same amount and this cheque was also encashed by LIC.

7) The submissions made show that nobody suffered loss. There was some mistake on the part of LIC also and due to that first time in the year 1993 LIC demanded the premium for November 1991. In view of these circumstances and as ingredients of section 405, IPC are not at all made out this Court holds that the Sessions Court has not committed any error in allowing the revision. There is no possibility of interference in the decision given by the Sessions Court. The petition stands dismissed. Rule is discharged. The amount of Rs.3,000/- deposited by petitioner in the Sessions Court to comply the order of compensation is to be returned to him as the said order is also set aside.

Sd/-  
**(T.V. NALAWADE, J. )**

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