

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

**BENCH AT AURANGABAD**

**CRIMINAL APPEAL NO.655 OF 2003**

The State of Maharashtra,  
Through Erandol Police Station,  
Dist-Jalgaon.

**...APPELLANT**

**VERSUS**

Subhansingh Lubhansingh Patil,  
Age-39 years, Occu:-  
R/o-Javakhede Bk., Tq-Erandol,  
Dist-Jalgaon.

**...RESPONDENTS**

...  
Mr. S.D. Ghayal, A.P.P. for Appellant.  
None present for Respondent.

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**CORAM: S.S. SHINDE, J.**

**DATE : 8TH MAY 2017**

**ORAL JUDGMENT :**

1. This Appeal is directed against the Judgment and order dated 2nd July, 2003, passed by the Judicial Magistrate First Class, Erandol in

Regular Criminal Case No.126 of 1990, thereby acquitting Respondent - Subhansingh Lubhansingh Patil, from the offence punishable under Section 408 of the Indian Penal Code (for short "I.P. Code").

2. The prosecution case in nut-shell, is as under:-

. Original complainant Gopal Gangadhar was auditor. Audit of Sriganesh Dudh Utpadak Society Limited, at Javkhede, Taluka-Erandol was carried out by auditor D.B. Patil for the period from 1st April, 1988, to 31st December, 1988. Half yearly audit from 1st July, 1988 to 31st December, 1988 was completed on 28th February, 1989. He submitted audit report vide outward No.90 dated 4th June, 1989. During that period, accused was Secretary of said society. His duty was to maintain register and to look transaction of the society. It was transpired while audit of the stock register that 116 gunny bags of fodder were to be there but

actually 35 gunny bags were there. It means 81 gunny bags of fodder were missing and short. In presence of Chairman and panchas, panchnama was prepared. He inquired with accused. It was transpired that 81 bags were sold by accused and it was not mentioned in the *Kird* and entry was also not taken in sale stock register. The price of said 81 gunny bags was Rs.10,149=30/-. One Appa Dodhu Patil was Chairman of the said society. In his presence accused admitted about the misappropriation. A notice was given to accused for recovery of misappropriation. Accused failed to deposit the amount and avoided to give undertaking. Therefore, as per directions the complainant gave written complaint in Erandol Police Station. It was registered vide C.R. No.70 of 1990 under Section 408 of the I.P. Code. Investigation was handed over to P.S.I. He seized register and recorded statements of witnesses. After completion of investigation, he filed charge-sheet against the accused.

3. After filing charge-sheet, charge was framed by the learned trial Court. Thereafter necessary points were framed for determination, and after appreciating the evidence of prosecution witnesses, trial Court acquitted the Respondent - accused. Hence this Appeal.

4. Learned A.P.P. appearing for the State, invites my attention to the evidence of PW-3 Appa Dodhu Patil, who was chairman of Ganesh Milk Produce Society at the relevant time. Relying upon his evidence, learned A.P.P. submits that accused was entrusted with job of Secretary of the said society. During the audit by the Auditor, it was found that 81 gunny bags of fodder were missing. At the time of audit, only 35 bags of fodder were in stock. Price of said gunny bags was Rs.10,471/-. However inspite of having those gunny bags in stock, the Secretary of the society i.e. accused has not shown the said amount as deposited with the society. The said subject was placed before the meeting of the Director Board. The

Secretary i.e. accused informed during the meeting that he has to collect the said amount from the people and after such amount is recovered, he will deposit the same. According to learned A.P.P., if the evidence of PW-3 Appa Dodhu Patil is taken into consideration, there is no manner of doubt that ingredients of Section 408 of the I.P. Code are attracted. Accused was entrusted with the job of maintaining registers of the society and also accepting the amount and depositing the same in the account of the society. Therefore, in his submission the view taken by the trial Court was not plausible and the accused ought to have been convicted for the offence punishable under Section 408 of the I.P. Code. Therefore, he submits that the Appeal deserves to be allowed.

5. I have carefully perused the evidence of all the prosecution witnesses and in particular, evidence of PW-3 Appa Dodhu Patil. In his evidence PW-3 stated that the Secretary of the society i.e. accused did not deposit the amount in the account

of the society immediately, as decided in the meeting. However the accused deposited the said amount after one month. During his cross-examination, PW-3 stated that society had no practice to sale out the goods on credit. However, he stated that the accused did inform in the meeting that goods were given on credit and that fact is not verified by PW-3 from the record. He has specifically admitted during cross-examination that the accused did inform in the meeting that amount was yet to be received and thereafter he would deposit the said amount in the account of the society. He has deposed in his examination-in-chief itself that after one month of such meeting, the amount was deposited by the accused.

6. The assertion of the prosecution that 81 bags of fodder were missing as noticed by the auditor, was not supported by the prosecution witnesses, in as much as panchnama of such missing bags was prepared, however the panchas during their examination before the Court, turned

hostile. Therefore, taking over all view of the matter, the trial Court reached to the conclusion that the benefit of doubt deserves to be extended in favour of the Respondent accused.

7. Upon independent scrutiny of all the evidence brought on record by the prosecution, and in particular evidence of PW-3 Appa Dodhu Patil, and the fact that panch witnesses to the panchnama which was prepared to show that 81 bags of fodder were missing turned hostile, in my opinion, the view taken by the trial Court was plausible and the findings recorded also appears to be in consonance with the evidence on record.

8. In the result, there is no merit in the Appeal. The Appeal stands dismissed.

**[S.S. SHINDE, J.]**