IN THE HIGH COURT OF BOMBAY AT GOA
APPELLATE SIDE

CRIMINAL MISC. APPLICATION NO.199 OF 2013
IN
STAMP NUMBER MAIN NO.2036 OF 2013

M/s. Goa Shipyard Limited through
Company Secretary and Deputy General
Manager (Legal) Mr. R.C. Asukar ..Appellant

vs.

Shri Suresh Chandra Sharma ..Respondent

Mr. S. G. Dessai, Senior counsel with Mr. Pavithran A. V. for the Appellant.
Mr. E. O. Mendes with Mr. M. S. Prabhudessai for the Respondent.

CORAM :- C. V. BHADANG, J

DATE :- 6th MARCH, 2017

ORDER :

. This is an Application for Special Leave to Appeal against acquittal.

2. The brief facts necessary for the disposal of the Application, may be stated thus:

That the Applicant/Complainant is a Government Company under the administrative control of the Ministry of Defence. The Applicant is having it's registered office at Vasco-da-Gama, Goa and a liaison office at New Delhi.

3. The Respondent/Accused was in employment of the Applicant and was incharge of the affairs of the Applicant at it's New Delhi office as a

Deputy General Manager and Company Secretary.

4. According to the Applicant various amounts were being remitted from the head-office of the Applicant at Vasco to the office at New Delhi towards its expenses. These amounts remitted from the Head-office at Vasco were entrusted to the Respondent who was authorized to effect withdrawal and disbursement of the amount subject to their accounting to the Head Office at Vasco. It is the case that the Respondent was the only officer authorized to operate the bank account of the Applicant at New Delhi office and was also responsible for the imprest amount which was under his control.

5. The Respondent was placed under suspension on 10/4/1995 on the allegations of committing misappropriation of the amounts entrusted to him. A departmental enquiry was initiated against the Respondent alleging that the Respondent had failed to account for an amount of Rs.5,17,792.57 ps. It is claimed that during the course of departmental enquiry, the Respondent was able to furnish accounts/details in respect of the amount of Rs.2,68,017.84 paise and the net amount which the Respondent could not account for was Rs.2,49,774.83 paise as on 31/10/1996. The Respondent was issued with a letter dated 7/7/2000 to clear the dues which he failed to do inspite of a reminder, a legal notice and a final notice dated 13/12/2001. It is in these circumstances that the Applicant filed a complaint against the Respondent under section 630 of the Companies Act, 1956 (for short, the Act of 1956) before the learned Judicial Magistrate, First class at Vasco which was registered as Criminal Case No.99/N/02/D.

6. On behalf of the Applicant one Shri Ram Asukar (PW-1), Srinivas Samavedan (PW-2) and Sunil Yadav (PW-3) came to be examined. The Applicant produced certain documents.

7. The Respondent did not lead any defence, however, produced certain documents as per Application dated 14/7/2008.

8. The learned Magistrate by a judgment and order dated 23/7/2008 dismissed the complaint and acquitted the Respondent which was challenged by the Applicant before this Court in Criminal Appeal No.18/2009. This Court by a judgment and order dated 10/8/2012 set aside the judgment of acquittal and remanded the matter to the learned Magistrate for deciding it afresh with a specific stipulation that the learned Magistrate shall decide whether the Applicant has established its case on the touchstone of preponderance of possibility as in a civil case. It is after the remand that the learned Magistrate by the impugned judgment and order dated 30/5/2013 has acquitted the Respondent. Hence this application.

9. I have heard Mr. Dessai, the learned Senior counsel for the Applicant and Mr. Mendes, the learned counsel appearing for the Respondent. With the assistance of the learned counsel for the parties, I have gone through the evidence and the impugned judgment passed.

10. The learned Senior counsel for the Applicant submits that the learned Magistrate has misinterpreted and misconstrued the provisions of section 630 of the Companies Act, resulting into miscarriage of justice. It is submitted that there is enough evidence on record to hold that the Respondent has wrongly withheld and has not accounted for the amount of Rs.2,49,774.83 which was entrusted to him, thus, making out the ingredients of section 630 of the Companies Act 1956. The learned counsel was at pains to point out that the standard of proof required in a prosecution under section 630 of the Act, 1956 proceeds on preponderance of probability unlike in a criminal trial which requires the offence to be proved beyond reasonable doubt. It is submitted that the evidence appreciated on the

touchstone of preponderance of probability is sufficient to make out the ingredients of section 630 of the Act, 1956. The learned senior counsel has placed reliance on the decision of Supreme Court in the case of ***State of Maharashtra vs. Sujay Mangesh Poyarekar, (2008) 9 Supreme Court Cases 475*** and in particular paragraph Nos.19 to 21 thereof, inorder to submit that at the stage of consideration of the question whether leave is to be granted or not, this Court is only required to see whether a prima facie case has been made out or an arguable point has been raised and not whether the order of acquittal would or would not, be set aside.

11. It is further submitted that a suggestion was given to the prosecution witness on behalf of the Respondent that the Respondent was entrusted only with a sum of Rs.4,71,038.21 ps. It is submitted that as such on his own admission the Respondent could be held responsible for not rendering the supporting documents for the deficit amount of Rs.2,03,020.37 ps.

12. On the contrary, the learned counsel for the Respondent submitted that the learned Magistrate after appreciation of the evidence has rightly come to the conclusion that no offence under section 630 of the Companies Act, 1956 is made out. The learned counsel has placed reliance on the decision of the Supreme Court in the case ***Basappa vs. State of Karnataka, (2014) 5 Supreme Court Cases 154*** inorder to submit that in a challenge to the acquittal, the Appellate Court cannot substitute its view in the place of the one taken by the Trial Court unless the finding is perverse or is an impossible view.

13. The learned counsel for the Respondent has also submitted that the Company Secretary and the Deputy General Manager (Legal) Mr. R.C.Asukar was not authorized to file the complaint on behalf of the

Applicant.

14. In reply, it is submitted by the learned senior counsel for the Applicant that Mr. Asukar was authorized to file a complaint for which he placed reliance on the Memorandum of Association and Articles of Association of the Applicant and a Power of Attorney dated 10/9/1991 as also a copy of the resolution passed by the Board of Directors of the Applicant in their meeting held on 23/8/2009. He also placed reliance on CMD/04/2014 dated 24/1/2014 pertaining to delegation of powers which is signed by the Chairman and the Managing Director.

15. I have carefully considered the rival circumstances and the submissions made and I do not find that a case for grant of special leave is made out.

16. It is borne out of the record that the Respondent was placed under suspension on 10/4/1995 and on holding of the departmental enquiry was dismissed from service on 4/3/1999, which order has been confirmed by the Appellate Authority, barring reversal of finding of guilt on certain heads of charges. The complaint in the case was filed on 15/4/2002. It is not the case of the Applicant that the Respondent was entrusted with any amount in cash. The case made out is that the Respondent had failed to submit documents/ vouchers in respect of an amount of Rs.2,49,774.83 paise which amount he had dealt with as being authorized to operate the bank account.

17. At the outset, it is necessary to mention that originally according to the Applicant, the amount which the Respondent No.1 had not accounted for was Rs.5,17,792.57 ps. and according to the Applicant during the course of the departmental enquiry the Respondent accounted for an amount of Rs.2,.63,017.84 ps. leaving Rs.2,49,774.83 as the unaccounted

amount. On the basis of a suggestion made on behalf of the Respondent, that the Respondent was entrusted only with a sum of Rs.4,71,038.21 ps., it is sought to be contended that taking into account the said amount and after deducting Rs.2,68,017.84 ps. (which amount is accounted for) the Respondent should be held accountable for Rs.2,03,020.37 ps. The submission to my mind has rightly been refuted by the learned Magistrate. It is true that in a prosecution under section 630 of the Act, 1956 the standard of proof turns upon preponderance of possibility. However, that does not mean that the complainant is not required to come with a specific case. It is for the complainant to come with a specific case and more so when the whole basis of the complaint is based on certain accounts which were entrusted to the respondent, which he had failed to account for.

18. Section 630 of the Act, 1956 reads as under:

> *(1) If any officer or employee of a company-*
> *(a) wrongfully obtains possession of any property of a company; or*
> *(b) having any such property in his possession, wrongfully withholds it or knowingly applies it to purposes other than those expressed of directed in the articles and authorized by this Act; he shall, on the complaint of the company or any creditor or contributory thereof, be punishable with fine which may extend to ten thousand rupees.*
> *(2) The Court trying the offence may also order such officer or employee to deliver up or refund, within a time to be fixed by the Court, any such property wrongfully obtained or wrongfully withheld or knowingly misapplied or in default to suffer imprisonment for a term which may extend to two years."*

19. The Apex Court in the case of ***Gopika Chandra Bhushan Saran and another vs. XLO India Ltd. And another, 2009(3) SCC 342*** has held that the main purpose of section 630 of the Act, 1956 is to provide a speedy and summary procedure for recovering the property of the

Company wrongfully obtained or unlawfully retained after lawfully obtaining it. As noted earlier it is not the case of the Applicant that the Respondent had unauthorizedly obtained any amount. The case thus squarely rests on the allegation that certain part of the amount is unaccounted for. The Applicant for this purpose has relied upon letter dated 7/7/2000 (Exh.88) setting out the amounts which are due from the Respondent which are as under:

Sr. No.	**Particulars**		**Amount**
1.	Amount outstanding against temporary advance account		Rs.66,856.98
2.	Amount outstanding against GSL Delhi office imprest account		Rs.3,31,317.85
3.	Amount outstanding against Traveling advance account		Rs. 8,118.00
4.	Re,mittance towards payroll payments for January 1995 to March 1995 are accountable separately		Rs.64,037.84
5.	Payroll related due: (a) Car loan outstanding including interest (b) Amount paid by Company to Group Savings Linked Insurance till March 1999 (c) House rent recovery due	 Rs.33,567.00 Rs.5,200.00 Rs.8,695.00	Rs.47,462.00
6.	Sub-Total (1 to 5)		Rs.5,17,792.67
7.	Deduct: Amount rendered vide exhibit C-5 on 31/10/1996 as Court document		Rs.2,68,017.84
8.	Balance amount due to the Company (6-7)		Rs.2,49,774.83

It can clearly been seen that the amount at clause 5 (a) to (c) are said to be the amounts which can be said to be recoverable on account of termination/dismissal of the respondent and not out of any amounts which were entrusted to the Applicant.

20. It has come on record in the evidence of Mr.Asukar (PW-1) that the amounts towards loan, traveling advance, insurance etc were required to be refunded on account of termination and were not part of the imprest amount. He also admits that other than Exh.C-88, the Applicant has not produced any other document to show that the Respondent was given a car

loan which was due and recoverable. It has further come in the evidence of Mr.Asukar (PW-1) that the Respondent No.1 has not drawn salary or wages after the date of his suspension and he has not drawn any back wages for the period of his suspension. He stated that he will have to verify whether during suspension the Applicant has contributed any amount towards the Group Saving Linked Insurance Scheme.

21. As far as the remittances towards payroll payments from January to March 1995 are concerned, Mr. Asukar (PW-1) has admitted that there is no representation from any of the employees posted in the Delhi office complaining about non-payment of their salaries which is referred to at clause 4 aforesaid. It has come in his evidence that the amount shown against GSLI, which account he has not seen. Mr.Asukar (PW-1) claimed that it is maintained by the Accounts Department and this figure is only on the basis of information given by the Accounts Department. Mr. Sunil Yadav (PW-3), who was working as Manager Finance since 1994 has admitted in cross examination that he had not seen from the records any unauthorized expenditure by the Respondent.

22. Mr. Ram Aukar (PW-1) claims that amount of Rs.2,19,774.63 is the amount not accounted for by the Respondent and the Respondent has not misappropriated the amount.

23. So far as temporary advance referred at Sr. No.1 is concerned Mr. Ram Asukar (PW-1) has stated that temporary advance account mentioned at Serial No.1 is an account maintained for advances given for a special purpose or event, which is given either by requisition or on the basis of a note of request or even by a oral request. He claims that he is not aware for what purpose that amount was given to the Respondent. He expressed inability to answer the question whether he could show any evidence

whether the Respondent has utilized any such amount for specific purpose.

24. It can thus be seen that the evidence of the Applicant on the aspect of non accounting of the amount by the Respondent is not clear and acceptable, even applying the standard of proof or on preponderance of probability.

25. In the case of ***State of Maharashtra vs. Sujay Mangesh Poyarekar***, (cited supra) the Apex Court has interalia held that for grant of leave, the Appellate Court has to see whether prima facie case is made out or arguable points arise and not whether acquittal would or would not be set aside. The Hon'ble Apex Court in ***Basappa vs. State of Karnataka,*** (cited supra) has made reference to its earlier judgment in the case of ***Chandrappa vs. State of Karnataka, (2007) 4 SCC 415:*** in which it has been interalia held that in the case of acquittal there is a double presumption in favour of the Respondent/accused and if two reasonable conclusions are possible, the Appellate Court should not disturb acquittal recorded by the Trial Court. Albeit, at the stage of consideration, as to whether leave is to be granted or not, the Appellate Court would confine the consideration to see whether a prima facie case is made out as held in the case of ***State of Maharashtra vs. Sujay Mangesh Poyarekar***, (cited supra).

26. Insofar as the contentions raised on behalf the Respondent challenging the authority of Mr.R.C.Asukar to file the complaint is concerned, perusal of the impugned judgment does not show that any such point was either raised or has been considered by the learned Magistrate. Even otherwise, as no case for grant of special leave is made out on facts, I do not find it necessary to go into this question.

27. Having gone through the evidence and the impugned judgment, I do not find that a prima facie case is made out in this case. In the result, the Application is dismissed.

(C. V. BHADANG, J.)