

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL APPEAL NO. 670 OF 2001

State of Maharashtra

... Appellant

Vs.

1) Kuldeep Bajaj
R/o : Plot No. 713/13, 12th Road,
Khar, Mumbai.

... Respondents

2) Naseem Khan
Mah. Hsg. Board Colony, Building No. 19,
Room No. 1515, 4th Floor, Borivali (West).
Presently at 8/XII – 246, R. K. Puram,
New Delhi.

Mr. Prashant Jadhav APP for the State.
Mr. Dharmendra Rohra for Respondent no. 2.

CORAM: SMT.SADHANA S.JADHAV, J.

DATED : MAY 16, 2017.

JUDGMENT:

1) State of Maharashtra, being aggrieved by the Judgment and Order dated 26/09/2000 passed by Additional Chief Metropolitan Magistrate, 19th Court, Esplanade, Mumbai in C.C. No. 8/P/2000 thereby acquitting the respondents of offence punishable under sections 120-B, r/w section 381, 420 r/w 34 of the Indian Penal Code, has filed present appeal.

2) During the pendency of the appeal, respondent no. 1 has expired on 22/11/2014. Hence, appeal stands abated as far as respondent no. 1 is concerned.

3) Respondent herein is charged for offence punishable under sections 120-B, r/w section 381, 420 r/w 34 of the Indian Penal Code for committing theft in respect of lorry receipts from the office of NTC, New Delhi and had further induced transport companies in Bombay to deliver the said assignments of controlled cloth bales which was in fact the property of Bombay Marketing Division of National Textiles Corporation Limited. According to prosecution, accused persons had disposed of the goods and misappropriated the sale proceeds of the said goods by cheating the complainant company.

4) Prosecution has examined 8 witnesses to bring home the guilt of the accused.

5) Upon perusal of the substantive evidence of all the witnesses, it is amply clear that prosecution has failed to, not only establish the guilt of the accused but even to bring on record any specific incriminating material which would indicate that present respondents have committed offence as charged. It is pertinent to note that P.W. 1 who happens to be Divisional Manager under whom respondent no. 2 was working, is not sure as to whether on that day, N. A. Khan was on duty. Prosecution has failed to bring on record the receipts which were allegedly stolen by respondents. The learned Magistrate had rightly considered the substantive evidence of all the witnesses. The learned Magistrate had rightly held that P.W. 2 has failed to identify the respondent. It is also observed that witness has not referred to the specific lorry receipts which were allegedly stolen and therefore his evidence would be of no significance to prove the guilt of the accused. It is also observed that P.W. 2 was not even confronted with the receipts on the basis of which property was delivered.

6) P. W. 3 Subhashchandra Malik has not deposed before the Court in respect of any incriminating act attributed to the respondent. As far as P.W.

No. 4 Sushilkumar Kanshi is concerned, the allegation is against original accused no. 1. It is also to be noted that the documents placed on record by P.W. 4 are not original receipts or the original documents and moreover, prosecution had not filed any application to place on record the said documents by way of secondary evidence. The learned Magistrate had rightly observed that the prosecution has not given any notice to any person to produce original documents and therefore, the documents on the basis of which the accused were put to trial are not proved by adducing admissible evidence. All that can be said is that the receipts were prepared in the office of NTC, however, the author of the said receipts has not been proved.

7) P.W. 5 Tarachand Harlal who was working as Assistant Manager with NTC has deposed that Exhibit 6 is a carbon copy of the letter which was not forwarded by him. He has specifically stated that he had not dispatched the said documents and they did not bear his initials, however, no inference could have been drawn that only because P.W. 5 had not dispatched the said receipts, they were stolen by the accused.

8) The reasons assigned by the learned Magistrate are justifiable and call for no interference. Hence, following order.

ORDER

- (i) Appeal stands dismissed.
- (ii) The Judgment and Order dated 26/09/2000 passed by Additional Chief Metropolitan Magistrate, 19th Court, Esplanade, Mumbai in C.C. No. 8/P/2000 is hereby upheld.
- (iii) Bail bonds of the respondent/accused stand cancelled.
- (iv) Appeal stands disposed of.

(SMT. SADHANA S. JADHAV, J.)