

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPEAL NO.371 OF 2004

State of Maharashtra,
through Investigating Officer,
Police Station City Wardha,
Tahsil and District Wardha.

.... **APPELLANT**

VERSUS

Ramkrushna Bhagwanji Shende,
Aged 53 years, Occupation – Nil,
Resident of Hindnagar, Wardha,
District Wardha, at present resident
of Near Observation Home Arvi Naka,
Wardha.

.... **RESPONDENT**

Shri A.V. Palshikar, Advocate for the appellant,
Shri S.R. Chakraborti, Advocate h/f. Shri R.M. Patwardhan, Advocate
for the respondent.

CORAM : ROHIT B. DEO, J.
DATED : 22nd SEPTEMBER, 2017.

ORAL JUDGMENT :

The State is in appeal challenging the judgment and order dated 09-3-2004 in Regular Criminal Case 11/1993, delivered by the learned Chief Judicial Magistrate, Wardha, by and under which the respondent (hereinafter referred to as the “accused”) is acquitted of offence punishable under Section 408 of the Indian Penal Code.

2. Heard Shri A.V. Palshikar, learned Additional Public Prosecutor for the appellant and Shri S.R. Chakraborti, learned Advocate holding for Shri R.M. Patwardhan, Advocate for the respondent.

3. The accused faced trial for having committed offence of misappropriation punishable under Section 408 of the Indian Penal Code.

4. The gist of the prosecution case is that the accused was serving as a Cashier in the Sub-Division Office of Maharashtra State Co-operative Cotton Growers Marketing Federation in Wardha. The accused used to withdraw cash from the bank. The modus operandi alleged is that the accused was withdrawing cash from the bank and while entering the amount in the cash book, the accused used to enter lesser amount and misappropriate the amount not recorded in the cash book.

5. The prosecution case that the special auditor who is examined as P.W.1 conducted the audit for the period 01-10-1989 to 30-9-1990. The misappropriation came to light during the said audit.

Accordingly, a first information report was lodged by R.M. Sakharkar, the Special Auditor. On the basis of the report, offence under Section 408 of the Indian Penal Code was registered on 12-5-1991 vide Crime 250/1991. The completion of investigation culminated into a charge-sheet before the learned Chief Judicial Magistrate. The learned Chief Judicial Magistrate, framed charge under Section 408 of the Indian Penal Code vide Exhibit 9. The accused pleaded not guilty and claimed to be tried.

6. With the assistance of the learned Additional Public Prosecutor for the appellant/State and the learned Advocate for the accused, I have scrutinized the record. It is evident that the prosecution has miserably failed to establish the ingredients of Section 408 of the Indian Penal Code.

7. The audit was conducted for the period 01-10-1989 to 30-9-1990. However, the period during which the accused allegedly misappropriated the amount is 01-8-1988 to 30-9-1989. That apart except for proving the entries in the cash book, the prosecution has not adduced even an iota of evidence to prove that a particular amount was withdrawn from the bank and that lesser amount was deposited in

the cheque book. The relevant record or the counterfoil of the cheques or the cheques are not even produced on record muchless proved.

8. The conclusion reached by the learned Chief Judicial Magistrate is the only conclusion possible on the evidence on record. The view taken is not only a possible or plausible view, the view is the only view which any judicial mind could have taken in view of the evidence or rather the lack of evidence.

9. This Court would appreciate if the State, as a model litigant, exercises more discretion in approaching this Court against the judgments of acquittal. The dockets of the Court are even otherwise overburdened. I refrain from making any further observation. The judgment and order impugned is unexceptional. The appeal is frivolous and absolutely devoid of substance and is dismissed. Bail bond of the accused shall stand discharged.

JUDGE

adgokar