

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

CRIMINAL REVISION APPLICATION NO. 209 OF 2005

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Abdul Raheman s/o Shaikh Lal,
age 43 years, Occ. Business,
R/o Khadka Road, Green Park,
Bhusawal, Tq. Bhusawal,
District Jalgaon.

..Applicant..
[orig complainant]

VERSUS

1. Shaikh Shakil Ahamad,
Mohammad Musa Patel,
age 50 years, Occ. Service,
R/o Sakegaon, Bhusawal,
Tq. Bhusawal, Dist. Jalgaon.
2. Shivajirao Vitthal Patil,
age 45 years, Occ. Business,
R/o Ganesh Colony,
Bhusawal, Tq. Bhusawal,
Dist. Jalgaon.
3. The State of Maharashtra,
Through Police Station Officer,
City Police Station, Bhusawal,
Tq. Bhusawal, Dist. Jalgaon.

...Respondents...
(orig. accused)

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Advocate for Applicant : Mr J. V. Patil h/f P R
Katneshwarkar

Advocate for Respondent no.1 & 2 : Mr B R Warmaa
APP for Respondent No.3 : Mr P K Lakhotiya

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CORAM : V.K. JADHAV, J.**Dated: February 01, 2019**

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ORAL JUDGMENT :-

1. The applicant/original complainant has preferred this Criminal Revision Application against the judgment and order of acquittal passed by the Judicial Magistrate First Class, Bhusawal dated 21.5.2005 in RCC No.321/2002 under sections 420, 467, 468 r/w 34 34 of the Indian Penal Code.

2. Prosecution story, in brief, is as under :-

a] The respondent/accused no.1 Shaikh Shakil is friend of the applicant/original complainant Abdul Raheman and respondent/accused no.2 Shivajirao Patil is friend of accused no.1. The Plot No.7 in S.No.110/3 situated at village Kandari is owned and possessed by applicant/original complainant. Respondent/accused no.1 being the friend of the informant was having knowledge about the said plot. Applicant/original complainant has decided to sell the plot and thus requested to respondent/accused no.1 to find out the

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purchaser for the same. As per the prosecution story, respondent/accused no.1 had taken signature of the applicant/complainant on one blank stamp paper and prepared a false and forged general power of attorney on the same. On the basis of the forged General Power of Attorney respondent/accused no.1 has transferred the aforesaid plot to respondent/accused no.2. Said plot has been transferred without knowledge and consent of the applicant/original complainant. Thus, both the accused have committed the offence as alleged in furtherance of their common intention. The applicant/complainant got knowledge of the transfer when he decided to sell the said plot for the purpose of marriage of his daughter and when he has collected the document pertaining to said plot. On the basis of the complaint lodged by the applicant/original complainant and as per the order passed by the Magistrate under section 156 (3) of Cr.P.C. crime came to be registered in the concerned police station and after due investigation, I.O. has submitted charge sheet against the respondents/accused persons for having committed an

offence punishable under sections 420, 464, 467, 468 34 of IPC. The learned Magistrate has framed the charge against the respondents/accused for the said offences. Both the accused pleaded not guilty and claimed to be tried. The defence of the accused is of total denial and false implication in the case in view of the rise in the price of the plot. In order to substantiate the charges levelled against the accused, prosecution has examined in all six witnesses. After recording the statement of the respondents/accused under section 313 of Cr.P.C. and after hearing both the sides, the learned Judicial Magistrate First Class, Bhusawal has acquitted both the accused persons for the offence punishable under sections 420, 467, 468, r/w 34 of Indian Penal Code by the judgment and order dated 21.5.2005 in RCC 321/2002. Hence, this Criminal Revision Application.

3. Learned counsel for the applicant submits that, evidence of P.W. 2 Abdul Raheman and his brother P.W.3 Anwar Lal is consistent, reliable and trust worthy.

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PW 2 Abdul Raheman has consistently deposed that respondent no.1/accused has obtained his signature on the blank paper and prepared a false and forged document of power of attorney and on the basis of said general power of attorney, falsely executed the sale deed of the plot owned and possessed by PW 2 Abdul Raheman to respondent/accused no.2. However, the learned Judge of the Trial Court has not considered the oral evidence and documentary evidence in its proper perspective and thus erroneously acquitted both the accused for the charges levelled against them.

4. Learned counsel for respondents/accused nos. 1 and 2 submits that evidence of P.W. 4 Pratap Shinde is important. He has deposed that original bond of the GPA exh.18 has been purchased by PW 2 Abdul Raheman from him and PW 2 has signed on the same in his presence. He has further deposed that he has typed the original G.P.A. document of the said bond as per the instructions given to him by PW 2 Abdul. Same is not forged one. PW 2 Abdul Raheman has admitted in his

cross-examination that he got knowledge of the alleged forged original document exh.17 and 18 in the year 1997-98. However, he has filed the complaint in the Court on 4.10.2002. There is an inordinate delay in lodging the complaint, which is not explained. Thus, the defence taken by the respondents/accused appears to be probable that because of the considerable rise in the price of the plot, the applicant/original complainant with some ulterior motive lodged the complaint against the respondents/accused. There is no substance in this criminal revision application. Hence, criminal revision application is thus liable to be dismissed.

5. I have also heard the learned APP for the respondent no.3/State.

6. On perusal of exh.18 power of attorney, it appears that, same has been executed on bond paper of Rs.50/- and the same has been executed in presence of Executive Magistrate, Bhusawal. There is no dispute about the sale deed exh.17 which is a registered

document. The said sale deed came to be executed in the year 4.7.1996. I have carefully gone through the evidence of prosecution witnesses. PW 2 Abdul Raheman has deposed that he has signed on the stamp paper of Rs.50/- at the instance of respondent/accused no.1. It was a blank stamp paper. He was in need of money for the purpose of marriage of his daughter and, therefore, he applied for the 7/12 extract in the year 1999 and after obtaining the 7/12 extract he found that said plot has been transferred in the name of respondent/accused no.2 by misusing stamp paper signed by him.

7. PW 4 Pratap Shinde, who is a stamp vendor has deposed that the person who is purchasing the stamp paper has to sign on it in presence of the stamp vendor. On perusal of the certified copy of the stamp paper exh.18 it appears that original stamp has been purchased by the complainant Abdul Raheman. The signature on the top of the stamp paper is made by the applicant/complainant in his presence. He has further

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denied that respondent/accused no.1 had purchased the original stamp paper exh.18 from him. He has further deposed that original document power of attorney is typed by him as per the say and instructions of the complainant Abdul Raheman and the complainant has signed on the original power of attorney document before the Executive Magistrate Bhusawal. The document at exh.18 is thus not fabricated.

8. PW 1 Jitendra Badgujar is attached to the Sub-Registrar office as Jr. Clerk. He has stated in his cross-examination that after getting confirmed the G.P.A. executed by the complainant in favour of the accused no.1, the Sub-Registrar had registered the sale deed exh.17.

9. Thus, considering the entire aspect of the case, the learned Judge of the trial court has rightly acquitted both the accused for the offences they are charged with.

10. In a case of **Vimal Singh vs. Khuman Singh**, reported in **1998 (7) SCC 223** the Supreme Court, while discussing the power of High Court in the matter of interference with the order of acquittal, by referring the decision of the Supreme Court in the case of **K. Chinnaswamy Reddy vs. State of Andhra Pradesh**, reported in **AIR 1962 SC 1788**, in para nos. 8 and 9 of the judgment, has made the following observations:-

“8. The legal position as to the powers of the High Court in revision in the matter of interference with the order of acquittal is no longer res integra, as the law in this regard is very well settled. Suffice it to refer to in this regard a decision of this Court in K. Chinnaswamy Reddy vs. State of Andhra Pradesh (AIR) 1962 SC 1788) wherein it was held, thus :

"It is true that it is open to a High Court in revision to set aside an order of acquittal even at the instance of private parties, though the State may not have thought fit to appeal; but this jurisdiction should be exercised by the High Court only in exceptional cases, when there is some glaring defect in the procedure or there is a manifest error on a point of law and consequently there has been a flagrant miscarriage of justice. Sub-section (4) of Section 439 forbids a High Court from converting a finding of acquittal into one of conviction and that makes it all the more incumbent on the High Court to see that it does not convert the finding of acquittal into one of conviction by the indirect method of ordering retrial, when it cannot itself directly convert a finding of acquittal into a finding of conviction. This places limitations on the power of the High Court to set aside the a finding of acquittal in revision and it is only in exceptional cases that this power should be exercised.....

Where the appeal Court wrongly ruled out evidence which was admissible, the High Court would not be justified in interfering with the order of acquittal in revision, so that the

evidence may be reappraised - after taking into account the evidence which was wrongly ruled out as inadmissible. But the High Court should confine itself only to the admissibility of the evidence and should not go further and appraise the evidence also".

9. *Coming to the ambit of power of High Court under Section 401 of the Code, the High Court in its revisional power does not ordinarily interfere with judgment of acquittal passed by the trial court unless there has been manifest error of law or procedure. The interference with the order of acquittal passed by the trial court is limited only to exceptional cases when it is found that the order under revision suffers from glaring illegality or has caused miscarriage of justice or when it is found that the trial court has no jurisdiction to try the case or where the trial court has illegally shut out the evidence which otherwise ought to have been considered or where the material evidence which clinches the issue has been overlooked. These are the instances where the High Court would be justified in interfering with the order of acquittal. Sub-section (3) of Section 401 mandates that the High Court shall not convert a finding of acquittal into one of conviction. Thus, the High Court would not be justified in substituting an order of acquittal into one of conviction even if it is convinced that the accused deserves conviction. No doubt, the High Court in exercise of its revisional power can set aside an order of acquittal if it comes within the ambit of exceptional cases enumerated above, but it cannot convert an order of acquittal into an order of conviction. The only course left to the High Court in such exceptional cases is to order retrial. In fact, Sub-section (3) of Section 401 of the Code forbids the High Court in converting the order of acquittal into one of conviction. In view of the limitation on the revisional power of the High Court, the High Court in the present case committed manifest illegality in convicting the appellant under Section 304 Part - I and sentencing him to seven years' rigorous imprisonment after setting aside the order of acquittal."*

11. In the light of the discussion above and in terms of the ratio laid down by the Supreme Court in the aforesaid case, I do not find that judgment and order of

acquittal under revision suffers from any glaring illegality or has caused miscarriage of justice. The learned Judge of the trial court has rightly acquitted the accused. There is no substance in this criminal revision application. Hence, following order.

ORDER

1. Criminal Revision Application is hereby dismissed. Rule discharged.
2. Criminal Revision Application is disposed off.

(V.K. JADHAV, J.)

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