IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 341 OF 2000

The State of Maharashtra .. Appellant
Through Police Station, [original
Jawaharnagar, Aurangabad. Complainant]

Versus

1. Shivaji Dattatraya Shewale .. Respondents
Age.38 years, Occ. Service, [original
R/o.Khokadpura, Aurangabad. Accused]

2. Ashok Namdeo Gangavane
Age.39 years, Occ. Service,
R/o.Gautamnagar, Aurangabad.

[Leave to appeal against respondent No.2 is refused vide order dated 02.07.2001]

Mr.S.N. Morampalle, APP for appellant/State.
Mr.P.F. Patni, Advocate for respondent No.1.

CORAM : S.M.GAVHANE,J.
RESERVED ON : 04.04.2019
PRONOUNCED ON : 21.06.2019

J U D G M E N T :-

. Aggrieved by the acquittal of the respondents [hereinafter referred to as “accused Nos.1 & 2”] of the offences punishable under sections 409, 420 and 468 read with section 34 of the Indian Penal Code [for short "IPC"] by the judgment and order dated 21.03.2000 in RCC No.469 of 1997, by the 9th JMFC, Aurangabad, the appellant/State has filed this appeal against acquittal.

2. By order dated 02.07.2001, leave to prefer appeal against accused No.1/respondent No.1 was granted and leave was refused to prefer appeal against respondent No.2/accused No.2. By the said order only the appeal was admitted against accused No.1 by the Division Bench of this Court. Thus, this appeal is only against acquittal of accused No.1.

3. By order dated 14.07.2017, the Division Bench of this Court passed order, which reads thus :-

> "Learned Counsel for respondent Mr.P.F. Patni placed reliance in the case of **State of Maharashtra Vs. Laljit Rajshi Shah & Ors., reported in 2000(2) Mh.L.J.801**, in which it is laid down that only because there is provision in Maharashtra Co-operative Societies Act to treat the servant of Co-operative Institution as

> a public servant for some purpose, due to definition given in Indian Penal Code of public servant in Section 21, they do not become public servant under Indian Penal Code and so, they cannot be prosecuted for having committed offence under Indian Penal Code as a public servant. In view of this settled law, the matter cannot be treated as under Section 409 of the Indian Penal Code. In view of the above, matter be placed before the Single Judge."

4. Facts giving rise to this appeal are as under :-

a] In all three accused persons were the office bearers of Patbandhare Karmachari Credit Society, Aurangabad [hereinafter referred to as "the Credit Society"] during the period 01.04.1993 to 31.03.1994. Accused No.1 – Shivaji Shewale was the Secretary, accused No.2 – Ashok Gangawane was the Chairman of the credit society for the period from 14.09.1993 to 24.01.1994 and accused No.3 – Shantilal Shinde was the Chairman of the said society for the period from 07.07.1993 to 14.09.1993. The complainant District Special Auditor [PW-1] had conducted audit of the credit society for the period from 01.04.1993 to 31.03.1994. During the said audit, the complainant found four transactions of money payment from society to Kunal Woolens, Jalgaon for the total amount of Rs.1,40,500/-. Said amount was shown towards expenditure side in the cash book of the credit society, but he did not get purchase slips of the said transactions. Therefore, he asked accused No.1 – Secretary for the said receipts i.e. vouchers of blankets, but he did not produce them. The complainant gave notice to accused No.1.

b] Further it is case of the prosecution that the complainant during the aforesaid audit found that accused No.1 disbursed loan amount in cash to few members, but has not taken receipts of cash payments. No amount was found recovered from the said members. Moreover, the complainant found that the loan amount to said members was bogus disbursement and amount of said loan was misappropriated. The complainant issued notice to accused No.1 for depositing the said amount, but the accused persons did nothing.

c] Further it is the case of the prosecution that, the complainant also found that accused No.1 recovered amount of Rs.35,812/- from 28 members towards repayment of loan, but the said amount was not deposited and shown in the cash book. It was alleged that the total amount of Rs.2,77,012/- was misappropriated during the tenure of accused Nos.1 to 3. Therefore, the complainant lodged report in Jawaharnagar Police Station. Accordingly, the crime was registered against all the three accused for the aforesaid offences and the investigation was commenced.

d] During the investigation the Investigating Officer seized the record of the society in presence of panchas. He also obtained six specimen signatures of each of the accused in presence of the panchas. He also took search of house of the accused in presence of panchas and seized the documents bearing signature of respective accused. He sent specimen signatures of the accused along with seized documents and cash book to the handwriting expert [PW-5] for verifying whether the signatures on the cash book tallies with the specimen signatures of the accused. The Investigating Officer collected report of the handwriting expert showing that the signatures on the cash book tallies with the specimen signatures sent to the handwriting expert. Therefore, according to the Investigating Officer, accused in furtherance of their common intention misappropriated the aforesaid amount of the credit society for the audit period and submitted charge-sheet against all the three accused for the offences punishable under sections 409, 420, 465, 466, 467 and 468 read with section 34 of the IPC in the Court of JMFC, Aurangabad.

e] Charge for the offences punishable under sections 409, 420 and 468 read with section 34 of the IPC was framed against the accused by the learned Magistrate. The accused pleaded not guilty and claimed to be tried. Their defence is total denial.

f] To prove charge against the accused, the prosecution has examined following ten witnesses :-

1) PW-1 - Onkar Rathod (Complainant)
2) PW-2 - Eknath Mogal (Member of Society)
3) PW-3 – Birju Ravlani
4) PW-4 – Shashikant Malwadkar
5) PW-5 - Dhotre (Handwriting expert)
6) PW-6 – Narayan Divekar (Panch)
7) PW-7 – Keshav Bhalerao
8) PW-8 – Gopal Deokar
9) PW-9 – PSI Shingare
10) PW-10– PSI Hanpurde (Investigating Officer)

. Besides the above prosecution witnesses, the prosecution has relied upon the report of handwriting expert, voucher book – Article “C”, orders Exhs.119 to 122, placed by the society to the Kunal Woolens, receipts Exhs.25 to 52 and entries in cash book.

g] Considering the evidence adduced by the prosecution and the submissions of learned APP for the prosecution and the learned Advocate for the accused, the Trial Court held that the prosecution has failed to prove offences against the accused with which they were charged and accordingly acquitted the accused of the offences punishable under section 409, 420, 468 read with section 34 of the IPC, by the impugned judgment and order, which is under challenge in this appeal to the extent of acquittal of accused No.1, as said earlier at the instance of the appellant/State.

5. I have heard Mr. Morampalle, learned APP for the appellant/State and Mr. Patni, learned Advocate for sole respondent/accused No.1. With their assistance, I have perused the evidence adduced by the prosecution and the impugned judgment and order.

6. Mr.Morampalle, learned APP for the appellant/ State submitted that there is no dispute that accused No.1 was Secretary, accused No.2 was Chairman and accused No.3 was also Chairman of the credit society, during the audit period from 01.04.1993 to 31.03.1994 and the audit was done by the complainant (PW-1) the District Special Auditor from 24.04.1994 to 30.04.1994. It is submitted

that the offences alleged against the accused are under sections 409, 420 and 468 read with section 34 of the IPC. It is alleged that the accused in furtherance of their common intention by preparing false and forged documents committed misappropriation of Rs.2,77,012/- and thus committed the aforesaid offences. The evidence of the complainant regarding alleged purchase of the articles i.e. blanket from Kunal Woolens, Jalgaon but actually not supplying the said articles to the credit society is corroborated by PW-3 – shop-keeper of the said shop. So also expert evidence, his opinion (Exh.89) and reasons (Exh.90) given by him for opinion have supported the allegation of the prosecution that the accused have committed the aforesaid offences. It is further submitted that seizure panchanama Exh.104 of the documents proved the case of the prosecution of preparing false and forged documents by the accused. Thus, according to learned APP, the prosecution has proved all the offences against accused No.1 with which he was charged along with other accused and therefore his acquittal by the Trial Court as per the impugned judgment is not sustainable and the same be set aside and said accused be convicted for the said offences by allowing the appeal.

7. Mr.Patni, learned Advocate for accused No.1 on the other hand submitted that as the punishment provided for the offence punishable under section 409 of the IPC is life imprisonment, this appeal was placed before the Division Bench and by order dated 14.07.2017, the Division Bench has held that the offence punishable under section 409 of the IPC is not attracted and as such the appeal was ordered to be placed before the Single Judge of this Court. Thus, according to learned Advocate when the Division Bench has held that the offence punishable under section 409 of the IPC is not attracted, the only point which is required to be considered by this Court is "Whether the prosecution has proved offence punishable under sections 420 and 468 of the IPC against accused No.1?"

8. Mr. Patni, learned Advocate for the accused further submitted that no document was prepared by accused No.1. The documents were prepared by one Naval and one Rathod – employees of the Credit Society. Said Rathod is nephew of the complainant – Special Auditor [PW-1]. Said fact is clear from para 7 of the impugned judgment. Thus, according to learned Advocate, there is absolutely no evidence to show that accused No.1 prepared false documents in respect of transactions with Kunal Woolens with intention to cheat the Credit Society. It is submitted that the order was placed by the Credit Society with Kunal Woolens to supply blankets to the members of the Credit Society, but none of the members of the Credit Society is coming forward and saying that he has not received the blankets. Learned Advocate further submitted that it has come on record that accused No.1 was compelled to make signatures as observed in para 8 of the impugned judgment and this shows that there was no involvement of accused No.1 in preparing the alleged forged record. Thus, according to learned Advocate for

the accused, it cannot be said that accused No.1 has prepared false and forged documents.

9. Mr.Patni, learned Advocate for the accused further submitted that as regards second allegation made against accused by the prosecution that 28 members to whom loan was disbursed had paid said loan, by monthly installments, but said amount of Rs.35,812/- was misappropriated by accused No.1 is concerned, no details of amounts received or receipts issued in this respect are given by the prosecution and therefore neither it can be said that accused No.1 committed false and forged documents, nor it can be said that he cheated the Credit Society or that he committed misappropriation of the said amount.

10. Mr.Patni, learned Advocate for the accused further submitted that the third allegation of the prosecution is that the accused No.1 disbursed loan to the persons who have been retired and misappropriated the

said loan. No person in whose name the loan was disbursed is making the aforesaid allegation and only Mogal [PW-2] says that he has not received the loan. The person who is required to repay the loan is bound to say so. There is no material to show that accused No.1 prepared false and forged documents in respect of loan disbursed to PW-2. According to learned Advocate for the accused, no loan amount is given in cash. It has to be given by cheque. The prosecution has not produced bank statement to show that although loan is shown disbursed, but actually concerned person has not received said loan amount. The entries in respect of alleged transactions in cash book are in the handwriting of Naval and not in the handwriting of accused No.1. It is submitted that the charge framed against the accused was vague and it was not specific. It is submitted that the prosecution has failed to prove ingredients of all the offences alleged against accused No.1 and therefore the Trial Court has rightly acquitted said accused of the offences punishable under sections 409, 420 and 468 of the IPC.

The Trial Court has properly considered the evidence. The view taken by the Trial Court is possible view. There is no error in appreciating evidence by the Trial Court. The acquittal of the accused shows innocence of the accused. There are no reasons to interfere with the order of acquittal of accused No.1. Thus, according to learned Advocate, there is no merit in the appeal. Same is liable to be dismissed. He, thus, claimed to dismiss the appeal.

11. As referred earlier in detail in paragraph-3 (supra), the Division Bench of this Court in order dated 14.07.2017, observed that the accused did not become public servant under the IPC and so they cannot be prosecuted for committing offence under the IPC as a public servant and in view of this the matter cannot be treated as under section 409 of the IPC. It is not the case of the appellant/State that it has challenged the said order dated 14.07.2017 of the Division Bench. Therefore, when as per the said order the accused cannot

be prosecuted for committing offence under the IPC as a public servant and particularly under section 409 of the IPC, the finding of the Trial Court holding that the prosecution has failed to prove offence under section 409 of the IPC against accused No.1 cannot be said to be illegal or improper. Therefore, no fault can be found with the said order of acquittal of accused No.1 of the offence punishable under section 409 of the IPC by the impugned judgment. As such, no more discussion is required on the aspect whether the acquittal of accused No.1 for offence under section 409 of IPC is proper or otherwise. Therefore, only aspect, which is required to be considered is – whether the prosecution has proved rest of the offences i.e. offences punishable under sections 420 and 468 read with section 34 of the IPC against accused No.1 against whom present appeal is filed.

12. As regards offence of cheating and inducing delivery of property punishable under section 420 of the

IPC is concerned, the ingredients of said offence are (i) there should be fraudulent or dishonest inducement of a person by deceiving him (ii)(a) the person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property; or (b) the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit, if he were not so deceived; and (iii) in cases covered by (ii)(b), the act of omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property. So also, as regards offence of forgery for the purpose of cheating punishable under section 468 of the IPC is concerned, the prosecution has to establish that the accused has made false documents or false electronic record or part of document or electronic record and as such committed forgery intending that said document or electronic record forged shall be used for the purpose of cheating. To prove the ingredients of both these offences the prosecution has mainly relied upon evidence of PWs

1,3 and 5 and the documents seized under panchanama Exh.104 and opinion and reasons given for opinion by the handwriting expert i.e. Exh.90.

13. Before considering the above evidence, it is necessary to mention here that the charge was framed at Exh.7 by the Chief Judicial Magistrate, Aurangabad against all the three accused for the offences punishable under section 409, 420 and 468 read with section 34 of the IPC. The contents of charge are that while accused were working as Chairman and Secretary of the Credit Society of the Government Employees of the Irrigation Department during the period 01.04.1993 to 31.03.1994 by preparing false and forged documents, misappropriated the money worth Rs.2,77,012/- in furtherance of their common intention and thus committed the aforesaid offences. Thus, the contents of the charge are not specific as regards the offence of cheating punishable under section 420 of the IPC and forgery for the purpose of cheating punishable under section 468 of the IPC. The Trial Court

was required to mention specific accusation in the charge in respect of these two offences. Thus, the charge framed against the accused was vague and it was not specific as regards offence punishable under sections 420 and 468 of the IPC.

14. Now coming to the evidence of above witnesses, the evidence of Onkar Mansaram Rathod – Special Auditor [PW-1] is that he was serving as a Special Auditor at Co-operative Societies at Aurangabad since 1985. He conducted audit of the Credit society for the period from 01.04.1993 to 31.03.1994 on 27.04.1994 to 30.04.1994. Accused No.3 was Chairman from 07.07.1993 to 14.09.1993 of said society and accused No.2 was its Chairman from 15.09.1993 to 24.01.1994. According to the complainant, he checked *Kird* (cash-book) and found that there were transactions of payment of money in the name of Kunal Woolens, Jalgaon, total four transactions dated 31.01.1994 for Rs.60,000/-, dated 07.02.1994 for Rs.25,000/-, dated 09.02.1994 for Rs.40,000/- and dated

23.03.1994 for Rs.15,500/-. Said amounts were shown towards expenditure in cash-book of the Credit Society. He did not get purchase bills of said transactions. He demanded them from the Secretary – accused No.1 – Shivaji, but he did not produce them. He did not find any purchase of blankets from Kunal Woolens, Jalgaon made by the Credit Society, but the amount of Rs.1,40,500/- was shown towards expenditure to the cash-book. He informed that the amount of Rs.1,40,500/- was misappropriated by accused No.1.

15. The complainant further deposed that in the cash book of the Credit Society at page No.99 amount of Rs.60,000/- was shown as expenditure in the name of Kunal Woolens, Jalgaon. There is another entry on page No.110 of cash-book showing expenditure of Rs.25,000/- in the name of Kunal Traders, Jalgaon, page No.112 of the said cash-book shows expenditure of Rs.40,000/- in the name of Kunal Traders, Jalgaon dated 09.02.1994 and on page No.130 of said cash-book, there is entry of expenditure

of Rs.15,500/- in the name of Kunal Traders, Jalgaon dated 28.03.1994. The complainant stated that said entries were found taken by the Secretary – accused No.1. He did not find vouchers of above said four entries while making audit nor accused No.1 produced vouchers of expenditure of above four entries.

16. The complainant has further deposed that he found that accused No.1 recovered monthly installments of loan from the borrowers an amount of Rs.35,812/- from 28 members, but the said amount was not shown deposited in the cash-book. The receipt book Article "A" shown to him shows that the amounts were paid by 28 members towards installments of loan and said receipt Article "A" bears signature of accused No.1 for the receipt of amount. Said receipts are Exh.25 to 52. According to the complainant, the total amount of Rs.35,812/- of said 28 receipts was not deposited by accused No.1 in the bank account of the Credit Society, when he verified the pass-book of the society on 31.03.1994.

17. The complainant has further deposed that he also found during audit that few members left the department and few were retired. However, the Secretary of the Society had shown the loan amount granted and allotted to such members in cash book Article "B". Said members shown in cash book are thus :-

Sr. No.	Name	Amount Rs.	Date	Page No. of entry in cash book.
1	A.A. Mogal	24,000/-	02/11/1993	58
2	A.A. Mogal	7,000/-	07/11/1993	66
3	U.H. Salve	19,800/-	07/11/1993	66
4	S.V. Malwatkar	26,000/-	07/11/1993	66
5	U.G. Potbhare	23,900/-	28/12/1993	84

. The above entries at Sr.Nos.2 to 4 on page No.66 of the cash-book are at Exh.53, 54, 55. According to the complainant, accused No.1 has misappropriated the amount of Rs.1,00,700/- and said amount was shown paid by cash to above said four persons. He also stated that the entries on page No.66 and 84 bear signatures of Chairman Gangawane and the Secretary – accused No.1. The complainant stated that he found that total amount of Rs.2,77,012/- was found misappropriated by the Chairman and the Secretary of the Credit Society. He had given report Exh.57 and Special Report Exh.58 and lodged report in the police station – Exh.59.

18. In the cross-examination, the complainant has stated that Dayaram Rathod is alone Clerk in the said Credit Society and a paid employee. He is his nephew. The records and the accounts were found written by one Naval. He did not enquire about him. He was knowing about writing of accounts by Naval previously. He has not given notice to Secretary or to the Society prior to audit. He called Naval during his audit period. He asked him to take entries of the receipts which were not found entered in the cash book. He asked him to take entries of such receipts. Said receipts are only from Article "A" receipt book and they are from Exhs.25 to 52. Except above receipts, he did not find other receipts of which entries were not taken.

19. The complainant has further stated that the receipts and the receipt book below Article "A" bear signatures of Dayaram Rathod and Shewale (accused No.1). He stated that few receipts bear signatures of Dayaram Rathod and the remaining signatures were of accused No.1. He admitted that out of Dayaram Rathod and accused No.1 nobody of them used to issue receipts for the receipt of amount. He stated that he cannot state that as to how much receipts and to what extent of amount, the accused No.1 made his endorsement. He stated that as per law the report about employment of paid employee is to be taken to the said register. The paid employee is also prosecuted, if found involved in misappropriation. He stated that he has not given notice to Dayaram Rathod about the receipts issued by him. He denied that he asked Mr.Naval for taking entries of all the receipts only with a view to keep safe his nephew.

20. The complainant has further stated that the

retired person can continue his membership if his shares are with the society. He admitted that a person can be a member of the society, only after purchase of shares of the society. Marutrao Mogal, U.H. Salve and U.G. Potbhare were the members of the society when he audited. He stated that he also found entries in their respective name about loan amount. The loan is to be issued only after application made to the society. He did not verify the register of loan application so also he did not find loan applications of above mentioned four persons in the said register of the loan application. The complainant stated that he knows only signatures of Potbhare and not other three members. He denied that he cannot state about loan applications of remaining three members. There was only one voucher book of receipt of payment used by the society and he has taken entries in his report. He stated that in the voucher book Article “C” shown to him, one voucher was taken out from it. He stated that it cannot be said that the receipt which was found torn may be receipt for the payment of amount of blankets to Kunal Woolens. He denied that the blanket transaction was carried out and looked after by Shri Shinde.

21. The complainant further stated that the account book is not found written in the handwriting of accused No.1. The entries in the account book in respect of payment made is in handwriting of Naval and not in the handwriting of accused No.1 He stated that Dayaram Rathod was doing the work of depositing cash of society in the bank. He could not state individually as to what amount was disbursed by any of the accused from accused Nos.1 and 2. He stated that all the signatures were obtained by him at the time of audit. He admitted that the entries of loan were found taken in the account of the members to whom loan was disbursed. He also found receipt of RPAD on Chikat book. He denied that he prepared false audit report to save his nephew Dayaram Rathod and that accused No.1 has not committed misappropriation of a single paisa. He denied that

accused No.1 was not involved in money transactions, but they were carried and done by his nephew – Dayaram Rathod. He also denied that accused No.1 is not related to transaction of blanket purchase.

22. From the above evidence of the complainant, it is clear that during the audited period of the Credit Society, one Dayaram Rathod alone was clerk in the said society and he was only paid employee of the said society. He was doing work of depositing cash of credit society in the Bank. Said Dayaram Rathod is nephew of the complainant. Moreover, it is clear from the evidence of the complainant that during audit he found that the accounts were found written by one Naval. It is also clear from his evidence that receipts and the receipt book Article "A" bear signatures of Dayaram Rathod and accused No.1 and that after receiving amount, Dayaram Rathod as well as accused No.1 used to issue receipts to the members who were making payment of installments towards repayment of loan of the society. It is also

clear from the evidence of the complainant that during the course of audit the complainant asked one Naval to take entries of receipts in the cash book, which were not found entered in the cash book. Though the complainant has stated about the entries of granting loan to four persons as referred earlier, in the cash book i.e. Exhs.53,54,55 and 84 but when there is procedure for sanctioning loan that is to say one has to make application for loan and the complainant did not verify register of loan application and the Secretary alone is not the authority to sanction loan and when one Naval had written the accounts, the evidence of the complainant is not sufficient to infer that accused No.1 Secretary had taken forged entries of Exh.53,54,55 and 56 in the cash book for the purpose of cheating.

23. The evidence of PW-2 - Eknath Asaram Mogal is that he was serving in the Irrigation Department for thirty years. He retired on 28.02.1993 from service. Accused No.1 was the Secretary of the Credit Society. He

had taken loan of Rs.10,000/- from the society in 1990-91. The repayment of loan was completed before retirement. He has not taken loan nor applied for loan after the date of retirement. He stated that he has not taken loan of Rs.24,000/- and Rs.7,000/- shown in the record as per case of the prosecution and that he had not made any application for said loan.

24. In the cross-examination PW-2 has admitted that till today he is share holder of the Credit Society. He does not know as to whether the employee of Sinchan Bhavan or the share holder becomes member of the society. He stated that he has not surrendered the shares. It has come in his evidence that it was written in his police statement that he made repayment before the retirement and he stated to police that he had not applied for the loan amount of Rs.24,000/- and Rs.7,000/-. He is stating about the said facts before the Court for the first time as he has been called in the Court for the first time and he did not have occasion prior to that. He denied that

he obtained loan of Rs.24,000/- and Rs.7,000/- from the Credit Society and he deposed false to relieve himself from the repayment of loan. When there are omissions in the statement before Police of PW-2 in respect of above said facts and when PW-2 is still member of the Credit Society and when there is procedure for applying and disbursing loan, it cannot be said that accused No.1 prepared false documents regarding loan disbursed to PW-2. It is pertinent to note that neither PW-2 nor other three persons, namely, U.M.Salve, S.V. Malwatkar and U.G. Potbhare, in whose name allegedly accused No.1 had taken entries in cash book regarding sanctioning loan to them and misappropriated amount of loan of all four persons as per entries Exhs.53,54,55 and 56, has made complaint against accused No.1, besides the complaint in the case. When as mentioned earlier one Naval was found to have maintained the accounts of the credit society and when PW-2 has not specifically stated that entries in the cash book regarding his loan were taken by accused No.1, evidence of PW-2 the accused No.1 was Secretary of the

Society is not sufficient to infer that accused No.1 had taken forged entry in respect of loan in the name of PW-2 for the purpose of cheating.

25. The evidence of PW-4 – Shashikant Malwadkar (who is Malvatkar as per cash-book) is that since 1981 to 1991 he was serving at Jayakwadi Project, Division No.1, Aurangabad as Junior Clerk. He was transferred to Jalna. Prior to his transfer he was member of the Credit Society. After his transfer he had no concerned with the said Credit Society. He has not made any application to Credit Society after his transfer at Jalna nor he made application on 07.11.1993 for loan of Rs.26,000/-.

26. In the cross-examination PW-4 admitted that for having loan from society, applicant has to submit application. Photocopy of application for loan shown to him bears his signature. He has not stated that entry regarding disbursement of loan in his name in the cash book was taken by accused No.1 and as such accused No.1

prepared forged document. When PW-4 has stated that for having loan from the society, application has to be submitted and when one Naval was maintaining the accounts, it cannot be said that accused No.1 took forged entry in respect of loan of PW-4 in the cash book as alleged by the prosecution.

27. The evidence of PW-3 Birju Ravlani, who is running shop of Kunal Woolens at Jalgaon is that he knows accused No.1 and he supplied goods of Rs.45,000/- approximately to accused No.1 He has not supplied the goods to the Credit Society of accused No.1 on 31.01.1994, 07.02.1994, 09.02.1994 and 28.03.1994. He checked his record and gave letter (Exh.75) to police. He states that he has not supplied blankets worth Rs.45,000/- in 1993-94.

28. In the cross-examination PW-3 stated that he knows the procedure for supply of goods to the society. He got order for which he supplied the goods. He took

the orders in printed proforma and obtained signatures and accused No.1 also signed the said orders. Copies of said orders Articles “A” to “D” are tentative orders (Exh.119 to 122). He further states that he is not sure about the quantity of goods booked and supplied. He stated that there are no arrears outstanding against the society, of his shop. Further he stated that for selling goods from Jalgaon to Aurangabad, octroi is paid at Aurangabad. He paid octroi for the goods supplied to the society. He can produce the receipts for payment of octroi. Sales tax is not applicable to these goods. It appears that he has not produced the receipts of payment of octroi in respect of goods supplied to the Credit Society at Aurangabad. In-fact, he should have produced the said receipts to show that he has supplied only blankets worth Rs.45,000/- to the Credit Society in 1993-1994 and he has not supplied the goods to the Society in January, February and March, 1994 on the dates referred earlier to the society, i.e. blankets worth Rs.1,40,500/-, as deposed by him, when as referred earlier he admitted Articles “A” to “D” tentative orders were placed by the Credit Society and when he was not sure about the quantity of goods booked and supplied.

29. As referred earlier while considering the evidence of the complainant (PW-1) – Special Auditor, it has come in his cross-examination that Dayanand Rathod, was alone clerk in the society and the record and the accounts were maintained by one Naval and as PW-3 has not stated anything about the entries in cash book or account of the Credit Society, in respect of payments made to Kunal Woolens, it cannot be said that the entries in the cash book regarding four transactions of the aforesaid dates in January, February and March, 1994 with Kunal Woolens were forged entries and that those were taken by accused No.1. On perusal of three entries at page No.99, 110, 112 in the *Kird* / cash book respectively in respect of payment of Rs.60,000/-, Rs. 25,000/- and Rs.40,000/-, to Kunal Woolens, there is no signature of accused No.1 below said entries. In the absence of signatures of

accused No.1 below said entries in the cash book and when as said earlier the complainant admitted that the account was written by one Naval, it cannot be said that said entries were forged by accused No.1. It appears that entry of fourth transaction of the Credit Society with Kunal Traders, Jalgaon at page No.130 of the cash book, there are signatures of accused No.1 and Chairman and signature of accused No.1 is marked Exh.87, which is disputed signature.

30. It appears that Article “Y-6” is the specimen signature of accused No.1. The handwriting expert (PW-5) has stated that he does not find dissimilarity in signature Exh.87 i.e. disputed signature of accused No.1 and specimen signature Article “Y-6”. But, this evidence alone is not sufficient to infer that accused No.1 forged entry dated 28.03.1994 in respect of payment of Kunal Woolen, Jalgaon at page 130 of the cash book, particularly when one Rathod was clerk in the society and one Naval was writing the account of the society as

deposed by the complainant. Therefore, the evidence of handwriting expert referred to above, which is opinion evidence, cannot be used as a substantive evidence to state that the accused No.1 has prepared false record to cheat the Credit Society. Therefore, the evidence of PW-5, opinion given by him and reasons given for opinion Exh.90 are not sufficient to state that accused No.1 prepared false record by taking four entries referred earlier in cash book at Page Nos.99, 110, 112 and 130 in respect of transactions with Kunal Woolens.

31. Here it is useful to refer decision in the case of **<u>Murlidhar alias Gidda and another Vs State of Karnataka</u>** (2014) 5 SCC 730, wherein in para No.12 the Apex Court has held thus:

> "12. The approach of the appellate Court in the appeal against acquittal has been dealt with by this Court in **<u>Tulshiram Kanu Vs State, AIR 1954 SC 1, Madan Mohan Singh Vs State of U.P., AIR 1954 SC 637, Atley Vs State of U.P., AIR 1955 SC 807, Aher Raja Khima Vs State of Saurashtra, AIR 1956 SC 217, Balbir Singh Vs State of Punjab, AIR 1957 SC 216, M.G. Agrawal Vs State of</u>**

Maharashtra, AIR 1963 SC 200, Noor Khan Vs State of Rajasthan, AIR 1964 SC 286, Khedu Mohton Vs State of Bihar, (1970) 2 SCC 450, Shivaji Sahabrao Bobade Vs State of Maharashtra, (1973) 2 SCC 793, Lekha Yadav Vs State of Bihar, (1973) 2 SCC 424, Khem Karan Vs State of U.P., (1974) 4 SCC 603, Bisan Singh Vs State of Punjab, (1974) 3 SCC 288, Umedbhai Jadavbhai Vs State of Gujrat, (1978) 1 SCC 228, K. Gopal Reddy Vs. State of A.P., (1979) 1 SCC 355, Tota Singh Vs State of Punjab, (1987) 2 SCC 529, Ram Kumar Vs State of Haryana, 1995 Supp (1) SCC 248, Madan Lal Vs. State of J & K, (1997) 7 SCC 677, Sambasivan Vs State of Kerala, (1998) 5 SCC 412, Bhagwan Singh Vs State of M.P., (2002) 4 SCC 85, Harijana Thirupala Vs Public Prosecutor, High Court of A.P., (2002) 6 SCC 470, C. Antony Vs K.G. Raghavan Nair, (2003) 1 SCC 1, State of Karnataka Vs K. Gopalkrishna, (2005) 9 SCC 291, State of Goa Vs Sanjay Thakran, (2007) 3 SCC 755 and Chandrappa, Chandrappa Vs State of Karnataka, (2007) 4 SCC 415. It is not necessary to deal with these cases individually. Suffice it to say that this Court has consistently held that in dealing with appeals against acquittal, the appellate Court must bear in mind the following : (i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial Court, (ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal, (iii) Though, the power of the appellate Court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate Court is generally loath in disturbing the findings of fact recorded by the trial Court. It is so because the trial Court had an advantage of seeing the demeanor of the witnesses. If the trial Court takes a reasonable view of the facts of the case, interference by the appellate Court with the judgment of acquittal is not justified. Unless, the conclusions reached by the trial Court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate Court in interfering with such conclusions is fully justified, and (iv) Merely because of the appellate Court on re-appreciation and re-evaluation of the evidence is inclined to take a different view,

> interference with the judgment of acquittal is not justified if the view taken by the trial Court is a possible view. The evenly balanced views of the evidence must not result in the interference by the appellate Court in the judgment of the trial Court."

32. For all the reasons discussed above the evidence of the complainant-PW-1, PWs.2,4 and 5 and the documents referred to above are not sufficient to state that accused No.1 individually or in furtherance of common intention with accused Nos.2 and 3 committed forgery for the purpose of cheating and cheated the Credit Society within the meaning of section 468 and 420 of the IPC. The prosecution has thus failed to prove both these offences against accused No.1. The Trial Court has properly considered the evidence adduced by the prosecution and rightly held that the prosecution has failed to prove these offences against accused No.1. As mentioned earlier, offence under section 409 of the IPC is not attracted against accused No.1 as observed by the Division Bench of this Court. For these reasons the view taken by the Trial Court acquitting accused No.1 of the aforesaid offences is a possible view and no fault can be

found with the acquittal of accused No.1 of the said offences. Thus, there is no ground to interfere with the impugned judgment and order acquitting accused No.1 of the offences with which he was charged. Therefore, the appeal being devoid of merits, the same is liable to be dismissed. Accordingly, the same is dismissed.

[S.M.GAVHANE,J.]

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