

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.707 OF 2002

THE STATE OF MAHARASHTRA)
(Through Kishnakant Bapuji Hadkar,)
Occupation : Service, Resident of Pen,)
District : Raigad)...APPELLANT

V/s.

NAMDEV CHANGDEV ANGRE)
Age : 37 years, Resident of Mangaon,)
Taluka : Mangaon, District : Raigad)...RESPONDENT

Mr.H.J.Dedhia, APP for the Appellant – State.

None for the Respondent.

**CORAM : PRASANNA B. VARALE &
V. G. BISHT, JJ.**

DATE : 8th SEPTEMBER 2020

JUDGMENT : (PER : PRASANNA B. VARALE, J.)

1 Heard the learned APP. By the present appeal, the appellant State challenges the judgment and order passed by the learned Chief Judicial Magistrate, Raigad, in Regular Criminal Case

No.159 of 1998. The prosecution case can be summarized as follows :

(a) The accused, one Namdeo Angre, was discharging his duties in the office of Social Forestry as a Plantation Officer and during the period from 16th August 1997 to 19th September 1997 when the accused was posted at Mangaon, he committed misappropriation of an amount of Rs.18,857.30, Rs.23,500/- as well as Rs.9,000/-. In total, an amount of Rs.51,357.30 is the amount misappropriated by the accused. It is the prosecution case that this amount was against salary to be paid to the employees, and the accused, for his personal benefit, utilized the amount without paying the same to those employees. The complaint was lodged at the instance of one Krishnakant B. Hadkar with the Police Station Mangaon. On lodgement of the complaint, the investigation was carried out and on completion of the investigation, the charge-sheet was submitted to the court on 22nd April 1998. The accused was to face charge for commission of offence punishable under Section 409 of the

Indian Penal Code. The accused pleaded not guilty and claimed trial.

(b) In support of its case, the prosecution examined in all seven witnesses. Needless to say that, the statement of the accused under Section 313 of the Code of Criminal Procedure was also recorded. The learned trial Court framed the points for consideration which are as under :

	POINTS	FINDINGS
1	Whether prosecution proves that the accused on or in between 16.08.97 to 16.09.97 in the office of Social Forestry, being Plantation Officer, being a public servant, and in such manner entrusted with total amount of Rs.51,357.30 ps. and in such a capacity committed criminal breach of trust in respect of said amount, and thereby committed an offence pun.u/sec. 409 I.P.C. and within my cognizance ?	In the Negative.
2	What order ?	As per final order.

and recorded a negative finding on the points for consideration. On going through the reasoning of the learned Judge and on appreciation of evidence, it reveals that the prosecution miserably failed to establish its case. The witnesses examined by the prosecution viz. PW-1 Ananta Gouru Manchekar, PW-2 Madhukar Janardan Kaware, PW-4 Dattaram Sitaram Tondlekar and PW-6 Madhukar Rama Mundhe, though in their examination-in-chief, have stated that they received salary and they are not aware as to who is responsible for not getting their salary in the month of August, in their cross-examination they have stated that they received salary and have shown their ignorance in respect of the amount lying in the Office when Mr. Hadkar took over the charge, meaning thereby, these witnesses took a somersault and turned down the basic contention of the prosecution case. Now, the other so called important witness, i.e. Prosecution Witness No.5 (PW5), on whose complaint the case proceeded, in his evidence before the court, showed total ignorance on the aspect of all the

documentary evidence collected by the prosecution. This witness, PW5 Krishnakant Bapuji Hadkar, clearly stated in the cross-examination that he had no personal knowledge about the so called official dealings nor any personal knowledge about the so called recovery of the amount from the cupboard, as alleged by the prosecution. Apart from this, there is another serious lacuna in the prosecution case and that is absence of sanction to prosecute the accused. The panchas, who claimed to be independent witnesses, have also turned hostile.

(c) The learned trial Court, on assessing the evidence on record, arrived at a conclusion that evidence falls too short to convict the accused, and thus, the resultant finding recorded by the court below was of acquittal of the accused.

2 On going through the evidence, we are of the opinion that the learned court below appreciated the evidence in proper perspective, committed no error in scanning the evidence and the

only conclusion which the court could have drawn was of an acquittal.

3 It is not in dispute that, so as to allow an appeal against acquittal, the requirement would be of perversity of the judgment. At the cost of repetition, it needs to be stated that, in the present case, the learned trial court appreciated and scanned the evidence in its proper perspective. It is also not the case of the prosecution that the court accepted some evidence, which was not before the court, nor a case of discarding the substantial evidence on an erroneous reasoning.

4 Considering all these aspects, we are of the opinion that the present appeal is wholly meritless and accordingly it deserves dismissal.

5 Appeal therefore stands dismissed.

(V. G. BISHT, J.)

(PRASANNA B. VARALE, J.)

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