IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1336 OF 2002

The State of Maharashtra
(Through Talegaon-Dabhade
Police Station, District Pune). … Appellant

V/s

Smt. Anjana Dattatraya Gaikwad
R/at Bebadhol, Tal. Maval,
Dist. Pune. … Respondent
(Ori. Accused).

Mr. V. B. Konde-Deshmukh, APP for the State-Appellant.

None for Respondent.

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

DATE : 13th October, 2020.

JUDGMENT (PER : V. G. BISHT, J.)

This Appeal is filed by the State challenging the judgment and order of acquittal dated 19th March, 2002 passed in Regular Criminal Case No. 186 of 1995 by JMFC, Vadgaon, Maval for the offences punishable under Sections 406, 465 and 467 of the Indian Penal Code (for short "IPC").

2 The prosecution case in short is that, the informant namely, Lata Shantaram Murhe, President of Village Somatane, Tal. Maval, Dist. Pune at the relevant time was Up-sarpanch (उपसरपंच) of village Somatane and was also President of Mahila Mandal of the village.

3 According to prosecution, the accused, who was an agent of Small Saving Scheme, persuaded the informant and women of the village to open their account of Small Saving Scheme with her. Accordingly, the women, who were the members of Mahila Mandal, opened the account with respondent-accused and used to pay Rs.25/-, Rs.50/- and Rs.100/- respectively, per month to her towards their savings. Respondent-accused on her part issued cards and passbooks to those ladies, who were subscribers of the said scheme, after accepting the amount paid by the subscribers and also used to put the signature against the said entries.

4 The prosecution then contends that one Ranjana Murhe (PW 7) wanted to withdraw the amount and therefore, the informant and others demanded their passbooks from the respondent-accused but later avoided. Ultimately, the respondent-accused handed over the passbooks and on verifying the same, they found the difference in the Seal of Post Office. They became suspicious and formed opinion of misappropriation

of the amounts so deposited by them. They also came to know that they were cheated on by respondent-accused by not depositing their amounts in the concerned Post Office.

5 Informant accordingly lodged the report with Talegaon Police Station, who registered the offence vide C.R. No. 91 of 1995 under Sections 406, 420, 464, 467 of the Indian Penal Code.

6 During the course of investigation, the investigating officer seized various articles including the passbooks and various receipts and after completion of investigation forwarded the charge-sheet against the accused.

7 In order to bring home the guilt, the prosecution has examined as many as 11 witnesses and exhibited number of documents. The respondent-accused was questioned under Section 313 of the Code of Criminal Procedure (for short "Cr.P.C.") about the incriminating evidence and circumstances and the respondent-accused denied all of them as false and she further denied that the alleged entries in the passbooks bore her signature.

8 Upon appreciation of oral and documentary evidence, the learned

trial Court acquitted the respondent-accused of the offences punishable under Sections 406, 465 and 467 of the IPC. Hence,this Appeal.

9 Mr. Konde-Deshmukh, learned APP, invited our attention to the testimonies of the material witnesses and impressed upon us as to how respondent-accused though collected the amounts from witnesses did not deposit the same in their respective accounts and rather misappropriated the same. According to learned APP, the evidence of PW-10 and PW-11 examined from the Postal Department was wrongly rejected by the learned trial Court on superfluous reasons. There is ample oral and documentary evidence on record to substantiate the charges and despite that the learned trial Court failed to appreciate the evidence in its proper perspective leading to erroneous judgment of acquittal. For all these reasons, the Appeal deserves to be allowed, argued learned APP.

10 None for the respondent-accused when called.

11 PW-1 Lata Shantaram Muhre, informant, states in her evidence (Exh. 29) that in the year 1992, she was the President of Mahila Mandal. In July 1992, accused came to her and others and gave the information about the small saving of the Post Office. It is her further

evidence that she opened recurring account No. 527301 in her own name and account No. 527302 and 527303 in the name of her sons. She deposited an amount of Rs. 50/- per month in her recurring account till March, 1995 and an amount of Rs. 25/- each in the account of her sons till April, 1995.

12 Her evidence then shows that Ranjana Balasaheb Muhre (PW 7) was in need of money, she came to her and told that she wants to withdraw the amount deposited by her. From time to time they made the demand of book with accused. The accused had shown the book to them and at that time, they noticed that entries were not made in the book as per the receipts issued to them. They also noticed the difference of seals appearing on the passbooks and receipts. They also noticed that the accused cheated on them by making false entries in the passbook. They noticed such type of cheating in 25 passbooks and accordingly she went to police station and lodged the report along with receipts. Those receipts were in her name and the names of her sons. She also identified signature of the accused on those receipts as according to her, those receipts were signed by accused in her presence. She then proved those receipts at Exhs. 30,31 and 32. She also proved her FIR at Exh. 33.

13 In the cross-examination, the informant states that accused had been to them and apprised that she was the agent of Post Office. However, they never made any enquiry with the concerned Post Office that the accused was not an agent of Post Office.

14 From the examination-in-chief what we notice is that the accused had introduced herself to the informant and other women of Mahila Mandal that she was an authorized agent of the Post Office to collect the savings from them towards small saving scheme of the Post Office. It is very surprising to us that without verifying this fact, which is apparent from the cross-examination of informant, the informant and others believed the words and if the evidence is to be seen then the informant and other started depositing monthly amount of Rs.25/-, Rs.50/- towards so called their respective saving accounts with the accused.

15 It is only when Ranjana Balasaheb Murhe (PW 7) was in need of money and wanted to withdraw the amount, the informant and others demanded passbooks from the accused and after going through it they realized that the entries in the passbooks were not made as per the receipts issued to them by the accused. They also noticed the difference of seal appearing on the passbooks and the receipts. They also observed the false entries made in the passbooks and thus felt cheated.

16 First of all, it may be pointed out here that, as far as the informant is personally concerned, her evidence shows that accused issued receipts at Exhs. 30, 31 and 32 and that those receipts were signed in her presence by the accused but then it is the most major omission inasmuch as this fact is not revealed in the FIR by the informant. Similarly, the FIR is silent to the fact that when the passbooks were given to the informant and others, they noticed that entries in the passbook were not in accordance with the receipts issued to them by the accused.

17 An ominous statement is made in the evidence that the informant and others also noticed difference of seal appearing in the receipts and as also recording of false entries. How the informant and others came to know about falsity of the seals and as also nature of entries being false is not made clear. Similarly, her cross-examination shows that neither she nor PW 7 made an inquiry with the Post Office to confirm whether or not accused was agent of Post Office. Even they had not been to the concerned Post Office to withdraw the amount. The evidence also does not enlighten as to whether they verified with the concerned Post Office about the genuineness of the seal appearing in the passbooks or in the receipts so issued to them allegedly by the accused.

18 Thus, at the moment the whole FIR and evidence of witness appears to be based on the formed opinion without verifying the true facts from the concerned Post Office. The next important witness, which is appearing from the evidence of informant is PW-7 Ranjana Balasaheb Murhe.

19 PW-7 Ranjana Balasaheb Murhe states in her evidence (Exh. 52) that in the year 1994, Anjanabai i.e. the accused came to her and insisted for opening of saving account by saying that she is an agent of Post Office. She opened her account and deposited Rs.25/- per month for three years. She was given one card. She then proved that card and the signature of accused thereon and relevant entries in the hand writing of accused at Exh. 53.

20 It is her further evidence that as she was in need of money, she approached the accused and was handed over her passbook. After going through the passbook she noticed different seals of the Post office. She also noticed that some of seals had been affixed with the help of the face cover of the bottle. She then went to informant and showed her the passbook. She also came to know that the accused had not deposited the amount in the Post Office.

21 The evidence of this material witness shows that the accused had approached her by informing that she was an agent of Post Office pursuant to which she opened the account and deposited Rs.25/- per month for three years and that the accused had issued the card (Exh.53)with handwritten entries have come by way of omission inasmuch all these facts are missing from her statement recorded by investigation machinery under Section 161 of Cr.P.C. However, those omission could not be proved inasmuch as it appears from the record that the investigating officer was not examined by the prosecution for the reasons best known to it. In this eventuality, we feel that the defence was denied an opportunity to prove the above noted material omission. Naturally, the adverse inference will have to be drawn against the prosecution.

22 The evidence of this witness further shows that she found difference between the seal of Post Office appearing in the passbooks and some of the seals had been affixed with the help of the face cover of the bottle. It is clear from her cross-examination that she is an illiterate lady. This being so, how she could infer about the falsity of the seals appearing in the passbook at the first instance. It is also not in her evidence that after suspecting the seals difference appearing on the

passbook, she approached the concerned Post Office and tried to verify the fact. This is amply demonstrated from her cross-examination when she states that she did not confirm the fact whether the amount paid by her was deposited or not in her account.

23 Interestingly, her cross-examination also shows that she had lodged her report with the police station and thereafter never went to police station or police never came to her. It seems that her complaint till the date of her recording of evidence did not see the light of day. So also, in her own words, police did not approach her for necessary enquiry and investigation pursuant to her complaint. We, therefore, seriously do not find any merit in her evidence.

24 PW-3 Vijaya Sahebrao Murhe states in her evidence (Exh. 43) that accused approached her and told that she is the agent of Post Office and asked her to open the account. Accordingly, she and other ladies opened the account. She used to pay Rs. 25/- per month and deposited said amount for 28 months. According to her, she used to pay the amount to accused, who in turn used to put her signature on the card after getting the amount of Rs. 25/- per month. She then proved her card at Exh. 44.

25 It is her further evidence that Ranjana Murhe (PW 7) wanted to

withdraw the amount from her account but the accused avoided to pay the amount deposited by her. Then all the ladies went to police station. They also noticed that the accused had put a false seal on the passbook and she utilized the said amount for her own use.

26 From her evidence one thing is clear that she is not an aggrieved party. It is only when the PW-7 was not paid her amount by the accused, she along with other ladies went to the police station. Her evidence gives an impression that she also noticed false seal in the passbook and that accused utilized the amount for her own use. How the fact of forged seal on the passbook came to her knowledge is not cleared by this witness in the examination-in-chief.

27 Although, her evidence also shows that the accused had approached her and informed that she was agent of Post Office and after receiving amount of Rs.25/-, the accused used to put her signature on the card but these facts again have come on record by way of omissions because her statement recorded under Section 161 of Cr.P.C. does not show this witness of having stated so before the investigating officer but then again because of want of non-examination of investigating officer, the defence was deprived of the benefit of this material omission as the

same could not be proved by the defence through the investigating officer.

28 Similarly, it is also clear from her evidence that she never confirmed the fact from the Post Office whether the accused in fact was an agent of Post office or not. So, like others, her evidence also does not take the case of prosecution to anywhere.

29 PW-4 Nirmala Shankar Gaikwad states in her evidence (Exh. 45) that she used to deposit Rs.25/- per month and accused used to put her signature on a slip (Exh. 46). According to her, she deposited the amount of Rs. 25/- per month for three years but the said amount was never deposited by the accused in the Post Office.

30 The cross-examination of this witness is full of significance. In the cross-examination, she stated that she never enquired with the Post Office as to whether or not the amount was deposited in her account. This being so, she falsifies herself in cross-examination when she states that the amount so deposited by her was never deposited in Post Office by the accused. On what basis she deposed so is not clear. Therefore, the evidence of this witness does not help the prosecution.

31 PW-5 Ratnabai Haribhau Pawar states in her evidence (Exh 47) that she deposited total amount of Rs.2400/- at the rate of Rs.100/- per month with the accused. The accused used to make entries and put her signature on the card (Exh.48) in her presence. According to her, passbook was with the accused. Only Rs.100/- was shown in passbook and she committed default with the remaining amount.

32 In the cross-examination, she states that she did not lodge any complaint and therefore, it appears that she is not an aggrieved person. Her cross-examination then shows that she did not enquire with the concerned Post Office as to how much amount is deposited in her account. This being so, on what basis this witness made accusation against the accused in her examination-in-chief about the misappropriation of the amount of Rs.2300/- is not beyond comprehension.

33 As far as her evidence concerning that the accused used to acknowledge by putting her signature in the card is concerned, the same has come by way of omission. Then again the defence was deprived of proving that omission for want of examination of the investigating officer. Needless to say, the evidence of this witness also

does not help the prosecution.

34 PW-6 Suman Dhyaneshwar Bhalesai states in her evidence (Exh. 50) that she deposited the amount of Rs.25/- per month for about three years. Accused handed over one card (Exh. 51) to her on which she had put her signature after accepting the monthly amount. It is her further evidence that accused used the amount for her own use. After seeing the passbook, she came to know that accused had not deposited the amount in the Post office. Again, her examination-in-chief showing that she deposited the amount for three years and that the accused used to put her signature in her presence on the card towards acknowledgment on the receipt of the amount has come by way of omission which again the defence could not be proved for want of examination of investigating officer.

35 Her cross-examination also shows that she also had lodged the complaint on the very day when the informant lodged the report but the prosecution has nowhere explained about the correctness of this fact or otherwise. Her grievance appears to be that when she saw her passbook, she came to know that accused had not deposited any amount in the Post Office. It appears to be a wild guess inasmuch as before

coming to this conclusion, it was expected of her to approach the Post Office and verify the correct factual position i.e. to find out whether the amount deposited by her per month with the accused was in fact credited or not in her account. Surprisingly, her cross-examination shows that she did not make any enquiry with the Post Office before lodging any report. Thus, it appears to us only a guess work and nothing else on the part of this witness, which puts the prosecution in a bad light.

36 PW-8 Shantabai Hanumant Gaikwad states in her evidence (Exh. 54) that in July 1992, the accused called ladies and insisted for opening saving accounts of the Post Office by saying that she is an agent of Post Office. She opened her account and used to pay Rs.50/- per month. The card (Exh. 55) was given to her by accused and accused used to put her signature.

37 Again, the major portion of her examination-in-chief like instance of accused requesting her and others to open the saving account she being an agent of Post Office and that accused used to put her signature in her presence on a card issued by her have all come by way of omissions. This will not help the prosecution inasmuch as the

prosecution itself has not examined the investigating officer for the reasons best known to it and thereby thus deprived the defence from proving this material omission.

38 It further appears from her examination-in-chief that she came to know about misuse of the amount of PW-7. It is not her case that her amount was also misused by the accused. Even her cross-examination shows that she did not confirm with Post Office as to how much amount paid by her was deposited in her saving account by the accused. Thus, the fate of this witness also goes in the same way like the others.

39 The prosecution has also examined PW-10 and PW-11 from the Postal Department. PW-10 Madhura Mukund Karandikar states in her evidence (Exh.61) that at the relevant time she was attached to Talegaon Post Office as a clerk. She knows accused as R.D. agent. She used to collect the amount from the ladies and to deposit in Post Office. She was working as an agent. R.D. No. 527301 is issued by her Post Office. It is her further evidence that the said passbook bears a single seal of Post Office entry dated 23.07.92 and the signature of Post Master. Remaining seals appearing on the said passbooks are not from her Post Office. Passbook remains in the custody of agent. The amounts are shown at entries dated 25.11.92, 25.12.93, 25.01.93, 25.02.93,

25.03.93, 25.04.93, 25.05.93, 25.06.93, 25.07.93 and 25.08.93 in the said passbooks are not deposited in the Post Office.

40 What is clear from the examination-in-chief of this witness is that accused was an RD Agent and used to collect the amount from the women and to deposit the said amounts in the Post Office. She has deposed to the effect that certain amounts were shown to be deposited on certain dates but in fact were not deposited with the Post Office.

41 An interesting aspect of the evidence of this witness which is seen through her cross-examination is that she was never enquired by the police. This being so how this witness came to be examined by the prosecution is not made clear. Her cross-examination carries significance. She states in her cross-examination that she had not produced any document before the police to show that accused was working as an agent of the Post Office. As already noted, this witness was not enquired with by the police, there was no reason for her to give the necessary information pertaining to the transaction of accused in the capacity of an RD agent of the Post Office. Her evidence reflecting that although certain amounts were shown to be deposited on particular dates but in fact were not deposited also does not clear haze as to about whose account she was speaking to in her examination-in-chief.

42 The next witness from the Postal Department is PW 11-Laxman Murlidhar Kuchekar, who states in his evidence (Exh. 66) that at the relevant time he was sub-postmaster at Talegaon-Dabhade. According to him, Collector used to appoint an Agent under Small Saving Scheme and issue agency slip to concerned agent. His evidence further shows that Post Office issues passbook to concern subscriber. In the cross examination, this witness states that he cannot say without verifying the record that which account was opened at counter and which account was opened through the agent.

43 One thing is very much clear from the evidence of this witness and it is that the Collector used to appoint agent under Small Saving Scheme and accordingly issue agency slip to the concerned agent. The prosecution has not brought anything on record to prove at the first instance that the accused was appointed by the Collector as an agent of Small Saving Scheme and accordingly he issued a agency slip. We are at a loss of words to understand as to why the investigating officer was not brought before the Court by the prosecution as it was his duty to come before the Court and apprise the various concrete steps taken by him during the course of investigation. We have already pointed out the disadvantage of his non-examination.

44 Moreover, what is seen from the statement of accused recorded under Section 313 of Cr.P.C. is that she has denied her signatures on the slips which according to prosecution witnesses bore the signatures of accused as a token of acknowledgment of the receipt of the amount deposited by all the prosecution witnesses. The prosecution has not attempted to prove those signatures of the accused on those slips which were allegedly given and purportedly signed by the accused at the time of collection of RD amount. Seen from any angle, there is abysmal failure on the part of prosecution to establish necessary ingredients of the offence of criminal breach of trust.

45 An offence of criminal breach of trust necessarily involves the facts of (a) entrustment of the property; and (b) a dishonest misappropriation or conversion of the property by the agent to his own use; or (c) dishonest use or disposal of the property in violation of mandate of law prescribing the mode in which the entrustment is to be discharged; or (d) dishonest use or disposal of of the property in violation of the terms of any legal contract either express or implied regarding the discharge of the entrustment or willfully allowing some other person to do so. Thus, this offence consists of any one of four positive act, namely, misappropriation, conversion, user or disposal of property.

46 In the case in hand, the prosecution has not been able to establish satisfactory that there was entrustment of RD amount by the prosecution witnesses through the accused and that instead of depositing those amounts in the Post Office, the accused either misappropriated or converted it to her own use. Essentially speaking, the entrustment of the moneys with accused or for that matter that accused misappropriated those amounts in violation of trust reposed in her by the depositors, namely, prosecution witnesses, are not proved to the hilt by the prosecution. To sum up, we hold that the prosecution has failed to prove its case beyond reasonable doubt.

47 In the aforesaid premise, we conclude that the learned Trial Court has taken into consideration all the material aspects of the case. The prosecution has not been able to make out good grounds for interference at the hands of this Court. The impugned order being in accordance with law and being neither perverse nor illegal, the Appeal is liable to be dismissed. Hence, the Appeal is dismissed accordingly.

48 Bail bonds, if any, shall stand cancelled.

(V. G. BISHT, J.) **(PRASANNA B. VARALE, J.)**