

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1366 OF 2002

The State of Maharashtra)
...Appellant
(Orig. Complainant)

VERSUS

Sudhakar Rangnath Lokhande,)
Age about 50 years,)
R/o. Mahud Budruk,)
Taluka Sangola, Dist. Solapur)
...Respondent
(Orig Accused)

Mr A R Patil, APP for the Appellant – State.
Mr Vijaykumar B Dighe for the Respondent.

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

DATE : OCTOBER 08, 2020.

JUDGMENT (PER PRASANNA B. VARALE, J)

1. By present Criminal Appeal the Appellant – State of Maharashtra challenged the judgment and order passed by the Learned Civil Judge, Junior Division and JMFC, Sangola in R.C.C. No. 100/1992 dated 28th May, 2001 whereby the Respondent (Orig. Accused) was acquitted of offence punishable under Section 409 of Indian Penal Code (for short “IPC”).

2. Heard learned APP, Mr A R Patil for the Appellant – State and Mr Vijaykumar Dighe for the Respondent (Orig. Accused).

3. Learned APP appearing for the State vehemently submitted before this Court that the learned Court below failed to appreciate the evidence in its proper perspective and arrived at an erroneous conclusion. He further submitted that the learned Court below also failed to appreciate the oral evidence in the form of testimonies of witnesses and also the documentary evidence, more particularly, in the form of the cash book signed by the Respondent – Orig. Accused. He further submitted that though there was sufficient evidence for holding guilt for the offence under Section 409 of IPC learned Trial Court recorded the judgment and order of acquittal and prayed for allowing the appeal by setting aside the judgment and order passed by the Court below.

4. Per contra, learned Counsel for the Respondent submitted that the evidence brought before the Court below at the instance of the prosecution was too insufficient to hold the Respondent guilty. It is also vehemently submitted by the learned Counsel for Respondent that though the Respondent was charged for commission and offence under

Section 409 of IPC none of the ingredient forming the charge was satisfied by the cogent and reliable evidence and as such, the learned Trial Court committed no error. Learned Counsel for Respondent also further submitted that the oral evidence before the Court in the form of three witnesses hardly supports the case of the prosecution, on the contrary there are material admissions on record to show that the Respondent – Accused committed no crime. Thus, learned Counsel appearing for the Respondent prayed for dismissal of the appeal.

5. With the able assistance of both the Counsels appearing for the respective parties, we have gone through the material placed on record.

6. The case of the prosecution unfolds through the complainant Shri. Bhagirath Dinanath Tiwari (PW 1) who was the additional auditor of co-operative society at Pandharpur, namely, Mahud Budruk Vividha Karyakari Seva Sahakari Society (for short “**said Society**”) at the relevant time. PW 1 – Bhagirath had conducted an audit of the said society for the period of 01.07.1989 to 30.06.1990. Accused was the shop manager of three departments, namely, general department, gypsum department

and fair price shop no. 1. Being the shop manager the accused was entrusted with the duties such as, purchased of articles, sale of articles, crediting the proceeds of the sale and managing various registers. In his audit PW -1 found that the accused failed to credit an amount of Rs. 26,237.05 ps on 09.01.1990 and credited only Rs. 10,300/- in general department and he was in arrears of Rs. 15,937.05 ps. Similarly, in gypsum department on 10.07.1989 he was arrears of Rs. 3940/- and in fair price shop no. 1 the accused failed to credit balance of Rs. 10,825.42 ps. out of the said amount the accused was entitled to get Rs. 2,499/- from the said society. As such, he was in arrears of Rs. 8,326.42 ps. Thus, it was alleged that the accused misappropriated an amount of Rs. 28,203.47 ps and had committed the breach of trust. PW -1 submitted special report to District Special Auditor Co-operative Society, Solapur and on the directions of the District Special Officer Co-operative Societies, Solapur a complaint was registered bearing C.R. No. 25/92 with Police Station, Solapur.

The investigating agency was set in motion. Shri. Ambadas Yadhav (PW 3) who was head constable and P.S.O. in Sangola Police Station at the relevant time on registration of offence took over the

investigation and completed the necessary formalities, such as, recording the statement of witnesses, collection of documentary evidence, namely, cash book under seizure panchnama, receiving sanction for prosecution from the special auditor and after completing all these formalities charge-sheet was filed and submitted to the Court on 24.04.1992.

Charge was accordingly framed against the accused. The accused pleaded not guilty and his defence is of total denial.

7. Learned Trial Court on appreciation of evidence framed points for consideration and as negative finding was recorded, accused was acquitted of the charge. Learned Trial Court rightly framed the material point for consideration which can safely be stated as prerequisite for holding the accused guilty of the charge i.e. whether the prosecution proves that accused was the manager and incharge of general department, gypsum department and fair price shop no. 1 all run by the said society during the period in question i.e. 01.07.1989 and 30.06.1990 and was being entrusted with the property of the said business of the society and committed criminal breach of trust?

8. Learned Trial Court on appreciation of oral and

documentary evidence was unable to find any satisfactory material in the form of evidence against the accused. On going through the record, we are of the opinion that the learned Trial Judge committed no error and arrived at a right and just conclusion.

9. As the oral evidence consist of only three witnesses, it would be useful for our purposes to refer to oral evidence.

10. Shri. Bhagirath Tiwari (PW 1) in his testimony before the Court though provides necessary details such as, his capacity being additional auditor and conducting the duty for the period of 01.07.1989 to 30.06.1990 and then he stated about the reference about the amount which was not credited in the account of the said society by the accused in various departments. Though, in the earlier part of the judgment we have referred to these details, at the cost of repetition we may refer this details in brief i.e. in general department the balance amount as on 14.10.1989 of Rs. 26,237.05 ps was not credited in the account of said society and on 21.01.1990 the accused deposited 10,300/- as such the accused was liable to pay Rs. 15,937.05 ps. The accused ought to have deposited the said amount of Rs. 26,237.05 ps in the bank account and

the cash book maintained by the accused is refers to this amount and the cash book bears signature of the accused. PW 1 deposed that on 21.01.1990 the accused had deposited an amount of Rs. 10,300. Then he stated that in gypsum department the accused neither deposited the amount of Rs. 3940/- with the said society nor credited it in the bank account. Similarly, in the fair price shop no. 1 the balance as on 31.05.1990 was Rs. 10,825.42 ps and the accused failed to deposit said amount in the bank. Accused was entitled to receive an amount of Rs. 2499/- as it was standing on the credit of the accused. Thus deducting that amount the accused was liable to pay Rs. 8326.42 ps and he failed to do so. PW 1 stated before the Court that in all the accused was liable to pay an amount of Rs. 28,203.47 ps. PW 1 further stated that on 22.11.1990 notice was issued to accused calling his explanation and submitted before Court accused received the notice on 26.11.1990. He further stated that the accused initially neither forwarded any explanation nor made any payment and on 04.01.1991 it was informed to PW 1 through society that the accused had deposited an amount of Rs. 23,655.55 ps. On 05.09.1990 and on 04.01.1991 accused deposited an amount of Rs. 4547.72 ps.

It would be important to note that PW 1 in his examination-in-chief stated before the Court that accused by not depositing the sum in time and promptly committed temporary misappropriation. The cross-examination of this witness assumes importance for the reason that this witness in cross-examination stated that he had visited the society only on a single occasion. He admits that the proceeding of society is the basic documents and then there is further admission that the PW 1 was having no document to show that the accused was entrusted with the duty of any financial transaction and he was a person responsible for any such financial transaction. He further admits that accused was not in service from 31.05.1990 and he had visited the society after five months i.e. on 08.10.1990. He admits that accused never signed in his presence. This admissions of PW 1 makes it very clear that at no point of time PW 1 had witnessed signature of accused. There is also an admission in respect of some overwriting in the bill on 13.10.1989. PW 1 then admits that accused was not in service after 31.05.1990. This fact assumes an importance in the backdrop of the admission of PW 1 that person taking charge from the accused or any director of the society did not complain about misdeed/misappropriation after 31.05.1990.

11. PW 2 – Madhukar Waghmare is the secretary of Society since year 1982. PW 2 stated that as he had worked with the accused and he was acquainted with the signature and writing of the accused.

In cross-examination PW 2 admitted that at the time of recording his evidence Shri. Phule is the secretary of the said society and at that point of time he had no power to sign as secretary. Then he admits that the accused underwent an operation and for 2-3 months he was not attending his duty. He further admits that when the audit was conducted the accused was not in service and further admits that the cash book and general department does not bear any signature on 19.10.1989. This witness also admits about overwriting in the entries in the month of October 1989.

12. PW 3 – Ambadas Yadhav, investigating officer provides some details in respect of steps taken by him in the process and of investigation. It is very important to note that in the cross-examination of this witness he admits that there was no document to show that Sudhakar Lokhande (Accused) was the shop manager.

13. Learned Trial Court while appreciating the evidence at the

outset itself referred to the offence charged against accused i.e. Section 409 of IPC and then rightly observed as under:

8/- To prove the offense of criminal breach of trust prosecution has to prove that accused was interested with the property or had dominion over the property. And 2) the person interested dishonestly misappropriated or converted to his own found that property or dishonestly used or disposed of that property or willfully suffers any other person so to do in violation of any direction of law or any legal contract.

14. Learned Trial Court was also right in observing that the requirement to hold accused guilty the prosecution ought to have present sufficient material before Court that the accused has been entrusted with some property. The learned Trial Court then referring to the admissions in the cross-examination of PW 1, PW 2 and PW3 observed that there was no document to show that accused was the manager of the shop and except the bare words of additional auditor and informant that there is nothing on record to show that the accused was manager of three departments of the society and he was entrusted with the property of the

said society. Learned Trial Court also observed that there can also be an implied entrustment but there was absolutely no material before the Court to show that either there was an express entrustment or implied entrustment of the property i.e. amount with the accused.

15. The perusal of the charge-sheet also shows that the investigating agency recorded the statement of two witnesses, namely, Suresh Telang and Haridas Jadhav, apart from Madhukar Waghmare these witnesses are not examined before the Court. Thus the observations of the Trial Court that the police have recorded the statement of these two witnesses but these persons have not come before this Court is in consonance with the record.

16. As already referred to PW 2 who has admitted before Court that accused was operated and did not attend work for 2-3 months and further stated before Court that he was unable to show whether accused was maintaining record at the relevant time or not. Thus on the aspect of the allegation that the accused was maintaining record, absolutely no evidence is brought before the Court.

17. At the cost of repetition we state that there is neither

resolution of the society showing duties entrusted to the accused nor any appointment letter issued to the accused as manager working in three departments. Considering this aspect, in our opinion, the learned Trial Court was justified in observing that the prosecution was unable to prove the main ingredient of Section 409 of IPC.

18. In our opinion, in the present case, prosecution miserably failed to bring before Court the cogent and reliable evidence to satisfy the basic requirement of the alleged offence against the accused therefore, the view taken by the learned Court below was just and proper. The learned Court below neither committed any illegality nor could be find perversity in the judgment of the trial Court. Hence, Criminal Appeal is devoid of any merits. Resultantly, Criminal Appeal is dismissed.

19. This judgment will be digitally signed by the Private Secretary of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

(V.G. BISHT, J.)

(PRASANNA B. VARALE, J.)

Sachin
R. Patil

Digitally signed
by Sachin R. Patil
Date: 2020.11.23
16:45:20 +0530

Umesh Malani