

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

CRIMINAL APPEAL NO.771 OF 2019
WITH
APPLICATION FOR LEAVE TO APPEAL BY STATE (ALS) NO.153 OF 2018

DEEPAK PADMANABH PUJARI
VERSUS
ARKESH BABURAO PAGARE AND OTHERS

...
Advocate for the Appellant : Smt.M.D.Thube-Mhase i/by Lex Aquila
APP for the State : Shri S.G. Sangle
...

**CORAM : RAVINDRA V. GHUGE
&
B. U. DEBADWAR, JJ.**

DATE :- 18th March, 2021

Per Court :-

1. The appellant in Criminal Appeal No.771/2019, is the first informant. He is aggrieved by the judgment and order dated 10.01.2018 delivered by the learned Additional Sessions Judge, Aurangabad in Sessions Case No.294/2014 vide which, all the six accused have been acquitted from the charge of having committed the offences punishable under Sections 395, 109 and 120-B of the Indian Penal Code.
2. The informant had lodged the report of the offence on 21.06.2014 with the MIDC Cidco Police Station, Aurangabad. Narration in

the FIR indicates that accused No.5, an employee of an educational institution in which the appellant/ informant was an employee, was the driver of the vehicle in which, an amount of Rs.52 lacs were being transported for depositing the same in the Malkapur Urban Cooperative Bank account. The said amount was towards the collection of tuition fees of students admitted to the school. The entire sequence of events have been narrated in the FIR.

3. The learned advocate for the appellant and the learned prosecutor, have drawn our attention to the impugned judgment and the testimony of witnesses. It is pointed out that the amount was kept in a bag in which, the bank deposit slips were also preserved. Details in the bank deposit slips were filled in and accused No.5 was supposed to deposit the said amount along with slips in the concerned bank.

4. It was the allegation of the informant that accused No.5, in connivance with accused Nos.1 to 4 and 6, had hatched a criminal conspiracy so as to obstruct the car of the informant bearing number MH-20-CS-1642. Accordingly, the car was obstructed by the accused using motorcycles to create a picture of there being a slight collision between the vehicle and the motorcycle. A quarrel-like scene was created and with the assistance of the driver/ accused No.5, the bag of money and bank deposit slips kept beneath the rear seat of the driver, were stolen.

5. The learned advocate for the appellant submits that accused

No.4 entered a memorandum under Section 27 of the Evidence Act and led to the discovery and seizure of the bag, which was intact with the entire amount and bank deposit slips. This vital piece of evidence has been ignored by the Trial Court merely because the panch witness turned hostile. It is a matter of fact that the said amount has been directed by the Trial Court to be returned to the Chairperson of the educational institution as it belonged to it and not even accused No.4, much less, any other accused have claimed that the amount belongs to them.

6. The test identification parade was conducted and the accused were identified by the informant. These accused were also subsequently identified by the informant, who testified, before the Trial Court. This vital piece of evidence has also been ignored.

7. The informant had put forth a theory that accused No.1 had an auto recording mechanism in his cellphone instrument. Accused No.5 knew of the plan/ movement of the informant for depositing the money in the bank. He, therefore, spoke to accused No.1 and the telephonic conversation between the two, was recorded. Phones were seized. The CDR record was produced by the Nodal Officer of the cellular service provider along with the certificate under Section 65-B of the Evidence Act. Recorded telephonic conversation nails the accused. However, the Trial Court has ignored this vital piece of evidence on the ground that the Nodal Officer did not produce his appointment order and his nomination

as the Nodal Officer for the service provider.

8. In view of the above, we do find that this Criminal Appeal needs to be considered. In the event, we refuse to admit the appeal, the informant/ appellant would lose a valuable right of challenging the judgment of acquittal.

9. As such, this Criminal Appeal No.771/2019 is ADMITTED. Issue notice to the respondents for final hearing, returnable after one year. The learned prosecutor waives service of notice on admission, on behalf of respondent No.7/ State.

10. We direct the compliance of Section 390 of the Code of Criminal Procedure, 1973.

11. The learned Additional Sessions Judge, Aurangabad shall prepare the appeal paper book in Sessions Case No.294/2014 decided on 10.01.2018, by 31.08.2021 and transmit the same along with the original record and proceedings and muddemal property, if any, to reach this Court by 30.10.2021.

12. In view of the above and for the reasons recorded in the foregoing paragraphs, the application filed by the State seeking leave to appeal, is allowed. Taking into account the judgment delivered by this Court at Principal Seat in ***Satesh H. Chandiramani vs. Sadashiv Namdeo Kharabi and another***, in Criminal Application No.1201/2007 and Criminal Application No.1200/2007 decided on 10.02.2009, the application

seeking leave to appeal itself is treated as an appeal filed by the State. As such, this appeal is also ADMITTED and notice be issued to the respondents.

kps

(B. U. DEBADWAR, J.)

(RAVINDRA V. GHUGE, J.)