

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL REVISION NO. 81 OF 2020

The Buldhana District Central
Cooperative Bank Ltd.,
Buldhana, R. No. 24958 at Post,
Tah & District-Buldhana,
through its Chief Executive Officer.

.... **Applicant**

- **Versus** -

(1) The State of Maharashtra,
Through Station House Officer,
Chikhli Police Station, Chikhli,
Distt – Buldhana, Maharashtra.

(2) Dilip Dagadu Wankhede,
Aged 55 years, Occ : Business,
R/o Kundalik Nagar, Chikhli,
Tq. Chikhli, Dist. Buldhana.

.... **Respondents**
/Original Accused

Mr. A. P. Wachasunder, Advocate for the applicant
Mr. N. S. Rao, A.P.P. for the State/respondent 1
Mr. P. S. Wathore, Advocate for respondent 2

CORAM : ROHIT B. DEO, J.
DATED : 26th August, 2021.

JUDGMENT

The Applicant, the Buldhana District Central Cooperative Bank Limited (hereinafter referred to as the complainant) is questioning the judgment dated 26-2-2018 rendered by the Judicial

Magistrate First Class, Court 2, Chikhli, District Buldhana in Regular Criminal Case 216/2004 whereby respondent 2 (who shall be hereinafter referred to as the accused) is acquitted of the offences punishable under Sections 408, 420, 467, 468, 470 and 471 of the Indian Penal Code. The complainant is further questioning the judgment dated 26-9-2019 rendered by the learned Sessions Judge, Buldana in Criminal Appeal 20/2018, whereby the appeal preferred by the complainant challenging the judgment of acquittal, is rejected.

2. Brief facts are as follows.

(i) Mr. Gulabrao Madhaorao Dukare lodged report dated 14-7-2002 with Police Station, Andhera alleging that the accused, who was then discharging duty as the Manager of Antri Khedekar Branch, misappropriated amount of Rs. 19,56,254/- (Rupees Nineteen Lacs Fifty Six Thousand Two Hundred Fifty Four) out of which amount of Rs. 15,06,254/- is deposited.

(ii) On the basis of the report lodged by Mr. Gulabrao Dukare, police registered offences punishable under Sections 408, 420, 467, 468, 470 and 471 of the Indian Penal Code (IPC) and upon

completion of the investigation, submitted the final report under Section 173 of the Code of Criminal Procedure, 1973 in the Court of jurisdictional Magistrate.

(iii) The learned Magistrate framed charge (Exhibit 10) and recorded the plea of the accused who abjured guilt and claimed a trial in accordance with law.

(iv) The prosecution examined as many as 11 witnesses. The accused did not step into the witness box. On appreciation of evidence on record, the learned Magistrate was pleased to record a finding of innocence which is upheld by the learned Sessions Judge while dismissing the appeal preferred by the complainant.

3. In all fairness to the learned counsel for the complainant Mr. Wachasunder, it is not even argued that the evidence must be reappreciated. The thrust of the submissions is that both the Courts erred in not considering that the accused was the Branch Manager and entrustment of the property of the complainant – Bank is implicit. The other submission is that in view of the provisions of the Maharashtra Cooperative Societies Act read with Section 21 of the

IPC, the accused is a public servant and ought to have been charged under Section 409 of the IPC.

4. Considering the latter submission first, it is fairly admitted that such a contention is not raised in appeal. I am not inclined to look into the submission that the charge framed was defective which is advanced at the stage of final hearing of revision. That apart, the grievance is that the charge excluded the graver offence which is punishable under Section 409 of IPC. The Courts have recorded a concurrent finding that the evidence on record is grossly insufficient to prove misappropriation. It is difficult to appreciate, even if it is assumed that charge under Section 409 could have been framed, as to the prejudice caused, in the sense that even the lesser of the offence is not proved on the basis of the evidence adduced.

5. Adverting to the first submission, while there cannot be any dispute as regards the submission that the property of the bank would be held in trust by the Branch Manager, what is found by the Courts below is that there is no evidence to show breach of trust or misappropriation.

6. While, reappreciation of the evidence must not be undertaken in exercise of revisional jurisdiction, in the context of the submission that the findings rendered are perverse, a brief reference to the evidence, is necessary. P.W. 4 Dadarao Deshmukh and P.W. 5 Digambar Surve inspected the record of Antri Khedekar Branch and allegedly found that the accused manipulated the documents and misappropriated the amounts. P.W. 4 Dadarao Deshmukh has deposed that only after verifying the original record, he would be in a position to explain the misappropriation. The inspection report was only marked as Article "A" for identification and is not proved. P.W. 4 did not bring with him the original inspection report filed in the Court. In this view of the matter, the Courts below rightly held that in the absence of the original inspection report, the evidence of the officers who inspected the branch is of no avail. Similarly, the evidence of P.W. 2 Bhaktapralhad Sarode does not take the case of the complainant any further since he has no personal knowledge of the transactions, having taken over from the accused the reins of the Branch only on 6-4-2002. While P.W. 2 Sarode does state that the accused withdrew amount of Rs. 19,50,000/- from saving account, cash credit account etc. and misappropriated the said amount, the list

detailing the names of the account holders and the amount withdrawn is not prepared by him, is the admission. The statement of P.W. 2 Sarode that the disputed withdrawal slips and cheques are signed by the accused is a fragile piece of evidence, particularly, since the handwriting expert's opinion is not proved.

7. It is true that if any person did have an opportunity to commit the misappropriation, it was the accused since the only other employee working in the bank was the Peon. However, suspicion, and even grave suspicion, cannot be the substitute of proof. The Courts below have recorded concurrent finding that the offences alleged are not proved. In exercise of revisional jurisdiction, the said finding cannot be upset in the absence of perversity. An acquittal cannot be converted into conviction and nothing is demonstrated as would make out a case of retrial or rehearing.

8. The revision is without substance and is dismissed.

JUDGE

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