

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 393 OF 2006

State of Maharashtra,)
Through Police Station, Shrigonda,)
at the instance of Vasant Ambadas) ...Appellant
Mohare, r/o Shrigonda, Tal.)
Shrigonda, Dist. Ahmednagar)

Versus

Ramesh Rajaram Kulthe,)
Age : 47 yrs,)
R/o. Shrigonda Factory,) ...Respondent
Tal. Shrigonda, Dist. Ahmednagar.)

Mr. S.P. Sonpawale, APP for Appellant – State.
Mr. K.G. Patil, Advocate h/f. Mr. S.S. Wagh, for
Respondent.

CORAM : R.G. AVACHAT &
R.M. JOSHI, JJ.

DATE : NOVEMBER 29, 2022.

JUDGMENT (PER R.M. JOSHI, J)

1. The State being aggrieved by the impugned judgment and order passed by Chief Judicial Magistrate, Ahmednagar on 25.01.2006 in RCC No. 363/1995 acquitting accused Ramesh Rajaram Kulthe has preferred this appeal under Section 378(1) of the Code of Criminal Procedure, 1973.

2. Short case of the prosecution which led to conducting of trial against accused for the offence punishable under Section 409 of Indian Penal Code, 1860

is that accused was godown keeper at Shrigonda and was entrusted with wheat, superfine rice and hybrid jawar for its storage in the godown. During the period of 12.11.1982 to 14.10.1983 and from 01.01.1984 to 20.05.1984, it was found that there was shortage of these items disproportionately. From audit report, it was found that the accused has misappropriated the said food grains to the extent of amount of Rs. 5 lacs and hence, offence came to be registered against him.

3. In order to prove charge framed at Exhibit 32 by the Chief Judicial Magistrate, Ahmednagar, prosecution has examined 5 witnesses i.e., Vasant Mohare (PW 1), Supply Inspector, Shrigonda, Ashok Deolalikar (PW 2), Account Superintendent / Auditor, Vasant Rakshasbhuvankar (PW 3), Tahsildar, Sarjerao Shinde (PW 4), Supply Inspector and Damodhar Shete (PW 5), District Supply Officer. Learned Trial Court after taking into consideration material evidence on record and giving hearing to both sides passed impugned judgment wherein it is held that prosecution has failed to prove beyond reasonable doubt that accused was entrusted with particular quantity of food grains

during the period 12.11.1982 to 14.10.1983 and 01.01.1984 to 20.05.1984 and has misappropriated 600 quintal of food grains worth Rs. 7 lacs and odd amount and was acquitted by extending benefit of doubt.

4. Heard learned APP and learned Advocate for accused.

5. It is settled position of law that the scope for interference in an appeal against acquittal is very limited and unless it is shown that the view taken by the trial Court is impossible or perverse, it is not permissible to interfere with the findings of acquittal. No doubt Appellate Court has power to re-appreciate the evidence and arrive at its own findings, however, if two views are possible then the one adopted by the trial Court in favour of accused needs to be maintained.

6. In order to establish charge against accused for offence of criminal breach of trust, it must be proved that the particular amount of food grains were entrusted to him for the specified period and the same is misappropriated dishonestly. Since for two different

periods the said misappropriation is alleged, there has to be concrete evidence of entrustment during this time.

7. Perusal of evidence on record shows that Vasant Mohare, Supply Inspector has accepted that the Senior Clerk is expected to visit godown on day to day basis and ascertain actual stock therein. It is also accepted that it is the duty of Supply Officer to ascertain whether there is damage to godown due to rats or break in the wall, but no document is there on record to show that Senior Clerk paid day to day visit as required nor any inquiry about the condition of godown was done. It is also seen from the evidence of Ashok, who conducted audit, that the causing of damage by natural calamity, rat, mice etc., is permissible and all these aspects were not considered at the time of audit. He further accepted that his report is not conclusive to show shortage or misappropriation. It is further came in the evidence of the prosecution that it is the duty of the Tahsildar, who is custodian of the godown, to periodically check the stock and to forward report of the shortage of the food grains to Collector.

8. In the instant case, the Tahsildar has forwarded report of 16 cases to Collector and as rightly observed by the Trial Court that only after being satisfied that the said proposal it could have been so forwarded to the Collector. It seems that only because Collector refused to accept report and passed order of recovery of the amount with direction to file complaint in the matter, present proceeding came to be initiated against accused. It is also pertinent to note that the audit report was submitted on 20.08.1984 whereas the first information report came to be lodged after lapse of period of 5 years. There is inordinate delay in lodging the first information report which has not been properly explained by the prosecution. This aspect is becomes an additional ground to create reasonable doubt about genuineness of the prosecution.

9. From the contentions of learned APP and from the grounds in the appeal memo, it seems that prosecution is contending about there being no explanation by the accused for performance of his duties diligently. It is also sought to be contended that learned Trial Court ought to have considered the

responsibility attached to the post of godown keeper and whether he has discharged those responsibilities. There is no need to emphasis that burden is on the prosecution to prove the charge against accused beyond reasonable doubt and there is no burden on accused to prove his innocence. In the instance case, there ought to have positive evidence led to show that accused was entrusted with particular amount of food grains and he misappropriated the same.

10. Learned Trial Court has taken into consideration entire evidence on record and appreciated it in proper perspective and has recorded finding of there being no evidence to prove the guilt of accused beyond reasonable doubt. In the facts and circumstances of the case, no perversity is found in the said findings recorded by the learned Trial Court.

11. In the result, present appeal must fail. Hence, we pass following order:

O R D E R

Criminal Appeal is dismissed.

(R.M. JOSHI, J.)

(R.G. AVACHAT, J.)