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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1312 OF 2003**

The State of Maharashtra

... Appellant

V/s.

Purushottam Narayan Ghumare and Ors.

... Respondents

Mr.H.J.Dedhia, APP for Appellant - State.

Mr.Sumit Kate i/b. Dr.Uday Warunjikar, Advocate for Respondent Nos. 1 to 3.

CORAM : S. M. MODAK, J.

DATE : 2nd DECEMBER, 2022

P. C. :-

1. Heard learned APP Shri.Dedhia, for the Appellant – Complainant and learned Advocate Shri.Sumit Kate for Respondents-Accused. These accused were prosecuted for committing an offence punishable under Section 408 read with 34 of the Indian Penal Code.

2. The sum and substance is that all of them in furtherance of their common intention have misappropriated the amount of Rs.4,78,591.15 paisa belonging to the Society. They have pleaded not guilty.

3. The Prosecution have attempted to examine the first informant – auditor Shri.Shantaram Nana Purkar. His chief-examination was conducted partly, but from 6th July, 2001, he has not turned up to the Court inspite of the best efforts of the Prosecution that is how, for want of evidence, all the accused were acquitted.

4. The allegation is that the Accused No.1 was working as a Salesman in the Society and he was supposed to maintain the accounts of fertilizers department belonging to the Society. He has prepared a false record of sale and purchase and not shown figures in the record and has disposed of the fertilizers and that is how, he has misappropriated the amount. The Accused Nos. 2 and 3 were the Chairman and Secretary respectively. They have not supervised and inspected the record and accordingly, assisted the Accused No.1 to commit that offence. The first informant has audited the accounts of Janori Vividha Sewa Sahakari Society for the period 1st July, 1991 to 31st March, 1993. During that, this fact is disclosed.

5. The grievance of the Prosecution in this Appeal is that, the trial Court ought to have issued a non bailable warrant against the first informant and hence, the acquittal is bad in law. With the assistance of learned APP and Respondents' Counsel, I have perused the roznama. The chief-examination started on 19th April, 2001 and it continued till 6th July, 2001. Thereafter, he has remained absent. Roznama shows that learned Magistrate has also issued a bailable warrant against him. Even warrant was issued through Special Police Constable. However, Police could not serve it. It went on from 6th September, 2001 upto 17th December, 2002. However, the Prosecution could not secure his presence. The first informant is the main witness.

6. The Accused is having right to speedy trial. The case is of the year 1995. If the Prosecution could not secure the presence of any of the witnesses inspite of various orders of the Court, the Court cannot be

blamed for that. Ultimately, Court has to secure interests of both the parties. Hence, this Court does not find any fault in the observations of the trial Court.

7. During pendency of this Appeal, there was an application moved on behalf of the Society for returning the documents produced before the trial Court. Because, they were required in an Arbitration Suit going on before the Co-operative Court. This Court has rejected that leave vide order dated 1st April, 2009 and a liberty was granted to apply for certified copies. It is not known what is the status of that Suit. The Suit was filed for recovery of the amount against these Respondents. The law will take its own course so far as that Suit is concerned. It does not affect anyway the hearing of this Appeal.

8. As there is no merit in the Appeal, it is dismissed.

9. Office is directed to return the record and proceeding to the trial Court with direction to pass appropriate orders about the record.

[S. M. MODAK, J.]