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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

APPLICATION FOR LEAVE TO APPEAL (PVT) NO. 83 OF 2022

Guma Tech Marine Services
A registered Partnership Firm under the
Indian Partnership Act, 1932 having its
Office at 409, Palm Spring Centre, Malad,
Link Road, Malad (West), Mumbai – 400 064.
And Acting through its Partner Mr. G.V. Seetharam,
Age : 73 years. **.. Appellant**

Versus

1. **State of Maharashtra.**

2. **Mr. Avdesh Kumar Ganesh Prasad Saxena,**
Age : 68 years,
R/o. C-701, Sai Shradha Co-operative
Housing Society Ltd., Phase – I, Ashokvan,
Borivali (East), Mumbai – 400 066. **.. Respondents**

Mr. Chinmay Moni i/by Mr. Harshal S. Suryawanshi, Advocate for Appellant.
Mrs. J.S. Lohakare, APP for the State.
Mr. K.H. Holambe Patil, Advocate for Respondent No.2.

CORAM : A.S. GADKARI &
MILIND N. JADHAV, JJ.

DATE : 18th October, 2022.

JUDGMENT (PER : MILIND N. JADHAV, J.)

. By the present Application for Leave to Appeal, Appellant - partnership firm has challenged the Judgment and Order of acquittal dated 28.03.2022 of Respondent No. 2 (original accused No. 3) passed by the Metropolitan Magistrate, 40th Court, Girgaon, Mumbai (for short "**Trial Court**") in CC No.108/SW/2011. By the impugned

Judgment, the learned Trial Court has acquitted the accused i.e. Respondent No.2 of the offences punishable under Sections 408 and 467 of the Indian Penal Code, 1860 (for short "**IPC**").

2. Appellant is the original complainant. Mr. G.V. Seetharam on behalf of Guma Tech Marine Services, a partnership firm lodged the complaint against original accused Nos. 1 and Respondent No. 2 (original accused No. 3). It was contended that original accused No. 1 was working as General Manager with the Appellant firm and in connivance and collusion with Respondent No. 2 (Manager of State Bank of India, Hughes Road Branch), had fraudulently opened a bank account in the name of Appellant firm and encashed a cheque for Rs.50,000/- received from one of its client. Appellant alleged that for opening the bank account, Respondent No. 2 aided and assisted original accused No. 1 in preparation of false and forged documents to open the said account which was not to the knowledge of Appellant. That both accused persons were related to each other. Accordingly crime was registered under Sections 408 and 467 IPC for Criminal breach of trust and forgery.

3. We have heard Mr. Chinmay Moni, Advocate for Appellant, Mrs. J.S. Lohakare, learned APP for the State and Mr. K.H. Holambe Patil, Advocate for Respondent No.2 and with their able assistance perused the record of the case.

4. It is alleged that Respondent No.2 was the brother in law of original accused No.1 and was working as Assistant Manager in State Bank of India, Hughes Road Branch. That on 05.11.2019 a savings account was opened in the said branch by original accused No. 1 in collusion with Respondent No. 2 in the name of Appellant firm. Today, admittedly the original accused No.1 is dead. Hence, Appellant before the Trial Court proceeded only against Respondent No.2. From perusal of record it is seen that original accused No.1 who was General Manager of the Appellant firm had opened the bank account in the name of the firm by furnishing the requisite documents to the Bank and thereafter had got one cheque of Rs.50,000/- received from the firm's client encashed in the said account and misappropriated the monies. That the firm was not aware about opening of this bank account, encahsment and misappropriation by original accused No. 1.

5. It is pertinent to note that despite leading evidence, record does not reveal that Respondent No. 2 was the brother in law or related to original accused No. 1. Further assuming at the highest that they both were related, the question that requires an answer is whether Respondent No. 2 (employee of the bank) can be prosecuted for cheating and committing forgery as alleged in the complaint. What is pertinent to note is that there is no evidence brought on record to show that Respondent No. 2 and the original accused No. 1 shared a common intention to commit the above offence. Appellant has referred to and relied upon the bank opening statement / form, viz. filled in by the original accused No. 1 and the documents annexed to the said form, viz. copy of the PAN card and such other required documents for opening the bank account.

6. Appellant has also agitated and pleaded that there were several discrepancies which were observed while filling up of various columns in the bank account opening form and Respondent No. 2 had turned a blind eye to the same. However, if at all any discrepancies were there, it would have to be deciphered whether the same could be attributable to the role of original accused No. 1 or the Respondent No.2 herein. It is important to note that Respondent No. 2 was the employer of the Bank. He has not been the beneficiary of the monies which have been encahsed and misappropriated by original accused No. 1 nor there is an allegation by Appellant that, any part of the said misappropriated amount was received by or paid over to Respondent No. 2. There is one more allegation levelled by Appellant that, the original accused No. 1 had opened the bank account in collusion with Respondent No. 2 and obtained a loan by using forged documents of the employer i.e. Appellant firm. However, this case is not supported by any material or evidence whatsoever as seen from the record of the case. In order to level the charge of forgery, active collusion of

Respondent No.2 who was the employee of State Bank of India is required to be established in conjunction with the role of original accused No. 1. All that is stated in the complaint filed by Appellant is that the documents which were submitted by original accused No. 1 were verified by Respondent No. 2 and hence he allowed the account to be opened and was hand-in-glove with him.

7. It is pertinent to note that verification of documents is done by the Bank Officer on submission of the documents and instructions given by the customer. That original accused No. 1 was the General Manager of Appellant firm and therefore had access to all its documents which he may have submitted for opening of the account. It cannot be therefore inferred that Respondent No. 2 was the author of the said documents or was instrumental in assisting the original accused No. 1 in filing up the form and providing incorrect information to the bank. Entire personal knowledge of the factual information entered into the account opening form was only to the personal knowledge of the original accused No. 1 and not Respondent No. 2.

8. Further it is to be noted that Section 467 IPC states that a person who forges a document which purports to be a valuable security or a will, or an authority to adopt a son, or which purports to give authority to any person to make or transfer any valuable security, or to receive the principal, interest or dividends thereon, or to receive or deliver any money, movable property, or valuable security, or any document purporting to be an acquittance or receipt acknowledging the payment of money, or an acquittance or receipt for the delivery of any movable property or valuable security, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. The provisions is very widely worded.

8.1. Section 408 IPC states that whoever being a clerk or servant or employed as a clerk or servant and being in any manner entrusted in such capacity with property, or with any dominion over property, commits criminal breach of trust in respect of that property, shall be punished with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine.

9. Both the above provisions are succinct and clear. Role of Respondent No. 2 in opening the account opening form in the present case cannot be said to fall within the ambit of the aforesaid provisions of IPC.

10. We fail to understand as to how the above provisions of IPC can be made attributable to the role of Respondent No. 2 in the present case.

11. In view of the above discussion and findings, we do not find any reason to interfere with the reasoned and speaking Judgment passed by the learned Trial Court under Exhibit 74. It calls for no interference by this court and deserves to be sustained.

12. In view of the above, Application for Leave to Appeal is dismissed.

[MILIND N. JADHAV, J.] **[A.S. GADKARI, J.]**

AJAY TRAMBAK UGALMUGALE Digitally signed by AJAY TRAMBAK UGALMUGALE Date: 2022.11.22 10:29:21 +0530