

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.1062 OF 2007

The State of Maharashtra

Appellant
(Org.Complainant)

versus

1. Suresh Madhukar Kardak,
Age 39 years, R/o.10 Chal, S.241,
ISP Quarters, Nashikroad,

2. Diwakar Sambhaji Bhawar, Age 30 years,
R/o.Gorewadi, Shastrinagar,
Nashikroad,

3. Shivnath Bidadin Harijan, Age 50 years,
(Dead,

4. Ramchandra Durbal Harijan, Age 40 years,
R/o.Nanawali Kathada,
Near Dr.Thakare's Hospital, Nashik;

5. Majaj Harun Kokani, Age 25 years,
R/o.Bagwanpura, House No.3257,
Nasik.

Respondents
(Org.Accused)

Mr.S.H.Yadav, APP, for Appellant-State.
Mr.R.D.Soni i/by Ram & Co. for Respondents.

CORAM : PRAKASH D. NAIK, J.

DATE : 5th January 2022

JUDGMENT :

1. This appeal has been preferred by the State of Maharashtra under Section 378(3) of Code of Criminal Procedure challenging the judgment and order dated 3rd August 2005 passed by learned

Judicial Magistrate, First Class, Nashik Road, in Regular Criminal Case No.16 of 2001 acquitting the respondents of the offences punishable under Section 381 r/w 34 of Indian Penal Code.

2. The case of prosecution is that the accused no.1 was serving with Indian Security Press. He removed 1,000 stamp papers of Rs.1,000/- denomination and handed over the same to the co-accused for sale. During the course of investigation 500 stamp papers of Rs.1,000/- each were recovered from accused nos.2 to 5. Search at the residence of accused no.1 had resulted in recovery of 1,500 stamps of Rs.1,000/- denomination. The complaint was lodged by various persons on behalf of India Security Press. During the course of investigation accused were arrested and directed to be released on bail. On completing investigation charge sheet was filed.

3. Charge was framed against accused u/s.381 r/w 34 of Indian Penal Code vide order dated 25th October 2002. The charge indicate that prior to four months of 24th October 2000, the accused no.1 was in service with Security Press and committed theft of 1,000 stamps of Rs.1,000/- each and in furtherance of common intention handed over them to accused nos.2 to 5 for sell and thereby committed offence punishable under Sections 381 r/w 34 of Indian Penal Code.

4. The prosecution had examined seven witnesses in support of its case. The statement of accused was recorded thereafter u/s.313 of Cr.P.C.. For the reasons stated in the judgment, the accused were acquitted of the offences charged against them. It appears that respondent no.3 was dead during the course of trial and case against him had abated.

5. Learned APP submitted that learned Trial Court has committed error in appreciating the evidence. The prosecution has been able to prove through evidence of independent witness PW-1 that the accused no.1 was involved in siphoning of/theft of number of stamp papers from the India Security Press and they were handed over to other accused for the purpose of sell. The evidence of other witnesses corroborates the prosecution case. The offence is of serious nature. Huge number of stamp papers were recovered during the course of investigation. The panch witnesses have supported the prosecution case. The learned Judge has overlooked the evidence of PW-1 who is the star witness and the other witnesses who have supported the prosecution case. There was sufficient evidence to establish that accused have committed theft of stamp papers. The Trial Court has committed error in coming to the conclusion that the prosecution has failed to prove that four months prior to 24th October 2000, the accused no.1 was in service with India Security Press and was involved in theft of stamp papers with other accused. There was no reason to disbelieve the version of prosecution witnesses and hence the judgment of Trial Court is perverse and deserves to be set aside. The prosecution had examined the panch witnesses involved in the seizure of stamp papers. The evidence of independent witnesses has not been considered by the Trial Court. The demonstration panchanama also corroborates the prosecution case. On flimsy grounds the Trial Court has disbelieved the evidence of witnesses adduced by prosecution. Police Inspector Deshmukh and PSI Pawar were part of raiding party. PSI Pawar prepared seizure panchanama. The seizure is corroborated and minor infirmities do not affect the case of

prosecution. The prosecution had examined about seven witnesses and thus there was no reason to discard their evidence. The prosecution has proved its case beyond doubt.

6. Learned advocate Mr.Soni representing the respondents-accused has submitted that this Court is dealing with the appeal against acquittal. The parameters for deciding an appeal against acquittal has been laid down by Supreme Court and this Court in various decisions. The judgment of Trial Court should be perverse, contrary to law or contrary to the evidence on record. It is in these circumstances the Appellate Court may intervene in the decision of the Trial Court acquitting the accused. Learned counsel took me through the evidence of witnesses examined by prosecution and cross-examination and submitted that there evidence suffers from serious infirmities. There are discrepancies in the evidence of prosecution which indicate that the prosecution has failed to establish its case. The theory of commission of theft of huge stamp papers at the instance of accused no1 has been disbelieved by the Trial Court by giving cogent reasons. The evidence of PW-2 would indicate that it is not possible to siphon of stamp papers on the person by accused. The evidence indicate that in India Security Press security there is personal check up of every employee while entering and leaving the premises of India Security Press. There were discrepancies of the alleged stolen stamp papers and those which were recovered. The prosecution case has also failed to establish that the stamp papers were recovered from the residence of accused. There are contradictions in the complaint and the evidence of witnesses with regards to the nature of articles seized viz court fee stamps and stamp papers. In the light of serious infirmities cropped

up in the investigation and the evidence adduced before the Trial Court, the Trial Court has rightly acquitted the accused and the charges for which they were prosecuted. Learned counsel took me through examination-in-chief of the star witness of prosecution PW-1 and the cross-examination. He pointed out the infirmities in his evidence. The evidence of PW-7 and PW-8 was also perused and it was pointed out that theft of stamp papers qua accused no.1 and handing over them to other accused, recovery of stamp papers from the residence of accused, has not been establish beyond doubt. In these circumstances, there is no reason to defer with the view expressed by Trial Court acquitting the accused.

7. I have heard both the sides. I have perused the evidence on record and the reasons assigned by the Trial Court for acquitting the accused. The thrust of the prosecution is primarily on the evidence of PW-1 who is purportedly an independent witness. The examination-in-chief and cross-examination of the said witness does not inspire confidence to establish the prosecution case. The Trial Court has rightly appreciated the evidence of this witness as well as all the other witnesses and come to the conclusion that case suffers from various infirmities. The cross-examination of PW-1 would indicate that there were serious discrepancies in the investigation of seizure of stamp papers. The witnesses have deposed that their signatures were not obtained on the seal affixed on the muddemal property. It was mentioned in the panchanama that muddemal property was sealed before him, however, it was not mentioned in panchanama Exhibit-39 that muddemal property was not sealed before them. On perusal of Exhibit-39 he stated that it does not bear the signature of accused. He further deposed that he was acquainted

with Police Inspector Deshmukh since last 20 years. He had friendly relationship with him. He used to act as per his say. He do not know whether police had obtained signature of the persons from whom stamp papers were seized. The evidence of other witnesses indicate that it is difficult to accept the prosecution case that accused no.1 had taken out huge quantity of stamp papers from India Security Press. There was search at the gate of India Security Press whenever persons are entering into the premises and exiting the premises. This creates doubt about the prosecution case that the accused has removed such quantity of stamps and stamp papers from the premises of India Security Press. There were discrepancies in the seals by Investigating agency. The Trial Court taken note of these discrepancies and reached to the conclusion that prosecution has failed to prove its case and ordered acquittal. This Court is conscious of the fact that Trial Court has appreciated the evidence and rendered the judgment and the view of the Trial Court can be interfered if the judgment is perverse, results in miscarriage of justice. Where the view taken by the Trial Court was not perverse but borne out by evidence on record and reasonably possible, it does not warrant interference. The Trial Court has given benefit of doubt to the accused. The Trial Court has appreciated the evidence and acquitted the accused. In the light of the findings of the Trial Court, I do not find any reason to defer with the view taken by the Trial Court, and therefore, this appeal must fail.

ORDER

- (i) Criminal Appeal No.1062 of 2007 is dismissed and disposed of.

(PRAKASH D. NAIK, J.)