

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR
CRIMINAL REVISION APPLICATION NO.138 OF 2022

Hareram Babarao Wakode

Vs.

State of Maharashtra, through, P.S.O. PS., Akot File, Akola Dist. Akola

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. H. M. Mohta, Advocate for applicant.

Mr. S. M. Ghodeswar, APP for non-applicant/State.

CORAM : AVINASH G. GHAROTE, J.

DATE : 20/06/2022

The only ground urged, is that the seizure panchnama of the sand in respect of which the applicant is convicted for having committed theft under Section 379 of the Indian Penal Code, has not been proved by examining the witnesses to the panchnama at Exh.16, and therefore, the learned Appellate Court was not justified in setting aside the judgment of acquittal dated 18.2.2015 passed by the learned trial Court, by the impugned judgment dated 15.6.2022. A copy of the property search and seizure form is shown to the Court at Exh.16 which is dated 6.2.2014, which indicates that the panchs to the seizure R.C. Khandare and Milind Kamble, have been examined as PW 2 Exh.17 and PW 3 at Exh.13, from the record of the exhibited documents and the evidence tendered across the bar by Mr. Mohta, learned counsel for the appellant, which is accepted and marked as 'X' collectively for the purpose of identification. It is not disputed by him that there is no

transit pass or any document which would indicate the ownership of the sand by the applicant or the entitlement to transport it. The contention is that the witnesses to the seizure of the tractor trolley and the spot panchnama have not been examined and therefore, the entire judgment which is based on the testimony of PWs 2 and 3, who have seized the vehicle with sand in question under the seizure memo at Exh.16 from the spot, cannot be relied upon. He further submits that the sand in question has not been sent to the chemical analyzer for the purpose for determining as to from which Ghat it belongs. Insofar as the contention regarding the sending of sand to chemical analyzer, in my considered opinion it is misplaced, for as per the provisions of Section 48 of the MLR Code any transportation of sand, without a legal transit pass has been made an offence. Admittedly, the applicant did not possess transit pass whatsoever, considering which, the only conclusion which could have been logically drawn was that the sand was stolen by the applicant, either from the sand Ghat or any other place. Therefore the question of sending the same to a chemical analyzer for analysis did not arise at all. That apart, a perusal of Section 48 of the MLR Code would indicate that PW 2 who was the Talathi/Revenue Officer had the authority to conduct the seizure which has been so done by him under Exh.16. By examination of PWs 2 and 3, Exh.16 the seizure memo in respect of sand in question has been

duly proved by the prosecution. The learned trial Court did not advert to this aspect at all but went on a different footing altogether to arrive at a finding that the offence was not made out and that the prosecution had failed to demonstrate as to from where the sand was brought by the applicant. In my considered opinion, when excavation and transportation of sand, cannot be done under a permit issued by the competent authority, the question as to from where the sand was procured, becomes immaterial, considering the fact that the applicant was found with the sand in his possession without a legal valid permit which is an admitted position on record. The learned Appellate Court therefore, had rightly set aside the judgment of the learned Magistrate as that was the sole ground for acquittal and has rightly considered that though the witnesses to Exhs.20 and 21 may not have been examined, the witnesses to Exh.16 which deals with seizure of the sand, have been examined as PWs 2 and 3 and have rightly proved Exh.16, which coupled with the fact that the applicant did not have any permit for transportation of the same lead to no other inference that the sand was stolen, considering which, I do not see any reason in the instant matter to interfere in the well reasoned judgment of the learned Appellate Court.

The revision is accordingly rejected.

JUDGE