

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**CRIMINAL APPEAL NO.417 OF 2002**

The State of Maharashtra

Through :

Madhukar Ganesh Kurekar,

Age : 52 years, Occu.: Service,

R/o.: Sangam Coloney, Deopur,

Dhule

.... APPELLANT  
(Org. Complainant)

**VERSUS**

1. Chandrakant Shivram Ahire,

Age : 32 years,

R/o.: Kawathe, Tal. Sakri,

District : Dhule

2. Nandabai d/o Shivram Ahire,

Age : 30 years, Occu.: Agriculturist,

R/o.: Kawathe, Tal.: Sakri,

District : Dhule

.... RESPONDENT  
(Orig. Accused)

....

A.P.P. for the Respondent-State : Smt. D. S. Jape

Advocate for the Accused : Mr. Joydeep Chatterji

....

**CORAM : SANDIPKUMAR C. MORE, J.**

**RESERVED ON : 06/09/2023**

**PRONOUNCED ON : 11/10/2023**

***JUDGMENT :***

1. The State of Maharashtra through original informant -  
Madhukar Ganesh Kurekar has challenged the acquittal of

respondents / accused from the offence under Section 406, 419, 420 and 511 r.w. 34 of IPC recorded by the learned Joint Judicial Magistrate First Class at Sakri (hereinafter referred to as 'the learned trial court') under judgment and order dated 22/03/2002 in RCC No.165 of 1997.

2. Background facts leading to this appeal are as under :

On 28/01/2007 both the respondents / accused came to State Bank of India, Branch at Sakri for opening an account for respondent No.2. They deposited an amount of Rs.200/- and opened an account in the said bank in the name of Vanitabai. They also deposited a cheque of Rs.30,874/- in the said account on the same day. For opening the said account, the present respondent No.1 / accused No.1 had given identification to respondent No.2 / accused No.2 as he was having account in the said branch. Photograph of Vanitabai was also pasted on the form of account. The aforesaid deposited cheque thereafter sent to District Treasury, Dhule and accordingly it was honoured and the amount was also credited to the aforesaid account on 06/02/1997. However, on the said day, a news was published in the daily news paper "Lokmat" that the said account in the name of Vanitabai was

in fact a bogus account and after 5 to 6 days thereafter, 4-5 persons and one lady namely Vanitabai, who was real Vanitabai came to the said bank and intimated them that some other lady had opened the said account in her name. On getting knowledge of such fraud, the informant i.e. accountant of the bank, lodged a complaint against both the respondents for opening bogus account in the name of Vanitabai to grab the amount of cheque, which was actually issued for the real Vanitabai. After lodging of complaint at Exhibit-39, the concerned investigating officer started the investigation and on completion of the same, the respondents / accused were charge-sheeted for the offence as mentioned above. Thereafter, the learned trial court conducted the trial and acquitted both the respondents / accused and hence this appeal.

3. The learned APP strongly submits that though there was no attempt on the part of the respondents / accused to withdraw the amount of cheque, but their intention and preparation to commit such offence has been established by the cogent evidence brought on record by the prosecution. According to her, for the offence under Section 420 of IPC, an intention is the most important ingredient and by establishing the fact that respondent No.2

opened a bogus account by posing herself as Vanitabai Sadhusing Chaudhari to grab her amount and for this purpose, respondent No.1 assisted her, the trial court ought to have convicted the respondents / accused. According to her, even in absence of any overt act the learned trial court should have convicted the respondents / accused at least under Section 511 of IPC.

4. On the contrary, the learned counsel for the respondents / accused strongly supported the judgment of the learned trial court and pointed out that when there was no overt act on the part of the respondents / accused despite opening bogus account in the name of Vanitabai, no offence as claimed by the prosecution has been established against them. He placed reliance on following citations:

- I) Malkiat Singh and another vs. The State of Punjab, reported in 1970 CRI.L.J. 750 &*
- II) Ghurey Lal v. State of U.P., reported in 2008 AIR SCW 6598.*

5. Heard rival submissions and also perused the oral and documentary evidence on record.

6. The prosecution in support of the charge against the respondents / accused, has examined in all 8 witnesses. However, on perusal of the evidence of these witnesses, it transpires that there is no dispute that respondent No.1 Chandrakant was in service in Panchyat Samiti, Sakri and it is also not in dispute that the cheque of Rs.38,874/- for the G.I.S. amount of one Sahadusingh came to him. Further, it is also admitted that respondent No.2 / accused No.2 was not Vanitabai but the sister of respondent No.1 / accused No.1 Chandrakant. Moreover, it has been sufficiently proved that respondent No.1 / accused No.1 entrusted with the cheque and he with the help of respondent No.2 / accused No.2, opened an account in the name of Vanitabai Sahadusing Chaudhari. Identification was also given by respondent No.1 / accused No.1 to respondent No.2 / accused No.2. However, when the news was published in daily news paper 'Lokmat' on 02/03/1997 that somebody opened a bogus account in the name of Vanitabai, the real Vanitabai approached the bank and therefore, no amount of the said cheque, which was already realized in the said account was withdrawn by the respondents / accused. Facts of opening the account has not been disputed by the respondents / accused and therefore, only it is to be seen that whether the respondents / accused had committed cheating in

respect of the amount despite there being no attempt of withdrawal of the said amount. The evidence on record shows that the complainant / PW-1 Kurekar i.e. bank employee has admitted in his cross-examination that bank had suffered no loss on opening such bogus account. Moreover, it has come on record from the evidence of other witnesses that in fact nobody suffered any sort of loss or damage due to opening such account. As such, aspect of misappropriation of the aforesaid amount of cheque is not there at all since the respondents / accused did not make any attempt to withdraw the same. The circumstances on record only indicate that respondent No.2 / accused No.2 opened the bogus account posing herself as Vanitabai with the help of respondent No.1 / accused No.1, who gave her identification but thereafter, there are no ingredients of cheating, are established by the prosecution as the respondents / accused did not withdraw the said amount.

7. The learned APP strongly argued that the intention of making preparation for causing offence under Section 420 of IPC has already been established by the prosecution and therefore, though the respondents / accused did not withdraw the amount, the learned trial court could still convict them for the offence as

mentioned above and if not, at least for the offence under Section 511 of IPC. However, here in this case, if the respondents / accused had tried to withdraw the amount of said cheque and trapped in doing so, then it would have been an attempt to commit an offence. In the instant case, such act had not taken place at the hands of respondents / accused and therefore, it cannot be said that there was an attempt on the part of the respondents / accused to commit such offence.

8. The learned counsel for the respondents / accused heavily relied on the judgment of the Hon'ble Apex Court in the case of ***Ghurey Lal vs. State of U. P.*** (supra), wherein the Apex Court has discussed well settled principles for overruling or disturbing the trial court's acquittal as under :

1. *The appellate court may only overrule or otherwise disturb the trial Court's acquittal if it has 'very substantial and compelling reasons' for doing so. A number of instances arise in which the appellate Court would have "very substantial and compelling reasons" to discard the trial Court's decision. "Very substantial and compelling reasons" exist when :-*
  - (i) *The trial Court's conclusion with regard to the facts is palpably wrong;*
  - (ii) *The trial Court's decision was based on an erroneous view of law'*

- (iii) The trial Court's judgment is likely to result in "grave miscarriage of justice".*
  - (iv) The entire approach of the trial Court in dealing with the evidence was patently illegal;*
  - (v) The trial Court's judgment was manifestly unjust and unreasonable;*
  - (vi) The trial Court has ignored the evidence or misread the material evidence or has ignored material documents like dying declaratin / report of the Ballistic expert, etc.*
  - (vii) This list is intended to be illustrative, not exhaustive.*
- 2. The Appellate Court must always give proper weight and consideration to the findings of the trial Court.*
  - 3. If two reasonable views can be reached - one that leads to acquittal, the other to conviction- the High Courts / appellate Courts must rule in favour of the accused.*

From the aforesaid observation it is quite made clear that if the acquittal recorded by the trial court under any category as mentioned in para 1, then only it can be disturbed.

9. The learned counsel for the respondents / accused also relied on the observation of the Hon'ble Apex Court in the case of ***Malkiat Singh and another vs. State of Punjab*** (supra), wherein following observation is made :

*"The test for determining whether the act of the appellants constituted an attempt or preparation*

*is whether the overt acts already done are such that if the offender changes his mind and does not proceed further in its progress the acts already done would be completely harmless. In the present case it is quite possible that the appellants may have been warned that they had no licence to carry the paddy and they may have changed their mind at any place between Samalkha Barrier and the Delhi - Punjab boundary and not have proceeded further in their journey. Section 8 of the Essential Commodities Act states that "any person who attempts to contravene, or abets a contravention of, any order made under Section 3 shall be deemed to have contravened that order." But there is no provision in the Act which makes a preparation to commit an offence punishable. It follows therefore that the appellants should not have been convicted under Section 7 of the Essential Commodities Act."*

From the aforesaid observation it appears that to constitute an attempt to commit an offence, commission of some overt act is necessary and if the offender changes his mind and do not proceed further to complete the commission of crime, then such acts of making preparation which are already done would be completely harmless. In this case also though the respondents / accused opened a bogus account in the name of Vanitabai and also got realized some amount, which was payable to her, in the said account, but thereafter they did not proceed further to withdraw

the same and therefore, in the light of the aforesaid observation it cannot be said that they attempted to commit an offence. Even otherwise also there are doubtful circumstances on record such as comparison of thumb impression of both the hands of respondent No.2 / accused No.2 shown as identical specially when the fingerprint expert i.e. PW-6 had stated that thumb impressions of both the hands could not be identical. Thus, considering all these aspects and the observations of the Hon'ble Apex Court in the judgments cited supra, prosecution has failed to prove the necessary ingredients of the offence with which the respondents / accused are charged. Moreover, an attempt to commit such offence has also not been established by the prosecution. Therefore, it appears that the learned trial court has recorded the acquittal of the respondents / accused from the offence punishable under Sections 406, 419, 420 & 511 r.w. 34 of IPC rightly. Thus, no interference is required in the impugned judgment and order and accordingly the appeal stands dismissed.

**( SANDIPKUMAR C. MORE, J. )**