

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE
NO.182 OF 2019

The State of Maharashtra,
(Through P.S.O. Azadnagar Police Station,
Dhule, Taluka and District-Dhule)

...APPLICANT

VERSUS

- 1) Ravibhushan Vidyabhushan Singh,
Age-35 years, Occu:Service,
R/o-P.No.403, Sunrise, Sangita Palace,
CDA Colony, Shastri Nagar,
Patna23 (Bihar),
At present- Suyog Nagar, P.No.B4,
Sai Surya Apartment, Wadibhokar Road,
Devpur, Dhule,
- 2) Mussavir @ Musa Ismail Khan Pathan,
Age-27 years, Occu:Contractor,
R/o-Lala Sardar Nagar, Vitabhatti area,
Devpur, Dhule,
- 3) Abdul Samad Abdul Rahim Shaikh,
Age-35 years, Occu:Contractor,
R/o-Taloda Naka, Akkalkuva,
Tq-Akkalkuva, Dist-Nandurbar,
- 4) Mohsin Khan Ismail Khan Pathan,
Age-29 years, Occu:Contractor,
R/o- Lala Sardar Nagar, Vitbhatti area,
Devpur, Dhule, Dist-Dhule,
- 5) Shaikh Habib Shaikh Nawab,
Age-42 years, Occu:Contractor,
R/o- Lala Sardar Nagar, Vitbhatti area,
Devpur, Dhule, Dist-Dhule,

- 6) Mohammad Shahid Khan Rashid Khan,
Age-35 years, Occu:Rickshaw Driver,
R/o-Mithi-khadi, Near Marathi School,
Limbayat, Udhana, Surat (Gujarat),
- 7) Majidkhan Rajjakkhan Pathan,
Age-35 years, Occu:Preparing key,
R/o-Bestana Awas, Building No.C-36,
Room No.11, Dindoli, Udhana,
Surat (Gujarat).

...RESPONDENTS

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Mr.A.M. Phule, A.P.P for Applicant - State.
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**CORAM: SMT. VIBHA KANKANWADI AND
S.G. CHAPALGAONKAR, JJ.**

DATE : 28th JUNE, 2023

ORDER [PER SMT. VIBHA KANKANWADI, J.] :

1. Present Application has been filed by the prosecution seeking leave to appeal under Section 378(1)(b) of the Code of Criminal Procedure challenging the acquittal of the respondents by the learned Additional Judge, Dhule in Sessions Case No.67 of 2015 of the offence punishable under Sections 457, 380, 465, 511, 120-B, 328, 107 of the Indian Penal Code, on 15th May 2019.

2. We have heard Mr. Phule, learned APP appearing for the State. With the able assistance of the learned APP, we have gone

through the entire record which was before the learned trial Judge.

3. The prosecution story, in short, is that the informant Shivilal Meena was the branch manager with Bank of Baroda, city branch, Dhule. The bank functioned in usual manner on 16th January 2015. Along with informant eleven staff members were present on that day. The cash transactions stopped around 4.00 p.m. The cash that was counted, was Rs.96,06,017/- which was tallied with the summary cash register. Thereafter the cash was kept in the safe with the seal and the safe was put in strong room which was having grill and iron door. The strong room was closed at about 5.15 p.m. The strong room alarm was kept on night mode. Till 7.00 p.m. the informant, joint manager Khobragade, accused No.1 Ravibhushan, who was the bank officer, completed the work and thereafter they left the bank, by closing the bank, at 7.15 p.m. There was a private watchman kept on duty with the ATM center. Around 8.30 a.m. on the next day i.e. on 17th January 2015, the sweeper found that the iron shutter of the bank was open from the bottom. He gave a phone call to bank employee Hemant Kulkarni, who then informed the said fact to the informant. Informant rushed to the bank with other employees. They found that the lock of the channel gate

was missing. They went inside the bank and checked CCTV footage and it was found that three persons entered the bank around 1.30 a.m. Two of them were wearing monkey caps. They opened the strong room door, entered inside and brought two bags filled with something. It was then realized that it was the cash amount and therefore, the informant registered the First Information Report (for short "the FIR") with the police station. Offence vide Crime No.10 of 2015 was registered for the offence punishable under Sections 457, 380, 465 of the Indian Penal Code and the investigation was started.

4. The investigation revealed involvement of accused No.1, the bank officer, along with other accused persons and therefore Section 120-B of the Indian Penal Code was also invoked. After completion of the investigation, charge-sheet was filed.

5. Prosecution has examined in all 33 witnesses to bring home the guilt of the accused. After considering the voluminous record and hearing both the sides, the learned trial Judge has acquitted all the accused persons from all the charges. Hence the present Application.

6. In order to cut short, it can be stated that the learned APP

stressed on the fact that when voluminous evidence has been adduced by the prosecution, the appreciation of the evidence is not properly done by the learned trial Judge. No doubt certain witnesses have turned hostile but the core of the evidence ought to have been considered and also the CCTV footage ought to have been given importance. There is recovery of huge cash amount from the accused persons, which may not be to the extent the amount that was stolen, but certainly the accused persons have not given explanation for possessing such huge amount. Re-appreciation is, therefore, necessary.

7. Perusal of the evidence of PW-3 informant Shivilal Meena would show that though he is giving the account that they had counted the amount the day earlier and taken all the precaution to keep it in the strong room, he says that he had seen the CCTV footage showing the involvement of three unknown persons. Two of them were of course wearing monkey caps and therefore, they could not be identified, but as regards the third accused who was not wearing any cap is concerned, it can be seen from cross-examination of the informant that he has not categorically identified any of the accused. The CCTV footage clip appears to have not been run when his testimony was recorded and the identification has not been got done from the said CCTV footage.

Though he has stated that police seized an amount around Rs.78,97,000/- and it has been already returned to the bank under Section 457 of the Code of Criminal Procedure, the connection has not been established. The currency notes are stated to be in denominations and their serial numbers have not been stated. Therefore, identification of the amount has not been got done. Whether it is the same amount which was stolen, is also a question, for which we do not find any answer in the testimony of the informant.

8. PW-5, PW-6, PW-8 to PW-21, PW-23, PW-24 and PW-27 have turned hostile. Therefore, it cannot be said that the memorandum panchnamas have been properly proved. Though the police officers are saying about the discovery, when the memorandum is not coming forward from independent witness, only the testimony of the police officers cannot be believed. As regards the involvement of accused No.1 Ravibhushan is concerned, it is to be noted that the search and seizure of his house appears to have been done and photographs of strong room door and eight photographs of bank keys were found in his laptop. However, the said evidence has been discarded by the learned trial Court on the technical ground that there is no evidence to show that the articles recovered were sealed

properly. Hash value of the concerned files was not taken by the police and therefore possibility of tampering cannot be ruled out, is the observation of the learned trial Judge, which we do not find to be perverse.

9. Further scanning of evidence shows that in fact the bank manager ought to have given account of six keys but he has not given the same. The evidence showed that none of the locks were forcibly opened. That means, the culprits were having all the necessary keys and therefore it cast doubt as to whether accused No.1 was having the entire set of keys of all the doors with him. Accused No.1 was not identified to be the person amongst the three persons. As regards the duplicate keys are concerned, it is stated that accused Majidkhan Pathan has made discovery after giving memorandum, but it has been discarded on the ground that the place, from where certain articles were discovered, was on the way from Dhule to Surat and certain articles were shown to have been seized from the gutter but there was no effect of the material from the gutter on those articles. Though the duplicate keys alleged to have been seized, but those were not checked with the locks with the bank. Mere seizure of some keys will not be important but those should be

similar to the original keys. Therefore, the said memorandum panchnama has been rightly discarded by the learned trial Court.

10. Learned trial Court has correctly held that there is no evidence as regards the conspiracy i.e. Section 120-B of the Indian Penal Code or Section 107 of the Indian Penal Code, as it is not brought on record that any stupefying substance was administered to the security guard or to the bank officers. It was tried to be brought on record that accused No.1 Ravibhushan and accused No.2 Mussavir @ Musa Pathan had taken PW-28 Ganesh Kotkar, security guard and PW-27 Ravindra Nandeshwar, bank credit officer, with them and they were given Coca Cola or some stupefying substance and after the giddiness upon consumption of such substance, the duplicate keys were made out. It is to be noted that the security guard PW-28 Ganesh Kotkar has stated about the said incident of consumption of soft drink which was in fact occurred on 24th December 2014, but it appears that he has not stated about any further incident occurred after he becoming giddy after consumption of Chinese food and Coca Cola. The main incident is stated to have taken place on 17th January 2015 i.e. after about three weeks from that date. Further, at the said time when alleged food articles were given for consumption, PW-28 Ganesh Kotkar does not say

that he was carrying the keys with him so that duplicate of the same can be made out. PW-27 Ravindra Nandeshwar has turned hostile. It also appears to be a case of the prosecution that photographs of those keys were taken and then duplicate keys were prepared. It has not been brought on record by the prosecution, whether the photographs would be sufficient to prepare the duplicate keys without actual dimension of the original keys.

11. Though the prosecution has adduced voluminous evidence but for the aforesaid reasons it cannot be said that the said evidence was sufficient to bring home the guilt of the accused. There is no perversity or illegality committed by the trial Court and the Application deserves to be rejected.

12. The Application stands rejected.

[S.G. CHAPALGAONKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE