IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

REVISION APPLICATION NO. 677 OF 2018

Makbul Shekusab Nigeban
Aged 50 years, Occ.: Business,
R/o. Vazir Nagar, Vijpur Road,
Solapur. ...Applicant

Vs.

1. **The State of Maharashtra**

2. **Mainoddin M. Kasim Sarkazi**
Age : 70 years,
Occ. Engineer
R/o. 704/1 Hakimi building
No. 1, Liliya Nagar, Goregaon (W)
Mumbai :- 400 062. ...Respondents

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Ujwal R. Agandsurve	Advocate for the Applicant
Mr. A. S. Gawai	APP for the Respondent No. 1-State
Ms. Vijayta Sunil Shinde	Advocate for Respondent No. 2

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CORAM : S. M. MODAK, J.

DATE : 30th JULY 2024

JUDGMENT :-

1. Heard learned Advocate for the Applicant-convicted accused, learned Advocate for the first informant and learned APP.

2. The accused is convicted for an offence under Sections 467, 468, and 471 of the Indian Penal Code by the Court of the Chief Judicial Magistrate, Solapur on 21.03.2013. Whereas the conviction is maintained by the Court of the Sessions Judge, Solapur on 13.12.2018. He has only reduced the sentence. <u>The sentence is as follows:-</u>

(a) For an offence under <u>Section 467</u> of the Indian Penal Code - rigorous imprisonment for one year and fine of Rs. 20,000/-.

(b) For an offence under <u>Section 468</u> of the Indian Penal Code – rigorous imprisonment for six months and fine of Rs. 10,000/-.

(c) For an offence under <u>Section 471</u> of the Indian Penal Code – rigorous imprisonment for six months and fine of Rs. 10,000/-.

3. The present revision is at the instance of the Applicant-accused.

4. <u>The prosecution in all examined seven witnesses. They are as follows</u>:-

PW No. 1	Mainoddin Md. Kasim Sarkarji	first informant
PW No. 2	Sanjiv Narayan Satpute	Junior clerk in the office of the Deputy Registrar

		Co-operative Solapur
PW No. 3	Jaikumar Sopanna Vanjari	Clerk in the office of the Deputy Registrar Co-operative Solapur
PW No. 4	Sidram Ramchandra Kale	Manager in the District Industrial Co-operative Bank, Solapur
PW No. 5	Bhagyashri Jaiprakash Kale	Cashier in District Central co-operative bank.
PW No. 6	Prakash Ramrao Motiwale	Asst. Co-operative Officer in the office of the Deputy Registrar, Co-operative, Solapur
PW No. 7	Sunil Uttreshwar Shirapurkar	Deputy Registrar, Co-operative society, Solapur

5. Admittedly, investigating officer is not examined. Even there is no handwriting expert opinion is called. The sum and substance of the prosecution evidence is as follows :-

(a) the first informant Mainoddin Md. Kasim Sarkarji has submitted a tender for purchase of the land and machinery belonging to the Vinkar Audyogik Vasahat Ltd. Mill.

(b) There was an agreement in between him and Vinkar Audyogik Vasahat Ltd. Mill. The mill went into liquidation and liquidator was appointed by the Deputy Registrar.

(c) The mill owes an amount to Solapur District Industrial Co-operative Bank.

(d) The consideration was Rs. 10 Lakhs. He deposited Rs. 1 Lakh with the Industrial Bank.

(e) PW No. 4-Sidhram Kale was examined to prove this transaction.

(f) That is why PW No. 1-Mainoddin approached District Deputy Registrar for refund of the amount of Rs. 1 Lakh.

(g) The accused was appointed as a liquidator. The accused instead of the completing the transaction with PW No. 1 sold the property to another person.

(h) Permission of Deputy Registrar for transaction with PW No. 1 was not obtained and that is why it is said that agreement is illegal.

(i) The Applicant assures to return the amount to PW No. 1 in installments.

(j) There was cheque issued in the name of the first informant drawn on Solapur Co-operative Bank for Rs. 35,000/-. It is dated 8/07/2006.

(k) Instead of visiting the bank by PW No. 1, it is accused who presented that cheque and PW No. 5-Bhagyashree Kale cashier paid the amount to the Applicant by taking his signature on backside of the cheque, and it is at Exh. 32.

(l) When the cheque was deposited alongwith slip there was counter foil. It is at Exh. 18. On front page the amount in words and figures is mentioned as Rs. 35,000/-.

(m) The PW No. 1 believed the accused and he has not visited the bank. He was called at Satrasta and in fact he was paid only Rs. 25,000/-. When PW No. 1 had seen the counter foil, figure of Rs. 35,000/- was mentioned and on backside, he signed as token of receipt of Rs. 25,000/- (cross-examination). The Applicant also obtained signature of the first informant on the voucher prepared for their record mentioning the amount of Rs. 35,000/-.

6. At that time, the first informant was not aware that the Applicant will play mischief and will alter the amount from Rs. 25,000/- to Rs. 35,000/- on both the documents (on backside of counter foil at Exh. 18 and on an amount mentioned on voucher at Exh. 19). The first informant could not get the remaining amount of Rs. 75,000/- and that is why he followed up with the Deputy Registrar. He was told that he was paid Rs. 35,000/-. He was surprised and that is why he lodged the complaint with the Sadar Bazar Police Station on 05/10/2006 at

Exh. 20.

7. The F.I.R. was registered on 13/12/2006 for the offence punishable under Sections 467, 468 and 471 of the Indian Penal Code.

8. During investigation, the Police have seized the counter foil, voucher, cheque and other documents. They are seized as per the panchnama dated **18/12/2006**. They were seized from the Applicant. Unfortunately, this panchnama was not proved through panchas and through investigating officer. Both the Courts below have not considered it as a lacunae. **The trial Court in para no. 17** has not considered this as lacunae. Whereas **the Appellate Court in para no. 20** has not considered this as lacunae. It is for the reason that the Applicant acted as an official liquidator, and it was his duty to prepare the documents, **it is part of his duty**. Applicant has never pleaded that they were never in his custody of documents produced by him.

9. Learned APP brought to my notice the facts stated by PW No. 7-Sunil Shirapur-Deputy Registrar in Chief-examination. During inquiry he has called upon the Applicant to produce the counter foil of the cheque, but it was not produced. Now it needs to be seen whether this lacunae in the prosecution case goes to the route of the matter.

10. It is true that for an offence under **Section 467** of the Indian

Penal Code, the forgery of a valuable security is to be proved. The emphasis is on forgery of the documents. If it is used in cheating there is an offence under **Section 468** of the Indian Penal Code. If it is used by pretending to genuine then it is an offence under **Section 471** of the Indian Penal Code. **So emphasis is on the documents.**

11. In this case, we have got the evidence of the first informant who is aggrieved person. We have got evidence of the cashier-PW No. 5. No doubt, when the first informant filed complaint to the Police Station, he was not aware about the alteration in the amount in the counter foil and in the voucher. It was disclosed later on. That is why he has deposed in the evidence about these two alterations in the Exh. 18 and Exh. 19.

12. Whereas the cashier has deposed that she was knowing the Applicant and the amount is withdrawn by him by signing on backside of the cheque. **It is at Exh. 32.** An attempt was made to contend that evidence of the cashier is not clear, whether she had seen the Applicant withdrawing the cash or not. The evidence has to be read in its entirety. If read in its entirety, one can very well say that she is having personal knowledge about withdrawal by the Applicant. It means the Applicant accepted Rs. 35,000/- from the bank on behalf of the first informant.

13. When question to pay the amount to the first informant has arisen, the applicant paid only Rs. 25,000/- to the first informant. The Applicant also took the signature of the first informant on the backside of the counter foil at **Exh. 18**. While putting the endorsement, first informant mentioned that he has received Rs. 25,000/- only. On the front side of the counter foil an amount of Rs. 35,000/- is mentioned in words and in figures but it was not written by him and according to him that is alteration made by the Applicant on backside of the counter slip and in the amount mentioned in figures in the voucher.

14. The Applicant was possessing voucher. It is but natural because he was liquidator. But it is strange how the Applicant was possessiing counter foil at Exh. 18. During investigation, these documents were seized from him. When question of proving this fact had arisen, it has to be proved. Unfortunately, none of the witnesses are examined to prove this seizure. No one has deposed how these documents were collected during investigation. It was shown to first informant during evidence. He identified them. He was not supposed to explain how these documents were collected during investigation. We cannot expect the Applicant to give any explanation, his turn will come when evidence is adduced.

15. It is duty of the prosecution to prove the seizure of those documents and from the Applicant. In this case unfortunately, it has not happened. Both the Courts below has overlooked this lacunae in prosecution evidence.

16. The trial Court observed in para no. 17 as follows:-

> *"However, the present case is entirely based on documentary evidence. Nothing has remained to be proved through Investigation Officer. Mere non examination of Investigation Officer, is not fatal to the prosecution, in the present case".*

17. It is very well true, but trial Court has overlooked the fact that the seizure of the documents needs to be proved. So also the Appellate Court in para no. 20 has discarded the objection. The base of the prosecution case is on the documents itself because contents of the documents were forged by way of altercation. How we can simply rely upon the oral evidence, even though trustworthy and reliable. Unless documents are there, the prosecution case of the forgery cannot be proved.

18. So this is lacunae in the prosecution evidence. The reasoning given by both the Courts below on this aspect is not acceptable. That is why provision of the revision is made in the Code of the Criminal

Procedure. If findings are perverse, it can be set aside in the revisional jurisdiction. The findings can be said to be perverse, if they are arrived at by overlooking some lacunae in the prosecution evidence. In this case there was material collected during investigation regarding seizure of these documents alleged to be forged. No attempt was made to prove the fact of the seizure because this panchnama is a link which connects the document and the Applicant. Merely because he was liquidator and he was supposed to possess those documents, the prosecution can not be relieved from the responsibility to prove the seizure from him. This lacunae goes to route of the matter. If this seizure is not proved, the conviction cannot be sustained only on the oral evidence. There is no alternative, but to set aside the conviction.

19. For rest of the issues, I agree with both the Courts below. The revision needs to be allowed. Hence, the Order:

ORDER

(i) Revision is allowed.

(ii) The order of the conviction passed by the Court of Chief Judicial Magistrate, Solapur in RCC No. 496 of 2007, the order confirmed by the Court of the Sessions Judge, Solapur in appeal no. 55 of 2013 for the offence punishable under

Section 467, 468, 471 of the Indian Penal Code are set aside.

(iii) The Applicant is acquitted for those offences.

(iv) The amount deposited, if any, be returned to the Applicant-accused. On instructions, learned advocate for the Applicant submits that let the amount of compensation be not returned back but it can be paid to the Complainant. That is why Order of return of the compensation is not passed. Let it be paid to the Complainant.

20. Accordingly, Revision application is disposed of.

21. Pending interim application, if any, also stands disposed of.

[S. M. MODAK, J.]