

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

**CRIMINAL REVISION APPLICATION (ST) NO.23639 OF 2023
WITH
INTERIM APPLICATION NO.930 OF 2024**

SATISH
RAMCHANDRA
SANGAR

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SATISH RAMCHANDRA
SANGAR

Date: 2024.07.24
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Laxman Haran Kole

Age : 52 Years,

R/o. : Ashok Sadan, 4th Floor,

Room No.9, Shivaji Nagar,

Waghale Street, Thane (W).

...Applicant

Versus

State of Maharashtra

Through the Ld.Public Prosecutor,

High Court, Bombay.

...Respondent

Ms.Isha Saglani a/w Mr.Siddhant B. Kusalkar, Mr.Ashish Phalke and Mr.Durgesh Sarfare:-	Advocates for Applicant.
Mr.H.J.Dedhia:-	APP for Respondent – State.

CORAM : S. M. MODAK, J.

DATE : 19th JULY 2024

P. C. :-

1. Heard learned Advocate for the Applicant – convicted Accused and learned APP.
2. Though the Applicant was prosecuted for committing an offence

under Sections 406 and 420 of the Indian Penal Code, 1860 (“**IPC**”), he was convicted for the offence punishable under Section 406 of IPC.

The sentence is as follows:-

- (a) Simple imprisonment for two (2) years and
- (b) Payment of fine of Rs.30,000/- (Rupees Thirty Thousand Only) out of which, an amount of Rs.28,000/- (Rupees Twenty Eight Thousand Only) to be paid to the Informant by way of compensation.

This was by the Court of Metropolitan Magistrate, 40th Court, Girgaon, Mumbai vide order dated 8th January 2020.

3. This judgment was challenged by way of Criminal Appeal No.137 of 2020 before the Court of Additional Sessions Judge – Greater Mumbai. Though, initially, he appeared, later on, he did not appear and even his Advocate. Learned Additional Sessions Judge as per his judgment dated 7th October 2022 was pleased to confirm the conviction as well as the sentence. He was taken into custody on 31st October 2023. Since then, he is behind bar. There was a delay in preferring the Revision and it was condoned. There is separate Application for suspension of sentence.

4. With consent, it was agreed to take up this matter for final hearing and accordingly, I have heard both the sides.

5. With their assistance, I have read both the judgments as well as the evidence. Before the trial Court, in all 8 witnesses were examined.

They are as follows:-

(i) **PW No.1 – Smt.Bela Shailesh Mahimtura - First Informant:-**

Dr.Mona Shukla is her sister-in-law. She got acquainted with the Respondent. Dr.Shukla was knowing the Respondent for the last 10 years. Due to this acquaintance, PW No.1 had handed over certain gold and diamond ornaments for repair and polishing on 3rd September, 2015. It consists of 3 gold bangles, 3 gold and diamond pendants, 1 gold and diamond ring, 1 diamond and ruby bangle. In addition to that, she paid Rs.28,000/- (Rupees Twenty Eight Thousand Only) towards the repairing and polishing charges. The Respondent has assured to return them within 10 days. However, the Respondent has not fulfilled his promises. Finally, the Respondent told PW No.1 about his real intention. He has sold away the gold ornaments and pledged other ornaments on 20th October 2015. PW No.1 was left with no alternative but to file a complaint with Gavdevi Police Station. After completion of the investigation, the charge-sheet is filed

against this Applicant and one receiver is shown as absconding Accused. The Police have not applied Section 411 of IPC.

The remaining witnesses are as follows:-

(ii) **PW No.2 – Basantkumar Rikhbchand Jain:-**

Who has advanced an amount of Rs.29,000/- (Rupees Twenty Nine Thousand Only) to the Respondent against certain ornament. After the arrest, they were recovered from his shop at the instance of the Respondent. The contention is raised “there is no document evidencing this transaction”. So also, the contention is also raised about “absence of any document evidencing the transaction about the Complainant and the Respondent”.

(iii) **PW No.3 – Hasmukh Gulabchand Parmar:-**

The Respondent on 27th October 2015, has also pledged the gold diamond ring and gold pendent and received Rs.16,000/- (Rupees Sixteen Thousand Only). There is memorandum of statement and they were recovered. This witness has also not taken an entry in the Books of Account.

(iv) **PW No.4 – Harish Amritlal Shah:-**

He has also advanced Rs.60,000/- (Rupees Sixty Thousand Only) to the Respondent against two gold bangles. He has not produced the bangles but it was converted and one gold bar is produced. He has also not maintained any document. Even, a suggestion was given to him about absence of licence.

(v) **PW No.5 – Girish Harkisandas Rathod:-**

The Respondent visited his shop on 18th October 2015 and advanced Rs.8,000/- (Rupees Eight Thousand Only) against the pledge of one gold pendent with studded diamonds. He has produced them when asked by the Police. Even, he was not possessing any document evidencing this transaction.

(vi) **PW No.6 – Pankaj Kamlakar Goregaonkar:-**

He is a panch witness to the memorandum statements recorded by the Police on 28th October 2015. He has supported the prosecution case.

(vii) **PW No.7 – Niraj Vijay Kankekar:-**

He was also another panch. He has also supported.

(viii) **PW No.8 – Balaji Kamble – API:-**

He is the Investigating Officer.

6. The trial Magistrate has dealt with this evidence and there is a conviction only for the offence under Section 406 of IPC. There is a difference in between these two Sections. For **Section 406** of IPC, an entrustment is required whereas, for the offence under **Section 420**, there should be deception from the beginning and believing upon the deception, handing over the property should be there. That is absent in this case.

7. Though there are no documents, learned Magistrate concluded that the trustworthiness of the witnesses cannot be disbelieved. When the Appeal came for hearing, learned Judge observed in Para No.7 that “the Appellant has remained absent since filing of the Appeal”. In fact, his sentence was also suspended. I have read the judgment. Again there is an emphasis on absence of document to show the transaction in between PW No.1 and the Respondent and secondly, the transaction in between the Respondent and other jewellers.

8. Whether to execute a document or not, depends upon the facts and circumstances which includes the relationship in between the parties, the need of the person who is handing over the ornaments, the amount levied as charges and the valuation of the ornaments. On

certain occasion, the relation is predominant than executing a document. On some other occasion, a person who is in need of money, pledges ornaments having high valuation as against less money advanced. These are the factual aspects. Why a person has behaved in such a manner, it is difficult to predict. Even though, it is true that for every ornament, there is no identity but for few ornaments, there is an identification by the PW No.1. If it is there, the entire chain is established right from PW No.1 and ending with the jeweller.

9. The learned Additional Sessions Judge has considered the evidence of recovery as an admission under Section 58 of the Indian Evidence Act, 1872. It is in Para No.10. This observation is not erroneous because admission stands on a different footing as per the Evidence Act. The evidence of discovery is admissible because the information given by the maker is corroborated by subsequent event. A person who gives a statement in no eventuality, will admit the same. But, the bar on admitting the evidence about confession is lifted only when it is corroborated by a subsequent event. Only for limited extent, the bar is lifted. Except this observation, I do not find any fault on the Learned Additional Session Judge. Even though, there was no representation, learned Additional Sessions Judge has given a judgment

after considering the evidence.

10. Learned Advocate Ms.Isha Saglani, vehemently argued in respect of absence of document. I am unable to accept it. She has tried her level best to convince me. I am not in favour of accepting her contention because one cannot expect a document to be executed at every time.

11. She prayed for leniency in the sentence. The Applicant is aged 61 years old and he has already undergone 8 months, 20 days approximately. Learned APP opposed reduction of sentence. Considering the grounds submitted and considering the fact that the amount of fine is already deposited, I am in favour of reducing the sentence for the period, which he has already undergone. So, I am allowing the Revision partly.

12. In view of that, following order is passed:-

ORDER

- (i) The Revision Application is allowed in part.
- (ii) The order of conviction and sentence dated 8th January 2020 passed by the Court of Metropolitan Magistrate, 40th Court, Girgaon – Mumbai in C.C. No.2507/PW/2016 and confirmed by the Court of the Additional Sessions Judge – Greater Mumbai vide order dated 7th October 2022 in

Criminal Appeal No.137 of 2020 for the offence punishable under Section 406 of IPC, **is modified and the sentence is reduced to the period which, he has already undergone.**

- (iii) The **Applicant - Laxman Haran Kole** be released from Jail immediately, if not required in any other case.
13. In view of the above, Revision Application stands disposed of.
14. Interim Application is also disposed of.
15. **Parties to act on an authenticated copy of this order.**

[S. M. MODAK, J.]