



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO.59 OF 2018

The State of Maharashtra,
Through Police Inspector,
Shrirampur Police Station,
Dist. Ahmednagar.

... Applicant
(Orig. Complainant)

Versus

1. Yashwant Rama Mhaske,
Age : 62 years, Occu. : Retired,
2. Pramila Yashwant Mhaske,
Age : 57 years, Occu. : Service,
3. Sushant Yashwant Mhaske,
Age : 35 years, Occu. : Service,
All R/o. Sanjaynagar, Shrirampur,
Tq. Shrirampur, Dist. Ahmednagar.

... Abated as against
respondent no.3

... Respondents.
(Orig. Accused)

.....

Mr. S. A. Gaikwad, APP for Appellant – State.

Mrs. M. G. Kasturkar, Advocate for Respondent Nos.1 and 2.

.....

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 26 NOVEMBER 2025

PRONOUNCED ON : 27 NOVEMBER 2025

ORDER :

1. As State is keen in questioning the judgment and order of acquittal passed by learned Additional Sessions Judge, Shrirampur in Criminal Appeal No.20 of 2012, thereby acquitting present respondents from charge under sections 420, 406, 198 and 465 r/w section 34 of IPC,

instant leave application to file appeal has been pressed into service.

2. In brief, prosecution was launched against respondents on the report lodged by one Chintaman Bhujangrao Kulkarni in the capacity of Founder Secretary of Sanjay Sahakari Gruhnirman Sanstha Maryadit, alleging that present respondents accused had prepared false consent letter dated 05.07.2007 showing him to be authorized to execute mortgage deed of the house in the said society and had thereby raised loan to the tune of Rs.2,25,000/- in the name of his wife by making his son and wife surety towards the said loan. On the strength of above complaint under section 156(3) Cr.P.C., crime seems to have been registered and investigated for commission of above offence and after charge-sheeting the accused, they were duly tried before learned J.M.F.C., Court No.4, Shrirampur, who appreciated the evidence and held charges proved vide judgment and order dated 16.07.2012.

Above order of conviction was taken exception to by filing Criminal Appeal No.20 of 2012 before Sessions Judge and learned Additional Sessions Judge was pleased to allow the appeal vide judgment and order dated 15.03.2017 and against this judgment and order, State is desirous of filing appeal. Hence, the leave application.

3. Learned APP pointed out that, accused had posed himself to be a Secretary and had manufactured documents authorizing himself to execute mortgage deed on behalf of society and he further raised loan from bank by making such forged documents. That, he also executed sale deed in favour of his wife without consent of society and thereby had played fraud on the cooperative housing society.

4. Learned APP further pointed out that, in support of its case prosecution had adduced evidence of PW1 complainant apart evidence of PW2 and Investigating Officer. That, documentary evidence like certified copies of 7/12 extract, resolution of co-operative society, copy of mortgage deed, sale deed were also placed on record and therefore, considering the oral and documentary evidence, it is his submission that learned trial court had rightly held the charges proved and had thereby convicted accused. However, according to him, first appellate court over turned the sound findings and conclusion by merely stating that prosecution failed to bring home the charges and that necessary ingredients for attracting the charges are missing.

5. Learned APP took this court through the observations of learned trial court, in paragraph nos.9, 10, 11, 12, 13, 15, 16, 22 and 25 and would submit the said findings are in consonance with the evidence

and therefore, the order of conviction is just, legal and proper. Lastly, he submitted that, on the contrary, no sound reasons are assigned by the first appellate court by setting aside the order of trial court. There is good case on merits and hence, he urges for leave.

6. Supporting the judgment and order of first appellate court, learned counsel for respondents accused would submit that none of the necessary essential ingredients for attracting the charges were available in the prosecution evidence and she would point out that there was no corroboration in the testimony of complainant and rather answers given by him in his own cross has rendered case of prosecution doubtful.

7. Heard. Perused the record, which shows that, one Chintaman Bhujangrao Kulkarni claiming himself to be Founder Secretary of Sanjay Sahakari Gruhnirman Sanstha Maryadit approached learned JMFC for invoking powers u/s 156(3) Cr.P.C. and the complaint was referred to police station for investigation by virtue of registration of crime bearing no. 16 of 2007 for offence punishable under sections 420, 406, 205, 198, 196, 192, 465 r/w 34 of Indian Penal Code.

8. Substance of the accusation is that, accused no.1, who was never a member of co-operative housing society, had become a owner of

bungalow and he has encumbered the said property by tendering fabricated documents posing himself to be 'B' Class member of the society. He had on the strength of bogus documents, mortgaged the property for raising loan to the tune of Rs.2,25,000/- and subsequently executed the sale deed in favour of wife itself. Hence, the complaint.

9. Evidence of complainant is at Exh.47. Another witness PW2 namely, Annasaheb Dhokchaule is at Exh.81 and PW3 is the Investigating Officer. That apart, there are several documents.

10. Sum and substance of evidence of PW1 is that, he was working as Secretary from 2002 to 2007. That, on 05.05.2007 Yashwant Rama Mhaske had prepared consent letter without authority, had caused signature over the said letter and had prepared false documents in the name of his wife Pramila Yashwant and had borrowed loan to the tune of Rs.2,25,000/- in the name of his society that too by executing mortgage deed before Sub-Registrar and further accused preparing sale deed of the property in the name of his wife and hence he filed complaint in the court of law.

While under cross, he admitted that, to remove a person, who is already a member of the society, resolution of the society is

required. In paragraph 6 of the cross, he has admitted that name of the accused figures in the list of members of the Sanjay Gruh Nirman Sanstha. He also admitted that, Bungalow no.16-b stands in the name of accused and he had purchased the said bungalow by accused no.1 and he also resides therein. He further answered that, Sanjay Gruh Nirman Sanstha is given on mortgage to Maharashtra Housing society. He is unable to state whether at the time of complaint any charge was created with regard to the bungalow over the 7/12 extract. He admitted that there was no notice to him by either society or the bank. He also expressed his ignorance regarding name of Mhaske recorded over Bungalow no.16-b in the municipality record.

PW2 Annasaheb does not seem to have supported prosecution as well as PW1 as he showed his ignorance about any loan transaction, sale deed as well as mortgage deed being executed.

PW3 is the Investigating Officer, but he does not seem to have carried out investigation about alleged fabrication of manufactured documents and its authenticity does not seem to have been verified by consulting any expert. Even bank does not seem to have questioned the authenticity of the documents and had rather extended loan by mortgaging the property.

Likewise, Investigating Officer has also admitted that he failed to investigate as to who was the exact secretary in the month of 2005 when alleged events had taken place.

11. No doubt, learned trial court which was the court of first instance, had recorded conviction of the accused, respondents herein, but on going through said judgment, it transpires that, failure of accused to take up particular defence or admission under section 313 of Cr.P.C. are taken into account while accepting the case of prosecution. Such approach was against the criminal jurisprudence. Even the papers which were placed on record, were not proved to be fabricated or manufactured that too by accused himself. Therefore, learned first appellate has rightly interfered by according acquittal. Necessary ingredients for attracting the charges were not available in the evidence of prosecution.

12. No case being made out on merits to accord leave, the same is refused. The application is rejected.

(ABHAY S. WAGHWASE, J.)