



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 509 OF 2005

Karbhari S/o. Saluba Pawar,
Age : 54 years, Occu. : Stamp Vendor,
R/o. Khadki, Tq. Kopergaon,
Dist. Ahmednagar

... Appellant
(Orig. Complainant)

Versus

1. The State of Maharashtra
 2. Sanjay S/o. Changdeo Pote,
Age : Major, Occu. : Cushion Work,
R/o. Laxminagar, Datta Cushion Works,
Dharangaon Road, Kopergaon.
 3. Aslam S/o. Gafur Shaikh }
 4. Rajendra S/o. Murlidhar Zaware }
5. Kalidas Dwarkanath Jadhav }
- Appeal dismissed as against
Resp. Nos.3 to 5 as per courts
dated 22.08.2005

... Respondents

.....
Mr. A. S. Gandhi, Advocate for Appellant.
Mrs. A. S. Mantri, APP for Respondent No.1 - State.
Mr. S. S. Daga, Advocate for Respondent No.2.
.....

CORAM : ABHAY S. WAGHWASE, J.
RESERVED ON : 12 SEPTEMBER 2025
PRONOUNCED ON : 23 SEPTEMBER 2025

JUDGMENT :

1. Original complainant Karbhari, who initiated criminal proceedings by filling private complaint for commission of offence punishable under sections 379, 406 read with section 34 of Indian

Penal Code, is hereby taking exception to the judgment and order dated 21.06.2005, whereby the present respondents were acquitted from above charge.

FACTS GIVING RISE TO THE PROSECUTION CASE ARE AS UNDER

2. PW1 Karbhari, who claimed to be owner of auto-rickshaw bearing no. M.W.A.7701, lodged complaint against respondents accused for taking away his auto-rickshaw without his consent and thereby committed criminal breach of trust. It is his case that, on 22.07.1992, he took his auto-rickshaw to accused no.1, who undertakes the work of cushion work and accordingly parked it in front of shop of accused no.1. After 2 to 3 days, he claims that when he went to bring back the auto-rickshaw, he did not receive it. When he asked about the whereabouts of the said rickshaw, it is his case that Ramesh Sontakke, Ananda Dawange and Suresh Sonawane informed about seeing accused nos. 2 to 4 taking away the auto-rickshaw. Thus, having been deprived of his auto-rickshaw, he lodged complaint culminated into investigation and finally filing of charge-sheet. On explanation of charge to the accused, the same was denied and as such trial was undertaken.

After appreciating the oral and documentary evidence, learned J.M.F.C. Kopargaon was pleased to acquit the accused from

the charge under section 406 of IPC read with section 34 of Indian Penal Code. Hence instant appeal.

SUBMISSIONS

3. Learned counsel for the appellant questioning the above judgment and order submitted that apart from evidence of complainant, there is evidence of eye witnesses, who had seen accused persons taking away auto-rickshaw owned by him i.e. without his consent. He further pointed out that on due verification of complaint, learned trial court was pleased to issue process. However, by erroneously appreciating available evidence, the learned trial court acquitted the accused. He pointed out that, there was entrustment of rickshaw with accused and witnesses had seen all accused persons taking away the rickshaw and not returned it, and therefore, required essential ingredients for attracting the charge was very much available in the evidence i.e. evidence of complainant himself as well as PW2 an independent witnesses. Their testimonies have remained unshaken. He pointed out that, even in the impugned judgment, learned trial court has itself observed testimony of complainant being corroborated by PW2 and PW3 and as such it was improper to accord acquittal. Thus, according to him, as acquittal was unwarranted and being contrary to the evidence on record, learned counsel urges for setting aside the impugned judgment and award by allowing the appeal.

4. Learned APP also supported the above contentions.

5. Learned counsel for respondent No.2 would point out that complainant had miserably failed to establish the charges. He pointed out that, there is no distinct, cogent and reliable evidence suggesting ownership of auto-rickshaw or its entrustment with accused. Answers given by the witnesses in cross examination has rendered case of prosecution doubtful, as according to learned counsel, auto-rickshaw was itself found standing in the premises of police station. Complainant himself failed to collect the same. It is pointed out that necessary ingredients for offence punishable under section 406 of IPC being patently missing, learned counsel emphasizes that no fault can be found in the order of acquittal and so he finally prays to dismiss the appeal.

6. On complete re-appreciation of both, oral substantive evidence as well as documentary evidence, it is clearly emerging that, though complainant came with the case that he took his auto-rickshaw to accused no.1 for cushion work, in his examination-in-chief itself he has stated that he went and parked his rickshaw in front of shop of accused no.1 for cushion work. No documentary evidence whatsoever is placed on record regarding entrustment of

auto-rickshaw. In his cross examination, he has admitted that he did not obtain receipt from accused no.1 after alleged handing over of rickshaw on 22.07.1992 so as to accept his case of entrustment of property.

7. PW2 Ramesh in his evidence at Exh.106 claims that he had been to shop of one Sanjay Pote for delivering scrap and that time he allegedly saw accused persons asking said Sanjay Pote regarding the ownership of rickshaw and he being informed that it belonged to complainant. However, in cross examination he answered that he does not have personal knowledge as to when rickshaw was parked in the shop of Sanjay Pote.

8. PW3 in his evidence at Exh.112 claims to have seen accused nos.2 to 4 taking away rickshaw from the shop of accused no.1. He claims that after 2 to 3 days, he met complainant and claims to have told about seeing accused no.2 Aslam along with the said rickshaw. It has also come in his evidence and not disputed that rickshaw of complainant was found to be parked in the police station, but there is no document or panchanama in this direction.

9. What section 406 of IPC requires is, firstly, entrustment of property, and secondly, said property to be converted for personal

use without consent of owner. Though case of complainant is that he took his auto-rickshaw to accused no.1, there is nothing to indicate actual entrustment with accused no.1. He testified about going to shop of accused no.1 and parking auto-rickshaw in front of it. Merely because he has learnt from witnesses about accused persons taking away the rickshaw itself would not attract the charge, for the simple reason that, auto-rickshaw was found to be parked in the compound of police station. Under such circumstances, necessary ingredients for attracting section 406 of IPC regarding both entrustment and its further conversion for personal use, are patently missing.

10. In cross examination, there are suggestions about complainant and accused to be of rival political group. There is admission to this extent by both complainant as well as PW2. Hence, this court does not find availability of necessary ingredients of section 406 of IPC which calls upon prosecution to establish firstly entrustment and secondly commission of criminal breach of trust by converting the property for their personal use. Though charge under section 406 of IPC has been framed by invoking section 34 of IPC, patently common intention has not been established. For above reasons, prosecution case fails.

11. Perused the judgment under challenged. It is noticed that

the available evidence has been appreciated in the light of legal requirements and findings are supported by sound reasons. No perversity or illegality is brought to the notice of this court so as to interfere in the instant appeal. No case being made out for interference, I proceed to pass the following order :

ORDER

The criminal appeal stands dismissed.

(ABHAY S. WAGHWASE, J.)