

*Esha***IN THE HIGH COURT OF BOMBAY AT GOA****CRIMINAL APPEAL NO. 12 OF 2016**

State, Through Police Inspector, (major)
Valpoi Police Station, Valpoi, Goa. ... APPELLANT

VERSUS

Mahadev Raghuvir Naik, (Major), Son of
Raghuvir Naik, Age 41 years, Resident of
Pensurlem, Dhatbandora, Ponda, Goa. ... RESPONDENT

Mr. Pravin Faldessai, Additional Public Prosecutor for the
Appellant.

CORAM: BHARATI DANGRE, J.

DATED: 22nd AUGUST 2025

ORAL JUDGMENT:

1. Heard the learned Additional Public Prosecutor, Mr. Faldessai for the State, which has instituted the present Appeal being aggrieved by the judgment and order dated 04.09.2015 passed by the Additional Sessions Judge, Panaji in Criminal Appeal No. 97/2013, thereby reversing the findings rendered in the judgment dated 19.07.2013, passed by the Chief Judicial Magistrate, Panaji in Criminal Case No. 135/S/2011/A.

2. The three accused persons faced the charge under Section 409 read with Section 34 of IPC as it was alleged that between 01.04.2003 to 12.01.2004, Accused No. 1 working in the capacity

as Incharge Secretary, Accused No. 2 working as Sarpanch from 01.04.2003 to 10.06.2003 and Accused No. 3 working as Sarpanch between 11.06.2003 to 31.03.2004 of the Village Panchayat of Guleli, entrusted with the Panchayat funds as public servants committed breach of trust, in respect of the funds and misappropriated an amount of Rs.3,15,712/-. They were, therefore, charged under Section 409 read with Section 34 of IPC, and upon they pleading not guilty, they were subjected to trial before the Magistrate and came to be tried.

3. In support of its case, the prosecution examined 38 witnesses, pursuant thereto, the statements of the Accused persons were recorded under Section 313 of Cr.P.C., confronting them with the entire evidence brought on record by the prosecution.

The Trial Judge framed the point for determination as to whether the prosecution had proved that all three Accused persons had misappropriated the amount and committed the breach of trust, and answered the same partly in favour of the prosecution.

4. The Trial Court, by referring to the decision of the Apex Court in the case of **Shambhoo Nath Misra Vs. State of U.P. & Others¹**, as well as **Swaroop Swarup Sikdar Vs. State of**

1 1997 Cri.L.J. 2491

West Bengal², was of the view that the accusations made by the Accused persons, though public servants, are not attributed to them in discharge of their official duties since it is not the official duty of the public servant to fabricate the false record and misappropriate the public funds as the official capacity only enables to fabricate the record or misappropriate the funds, but they are integrally connected and so inseparably interlinked with the crime committed, that the sanction would not be warranted under Section 197.

Apart from this, on appreciating the evidence placed on record, a finding is rendered to the effect that it came to the conclusion that the Secretary/Sarpanch got dominion over the physical affairs of the Panchayat and therefore, it was only the Accused No. 1, who is found guilty of the offences, but not Accused Nos. 2 and 3, as at no point of time, the dominion over the money was shifted to Accused Nos. 2 and 3.

This finding is reversed by the Appellate Court in Criminal Appeal No. 97/2013 and on due consideration, the Appeal was allowed and even Accused No. 1 stood acquitted for the offence punishable under Section 409 of IPC as on merits, it was noted that the Trial Judge had not appreciated that there was no direct evidence pointing out to the guilt of the Accused and the evidence has not been appreciated in its proper perspective.

5. Mr. Faldessai has placed before me the decision of the Apex Court in the case of **State of Kerala Vs. V. Padmanabhan Nair**³, which has categorically held that the Accused facing prosecution under the P.C. Act, cannot claim immunity on the ground of want of sanction, if he ceased to be a public servant on the date when the Court took cognizance of the offence.

The relevant portion of the said decision reads to the following effect:

“In S.A. Venkataraman Vs. State of Maharashtra⁴ the Apex Court has held that:

“There is nothing in the words used in Section 6(1) to even remotely suggest that previous sanction was necessary before a court could take cognizance of the offences mentioned therein in the case of a person who had ceased to be a public servant at the time the Court was asked to take cognizance, although he had been such a person at the time the offence was committed.”

When the newly worded section appeared in the Code (Section 197) with the words “when any person who is or was a public servant” (as against the truncated expression in the corresponding provision of the old Code of Criminal Procedure 1898) a contention was raised before this Court in Kalicharan Mahapatra Vs. State of Orissa⁵, that the legal position must be treated as changed even in regard to offences under the

3 1999 6 Supreme 1

4 1958 SCR 1040

5 1998 (6) SCC 411

P.C. Act also. The said contention was, however, repelled by this Court in Kalicharan Mahapatra (supra) wherein a two Judge Bench has held thus:

“A public servant who committed an offence mentioned in the Act, while he was a public servant, can be prosecuted with the sanction contemplated in Section 19 of the Act if he continues to be a public servant when the court takes cognizance of the offence. But if he ceases to be a public servant by that time, the Court can take cognizance of the offence without any such sanction.”

The correct legal position, therefore, is that an accused facing prosecution for offences under the P.C. Act cannot claim any immunity on the ground of want of sanction, if he ceased to be a public servant on the date when the court took cognizance of the said offences. So the High Court was at any rate wrong in quashing the prosecution proceedings in so far as they related to offences under the P.C. Act.”

6. The scope of this Court, while entertaining an Appeal against acquittal, is well settled to the effect that if two views are possible and if the benefit can be granted to the Accused, then the Court must favour the said view and shall not reverse the findings lightly.

On appreciation of the evidence that is placed before the Trial Court, I find that the Magistrate has in fact acquitted Accused Nos. 2 and 3 for want of evidence, but as far as Accused No. 1 is concerned, it arrived at a conclusion that the money was

entrusted to him, but did not find any material in form of deposition of any witness or any documentary evidence to establish the said charge and therefore, I do not feel that the judgment of the Appellate Court suffers from any perversity as the Appellate Court had recorded that there is no material to implicate him in the offence under Section 409 of IPC. Despite examining 38 witnesses including the actual workers in whose favour the payment was disbursed i.e. between PW-9 to PW-37, prosecution was not able to prove the accusation against Accused No. 1.

Since I do not find any perversity in the impugned judgment passed by the Appellate Court and rather it is a plausible view based upon the evidence that was placed before the Magistrate, I do not intend to show any indulgence and dismiss the Appeal.

BHARATI DANGRE, J.