IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO. 152 OF 2024

Ramesh s/o Laxminarayan Bangad
Age : 72 years, Occu.: Medical Practitioner,
R/o. Gandhi Chaman, Old Jalna,
Taluka and District Jalna. ….Applicant

Versus

The State of Maharashtra ….Respondent

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Advocate for Applicant - Accused : Mr.N.S.Ghanekar
APP for Respondent – State : Mr.S.M.Ganachari

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CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 28 JANUARY, 2026
PRONOUNCED ON : 02 FEBRUARY, 2026

JUDGMENT :

1. Revisionist, a convict for offence under Section 406 of the Indian Penal Code (IPC) hereby challenges judgment and order dated 01-06-2024 passed by learned Additional Sessions Judge, Jalna while deciding the Criminal Appeal No.15 of 2002 arising out of judgment and order dated 12-09-2002 passed by learned 5th Joint Judicial Magistrate First Class, Jalna in SCC No.26 of 1998.

2. Police Station, Kadim Jalna, entertained complaint lodged by

one Vishwanath Narayan Kale contending that Ramesh Laxminarayan Bangad formed a Society namely "Sanjog Sahakari Gruh Nirman Sanstha". Said Society had 46 members. Society borrowed loan from the Maharashtra State Co-operative Housing Finance Corporation (hereinafter referred to as "Finance Corporation") and extended loan for construction of houses to its members. Complainant too was a member of the said Society. According to complainant, he had paid Rs.11,444 to accused by way of installment towards repayment of loan, but including his installment none of the installments paid by way of repayment were deposited by accused with Finance Corporation and rather said amount was utilized by accused for his own purpose and therefore, on the strength of above complaint, Police registered crime bearing no.283 of 1997 for offence under Sections 420 and 406 of the IPC. On completion of investigation, accused was chargesheeted and after framing charge by learned trial Court, accused was tried by learned 5th Joint Judicial Magistrate First Class, Jalna vide RCC 26 of 1998 which ended up in acquittal from charge of Section 420 of the IPC, but conviction came to be recorded for offence under Section 406 of the IPC.

Feeling aggrieved by above order of conviction, accused preferred Criminal Appeal No.15 of 2002 questioning the sustainability of the above order of trial Court. After hearing both sides and on re-appreciation of the evidence, learned First Appellate Court was pleased to partly allow the appeal confirming conviction for offence under Section 406 of the IPC, but instead of sentence of Rigorous Imprisonment for one month, it is modified to Simple Imprisonment for one month and rest of the order was kept intact.

Aggrieved by the above, accused has preferred instant revision by invoking provisions under Sections 397 r/w 401 of the Code of Criminal Procedure.

3. Mr.Ghanekar, learned counsel for applicant would submit that both learned trial Court and First Appellate Court failed to appreciate the evidence in correct perspective. According to him, the only piece of evidence, which is relied by both the Courts below was evidence of PW7 Narayan Keshavrao Ingle, Special Auditor, but according to him, answers given by this witness in cross-examination are not properly comprehended and appreciated. According to him, only on report prepared and submitted by PW7, a Auditor, guilt has been fastened. Taking this Court through evidence of PW7, he pointed out that this witness was unaware about actual affairs of the Society. That, mere difference noted during Audit is directly attributed to be mis-

appropriated amount. He pointed out that, it was admitted by complainant in cross-examination that he had received receipts for the amount repaid by him and moreover, there was no distinct evidence to shows that revisionist was actually beneficiary of the money, which allegedly went unaccounted. He pointed out that, there is no dispute that Society was the borrower and therefore, holding accused responsible for repayment was unjustified. He pointed out that accused had adduced evidence of defence witness DW1 Madhav Kishan Chaudhary, who is none other than the Officer of Finance Corporation, who had agreed that responsibility of repayment was of Society and not of accused. For above reasons, he questions both the judgment and orders of conviction passed by the trial Court and one passed by learned the First Appellate Court by urging to allow the revision.

4. Learned APP supported judgment and orders of both trial Court and First Appellate Court by stating that on meticulous appreciation, charge of criminal breach of trust is held to be proved. According to him, there is no illegality or perversity in the impugned judgments so as to interfere in this revision.

SUM AND SUBSTANCE OF EVIDENCE IN TRIAL COURT

5. **PW1** Vishwanath Narayan Kale, complainant, deposed that he knew accused, who was chairman of "Sanjog Sahakari Gruh Nirman Sanstha" constituted to provide houses to the members. That, he also was a member as he wanted a house. He further deposed that accused was chairman and his wife was builder. According to him, in respect of construction cost of the house, an amount of Rs.40,000/- was paid by him and remaining was obtained by way of loan from the Finance Corporation in the name of each members. He testified that he deposited Rs.40,000/- with accused and even other members deposited said amount. Remaining amount of Rs.60,000/- was loan aid extended by Finance Corporation to the society. That loan amount was received by the accused. He further deposed that loan was to be repaid in installments. He started making repayment to accused of which accused initially used to issue receipts under his signature and he has placed said receipts on record which are at exhibits 32 to 74. According to him, in total Rs.60,000/- was repaid towards loan installments with the accused. He claims that accused issued him notice on 31-12-1996 conveying due of Rs.11,433.64 in his name and therefore, he deposited the amount on 05-02-1997, but he was again served with notice that too by the Finance Corporation

on 19-09-1997 regarding dues of Rs.11433. Therefore, he approached Manager of Finance Corporation, but he was told that said amount has not been received by Finance Corporation and therefore, notices exhibits 75 and 76 are despatched. According to him, similar notices were received by other members and then they realized that amount paid by them to accused by installments was not at all further deposited by accused with the Finance Corporation and therefore, he lodged report. He also stated that District Deputy Registrar, Co-operative Societies was approached, who constituted team for audit, which revealed that accused has misappropriated huge amounts.

Though above witness is subjected to **cross-examination**, above averments of borrowing loan, paying it in installments to the accused, has remained intact. In cross-examination, to a suggestion he answered that amount towards repayment of installment was given to accused as loan was obtained through him. He volunteered that loan was given by Finance Corporation through Society. Suggestion is given that interest has been paid over the loan amount.

Such cross-examination itself shows that transaction of loan is not denied. Witness also volunteered in cross-examination that amount is paid to accused and even receipts were received for the same. Thus, testimony of PW1 complainant has virtually remained unshaken.

6. Similarly, **PW2** Vitthal Pawar, **PW3** Anant Deshpande, **PW4** Suresh Patil, **PW5** Sudhakar Nemane are all the members of the Society and they like PW1 have testified about borrowing loan, accused to be Chairman of the Society, they repaying loan by installments and initially receiving receipts from accused. They all have placed on record said receipts issued by accused under his signature. **PW8** Hanuman Sitaram Patil (P.I.) is the Investigating Officer.

7. Star witness, as pointed out for prosecution, is Special Auditor **PW7** Narayan Keshavrao Ingle, who in his evidence at exh.279 testified about he being engaged by District Deputy Registrar, Co-operative Society, Jalna for re-audit of the accounts of Society from 02-02-1990 to 31-03-1997. After conducting audit, he has tendered report under his signature exh.282 and according to him, it was revealed that the loan was sanctioned and disbursed by Finance Corporation to the members from the year 1992 to 1998. He elaborated that members deposited Rs.21,21,992/- with the accused,

whereas accused only deposited Rs.11,97,849.20 with the Finance Corporation and as such, he did not deposit remaining amount of Rs.9,24,143.58. He categorically deposed that he noticed that the said amount was misappropriated and not deposited by accused. He stated that findings of Auditor regarding misappropriation are at page 8 and total misappropriated amount is Rs.11,29,277.95.

Above witness is also extensively **cross-examined**, wherein suggestion given that accused was not Chairman has been flatly denied by him. He is put question on the recital of agreement to sale. He admitted that receipts were issued to members of Society of the amount which they deposited towards repayment of loan to the Finance Corporation. He also answered that he has seen bank accounts of Society. He admitted that figure of Rs.9,24,143.58 is the difference between the amount credited with the Finance Corporation and it is reflected in the accounts of the Society.

8. This court is called upon to exercise revisional powers i.e. under Section 397 of the Code of Criminal Procedure. Before appreciating contentions raised in revision, it would be appropriate to spellout judicial precedent on the point of scope and object of revision under Section 397 of the Code of Criminal Procedure.

While exercising powers under section 397 of Cr.P.C., this court is merely expected to test the legality, propriety or illegality in the findings recorded by learned trial court. Such powers are to be exercised to prevent miscarriage of justice and when there are clearing errors on the face of order or there is failure and non compliance of law. Re-appreciation is to be avoided unless findings are patently perverse and as such, is the narrow scope of revisional court. Law regarding the scope of revision is elucidated in catena of judgments. Though there are catena of judgments, the landmark judgment of ***Amit Kapoor v. Ramesh Chander and another*** (2012) 9 SCC 460 is relied and the relevant observations therein are borrowed and quoted as under :

> *"12. Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well - founded error and it may not be appropriate for the court to scrutinise the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law.* ***If one looks into the various judgments of this Court, it emerges that the revisional***

> ***jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely.*** *These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits."*

9. Therefore, in the light of above settled position, the limited scope for this court is to test whether there is patent illegality, error or perversity at the hands of trial court followed that of by learned First Appellate Court.

10. The sum and substance of accusation is that accused, who was admittedly a Chairman of housing Society namely "Sanjog Sahakari Gruh Nirman Sanstha" was also shown to be husband of the builder who had undertaken the construction activity. There seems to be a tripartite agreement between said society, its members and the builder. There is no dispute that loan was borrowed by Society from Finance Corporation and as such the members, who are borrowers, were expected to repay the loan in installments. Precise accusations of complainant is that he regularly paid installments to accused towards the installments of repayment of loan and was expected to

deposit it with the Finance Corporation. He specially contended that he had paid Rs.11444 as demanded and even receipt to that extent is received but still he was served with multiple notices by the Finance Corporation regarding dues towards his end and therefore, when he made enquiry, it emerged that accused to whom the installments were paid, to be further deposited, has failed to do so and it was the accusation that he had used it for his own purpose. Affirmation was also got done by engaging Special Auditor, who in his report detected above misappropriation and irregularities. Substantive evidence of PW1 complainant is already reproduced above. Other witnesses, who are also members of the Society, have deposed on similar lines regarding they repaying installments towards repayment of loan, receiving receipts also under the signature of accused, but still being served with demand notice from Finance Corporation. Evidence of these witnesses has not been disturbed or dislodged in cross-examination. It is tried to be suggested that each of the members has received receipt and therefore, it is an acknowledgment of payment of installment, however, it has come on record through the Auditor, who conducted audit of the Society that, an amount of Rs.21,21,992.78 was deposited by the members for a period from 1992 to 1998, however, only amount of Rs.11,97,849.20 was paid back to the Finance Corporation and as such amount of Rs.9,24,143.58 being not deposited and undeniably accused is shown to be the custodian of all the deposits,

11. In the cross-examination, suggestions are given that extra housing activity was conducted, but except giving such suggestion, there is no specific denial by accused about not receiving complainant's installment of Rs.11,444/-. On the contrary, he has issued receipts time to time, which are also placed on record, which bears his signature, which strengthened the case of complainant that amount repaid by way of installments, was with accused and he was custodian of the same and when he was expected to further deposit it to the Finance Corporation, he having failed to do so, the only inference that follows is that he has retained the amounts of not only of complainant but of other members.

12. It seems that the funds are diverted for making payment to Sanjivani builder of which accused is said to be not a Proprietor but only husband of said builder. Admittedly, by issuing receipts, accused has admitted the entrustment of money and he had domain over the same. By not depositing the said amount with the Finance

Corporation, there is breach of trust. There is both ample oral and documentary evidence regarding offence under Section 406 of the IPC. There is nothing to show that after receiving the amount, accused took steps to deposit the amount with Finance Corporation. By admitting issuance of receipts, which is brought by way of suggestion to the witnesses, entrustment of money is indirectly admitted. None of the receipts issued in favour of complainant, which are at exh.32 to 74 and 81 to 94 are denied. When there is acknowledgment of money from complainant and other members, and the same not being further deposited with Finance Corporation, inference of embezzlement naturally follows.

Evidence of PW7 is a value addition to the prosecution story. He is an independent witness and rather an expert Auditor, who carried out special audit and has tendered report regarding notice of the irregularities in the affairs of the Society.

Thus, here, all essential ingredients for attracting offence under Section 406 of the IPC are indeed available in the evidence of prosecution. Consequently, judgment and order of trial Court as well as First Appellate Court cannot be faulted at. Revisionist is failed to point out on merit what was the illegality or irregularity or error in the manner of appreciation while drawing conclusion of guilt so as to interfere in the impugned judgments and orders in the revision. Hence, revision deserves to be dismissed. Accordingly, following order is passed :

ORDER

Criminal Revision Application is dismissed.

(**ABHAY S. WAGHWASE**)
JUDGE

13. On pronouncement of this Judgment, learned Counsel for revision petitioner submits that he intends to approach the Hon'ble Apex Court against the today's order and therefore, he urges to stay the effect and operation of today's order on the point of surrender for a period of six weeks.

14. Learned APP opposes the same.

15. Considering the above request made by learned Counsel for revision petitioner, to enable him to approach the Hon'ble Apex Court, the effect and operation of today's order is stayed for a period of six weeks.

(**ABHAY S. WAGHWASE**)
JUDGE

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