
(2015) 08 BOM CK 0062
In the Bombay High Court
Case No : Criminal Appeal No. 704 of 2003

State of Maharashtra

APPELLANT

Vs

Mohan Sampat Kharat and Others

RESPONDENT

Date of Decision : 13-08-2015

Acts Referred:

Evidence Act, 1872 — Section 106, 114, 27, 3, 45
Penal Code, 1860 (IPC) — Section 34, 381, 420, 468

Citation : (2015) 08 BOM CK 0062

Hon'ble Judges : T.V. Nalawade, J

Bench : Single Bench

Advocate : P.N. Mule, APP, for the Appellant; M.M. Joshi, Advocates for the Respondent

Judgement

T.V. Nalawade, J—The appeal is filed against judgment and order of Regular Criminal Case No. 432/1996, which was pending in the Court of Judicial Magistrate, First Class, Aurangabad. In a police case filed against the respondents for offences punishable under sections 420, 468, 381 and 34 of Indian Penal Code, both the respondents are acquitted by the trial Court. Heard both the sides. Accused No. 2/respondent No. 2 did not turn up. So, amicus curie was appointed to represent him in this case.

2. Respondent No. 1 - Kharat was employed as Lab Assistant in Government Laboratory of chemical analysis of Aurangabad region of the State Government. The office of respondent No. 1 had received complaints against him which were more than four that by making false representation that he can secure job to them in Government Offices, he had extracted money from them. Even one advocate had given notice for his client to inform the office of respondent No. 1 about his conduct and the advocate had asked the accused No. 1 to return back the money of his client or face action. The office of respondent No. 1 had given complaint to the office of Commissioner of Police, Aurangabad against him. But till the date of F.I.R., no action was taken.

3. Kranti Chowk Police Station had received a complaint of a lady against respondent No. 1 - Kharat that he was blackmailing to said lady by saying that he had her nude photographs. On 14.2.1996 Kranti Chowk Police Station took search of residential place of accused No. 1 in presence of panch witnesses. Police recovered may incriminating articles from the residential place of accused No. 1. Some of the articles were photographs of the said lady, which were as per the allegations made by her. Many articles involving obscene material were also recovered from his residential place.

4. During investigation of the aforesaid crime, Kranti Chowk Police recovered other material which was the record of Government Offices including the record of office of accused No. 1 and it was of following nature:--

"i) Personal record of around 18 persons which included the copies of their school leaving certificates, copies of other documents and this record is generally used for getting appointment.

ii) Blank Letter Head Pad containing many letters of the then Home Minister of the State of Maharashtra.

iii) A letter addressed by Government Department which was signed by Secretary of the Department to the office of accused No. 1 and it was in respect of the request made by the office for giving approval to the appointment of some persons by nomination and it was dated 31.8.1994.

iv) A letter of Selection Board of State Government with regard to appointments of the candidates.

v) Another letter dated 11.6.1994 sent by Selection Committee of the Government Department for giving appointments to the candidates.

vi) Another similar letter dated 15.3.1994 about selection of the candidates of Government Body.

vii) Copy of letter of one Shri. S.B. Padlikar for giving appointment on temporary post of Junior/Senior Lab Assistant.

viii) A letter of Survey Office of Deputy Director of Land Records for filling the posts of Surveyors and Clerks in that department.

ix) Rubber stamps of various Government institutions and offices, eight in number and

x) Record of appointment given to one lady in Government Department (the lady who had given complaint against the accused)."

5. All the aforesaid articles were seized under panchanama by Kranti Chowk Police. More record was subsequently recovered and the record included correspondence made by the office of accused No. 1 with Selection Board of the State Government for approval of selection of Shri. M.V. Rathod and Shri. G.M. Ade-More.

6. It appears that Kranti Chowk Police Station informed about the recovery of aforesaid material of the office of accused No. 1 to his office and then on the same day, the office of the accused No. 1 gave report to concerned police station, Chavani Police Station, Aurangabad. The office is situated within the local jurisdiction of Chavani Police Station. The crime came to be registered against accused No. 1.

7. During investigation, it transpired that accused No. 2 had taken some persons to accused No. 1 by making false representation to them that accused No. 1 can seek employment for them. These persons were deceived by accused Nos. 1 and 2 by acting together.

8. For proving the offence of theft of articles of the office of accused No. 1 by accused No. 1, prosecution has given evidence on the recovery of these articles on 14.2.1996. During investigation more articles were recovered on 21.2.1996 and they were the record of appointments of Shri. Rathod and Shri. Ade-More. This circumstance can also be used for proving modus operandi of accused No. 1 for proving the offence of cheating the persons who were believing that accused No. 1 was in a position to seek employment for them in Government Department.

9. Dr. Garad (PW 1), officer of the office of accused No. 1, who gave F.I.R. has given evidence that he had already received complaints against accused No. 1 from various persons like Digambar Pawar, Kalayan Solanke, Kiran Dantal Advocate and others. They had complained that accused No. 1 had deceived them by saying that he can seek employment to them in Government Offices and by making some false representation he had extracted money from them. The advocate had informed that from his client accused No. 1 had taken amount of Rs. 12,500/- and he was not returning the amount to his client.

10. Garad (PW 1) has further deposed that the aforesaid articles, articles recovered under panchanama dated 14.2.1996 in respect of his office and articles recovered under panchanama dated 21.2.1996 are the articles belonging to his office. He has identified even the rubber stamps of his office which were recovered under the aforesaid panchanama. The F.I.R. given by him is duly proved as Exh. 28 in his evidence and it is consistent with his substantive evidence.

11. For proving the recovery of incriminating articles from the residential place of accused No. 1, there is evidence of panch witness - Huseni (PW 3). His evidence shows that when search of residential place of accused No. 1 was taken, accused No. 1 was present there. He has also identified the articles of office of accused No. 1 which were recovered under the first panchanama. The panchanama is proved as Exh. 37. His evidence shows that his signatures were obtained on some articles and on envelopes in which some articles were kept.

12. In the cross examination of Huseni (PW 3), it is brought on the record that he had acted as a panch witness for police in 10-12 cases. Due to this circumstance, the trial Court has not placed reliance on the evidence of Huseni.

This Court has no hesitation to observe that only because a person has acted as panch witness in some cases, his evidence cannot be discarded altogether. Such circumstance requires the Court to do close scrutiny of the evidence. If there is other convincing material and supporting evidence, then the evidence of such panch witness also can be taken in to consideration. It needs to be kept in mind in the present case that even before the registration of the present crime, the incriminating articles were recovered from residential place of accused No. 1. This circumstance shows that Kranch Chowk police or panch witnesses had no reason to implicate the accused in such a case and by chance these articles were recovered from his residential place when other crime was being investigated. The evidence of this witness could not be shaken in cross examination. He gave evidence competently on the recovery of articles.

13. Mahajan (PW 12) Deputy Superintendent of Police, who made investigation of the crime registered in Kranti Chowk Police Station has given evidence that on 14.2.1996 he took the search of residential place of accused No. 1 and he recovered the aforesaid articles from the residential place of accused No. 1. This witness has also identified the articles. Original panchanama was produced in R.C.C. No. 149/1996 filed by Kranti Chowk Police Station and it's copy is produced in the present matter which is given Exh. 37. There is no law preventing the use of such material recovered in other case. The incriminating material can be used even if it is recovered first and crime is registered afterwards. On this point also, the trial Court has committed error. The trial Court has unnecessarily given importance to the circumstance that the lady who had given complaint against accused No. 1 in Kranti Chowk Police Station is not examined. Considering the nature of allegations made by her and aforesaid circumstance, this Court holds that examination of the said lady was not at all necessary in the present matter.

14. Renke (PW 13), another Investigating Officer, P.S.I. who made investigation of the present case, crime No. 30/96 has given evidence that he arrested the accused on 20.2.1996. He has given evidence that he took the search of residential place of accused on 21.2.1996 and on that occasion, he recovered more articles of the office of accused No. 1 from his residential place. This record includes the correspondence made with regard to appointment of staff in this office and it include even the letter given to accused No. 1 seeking his explanation. Though the panch witness on this recovery turned hostile, there is no reason to disbelieve Renke (PW 13).

15. There is some evidence like the statement given by accused No. 1 under section 27 of Evidence Act and prosecution wanted to prove that accused had taken the police to his office and he had shown the place from where the aforesaid material was collected and stolen by him. No recovery as such is made under the panchanama on the basis of statement made by the accused though similar record was found at these places. This Court holds that this evidence is of no use. The aforesaid evidence which is on actual recovery is sufficient to prove

that the articles of the office were recovered from the residential place of accused No. 1. He has not given explanation about this incriminating circumstances and so, this evidence is sufficient to prove that accused No. 1 had committed the theft of aforesaid articles and that is why, these articles were found at his residential place. The burden was on the accused No. 1 to explain the things in view of the provisions of sections 114 and 106 of the Evidence Act.

16. For proving the offence of forgery and the offence of cheating, some witnesses are examined by the prosecution. The evidence of Dilip Jadhav (PW 5) shows that he knew one Vijay Pardeshi and Vijay Pardeshi had represented him that accused No. 1 was in a position to seek appointments in Government Departments. According to this witness, his relative had passed S.S.C. and he was in search of job and so, he requested Vijay Pardeshi to do something. He has given evidence that he then met accused and accused showed to him the letter pad of his office. As some documents were shown by accused No. 1 to him, he believed that accused No. 1 can seek job for his relative. He has given evidence that as per the demand made by the accused, initially the amount of Rs. 15,000/- was paid and the remaining amount was to be paid after giving of the appointment. He said that again demand was made and so, again he had paid Rs. 2,000/- and after that when he started making inquiry with accused No. 1, accused No. 1 gave lame excuses and accused asked him to wait as the Selection Board was not created. He has given evidence that when he insisted for return of money, accused No. 1 issued a cheque of Rs. 17,000/-, but this cheque bounced. He has given evidence that after bouncing of the cheque, he had approached accused No. 1 and accused No. 1 had again asked him to wait for some time and he had assured him to return the money. The trial Court has refused to believe this witness only due to the circumstance that no cheque was produced. The circumstance that accused No. 1 was not at all known to this witness is not considered by the trial Court. There was virtually no reason for Jadhav (PW 5) to give false evidence against the accused. No material contradiction could be proved in the evidence of this witness and he had given statement to police on 21.2.1996.

17. There is evidence of Suresh Mohite (PW 6) on another incident of cheating. He has given evidence that aforesaid Vijay Pardeshi had introduced accused No. 1 to him and it was represented that accused No. 1 was in a position to seek employment for two relatives of this witness. He has given evidence that accused No. 1 had directly made demand of Rs. 25,000/- for each appointment and he had paid total amount of Rs. 20,000/-. His evidence is similar to the evidence of aforesaid witness and it shows that under different pretexts, he was asked to wait and then accused No. 1 gave cheque, which bounced. This witness also could not produce the cheque and this circumstance is held against the prosecution. For the reasons already given, this Court holds that for Suresh (PW 6) there was no reason to give false evidence against accused No. 1. He had come forward to give statement to police on 29.2.1996 and no material contradiction is proved in relation to the previous statement. His evidence also

remained unshaken during cross examination.

18. The evidence of Jankiram Rathod (PW 7) is similar in nature and to him also, promise was given to give appointment of Peon in Court. He has given evidence against accused No. 1 that accused had demanded Rs. 20,000/- for giving the job and he had represented that he will require atleast Rs. 30,000/- for giving the appointment to another person Mangilal. He has given evidence that at the relevant time one Shantilal Kharat was present in the house of accused No. 1 and he had paid Rs. 10,000/- to accused No. 1. The remaining amount was to be given after giving of the appointment letter. He has given evidence that from Mangilal Rathod, accused had collected amount of Rs. 15,000/- as per the aforesaid agreement and remaining amount was to be paid by Mangilal after getting the appointment letter. He has given evidence that they waited for two months, but they did not receive appointment letter and accused gave excuses that there was election of legislative assembly and the things had changed and he wanted time to make arrangement. He also represented to this witness that the inauguration of the Court was postponed and so, there was delay. He kept waiting and waiting and ultimately, when he learnt about the arrest, he came forward and he gave statement to police on 26.3.1996. His evidence also remained unshattered. This witness did not know accused No. 1 and for him also, there was no reason to give false evidence against accused.

19. Mangilal Rathod (PW 8) has turned hostile and so, there is no need to discuss his evidence. Another witness Makrand Kale (PW 9), who was also cheated has turned hostile. One more witness Chandrakant Padul (PW 10) has turned hostile and he was also on similar point. It needs to be kept in mind that the persons deceived are afraid to admit such things as they had got themselves involved in such illegal activities.

20. When offence of cheating is committed there is ordinarily no record as the persons involved in the offence take care to see that they do not create the record of representation. Fortunately, in the present case, there is the record of aforesaid nature, which is recovered from the residential place of accused No. 1. This record gives necessary corroboration to the versions given by the aforesaid persons who were deceived by the accused No. 1. This evidence is more than sufficient to prove the offence of cheating.

21. Some evidence is given by the prosecution like that of Handwriting Expert to show that the specimen hand writing of the accused No. 1 tallied with the hand writing found on documents recovered from residential place. This circumstance can also be used as corroborative piece of evidence. Even if this piece of evidence is ignored, the other evidence is sufficient to prove the offences punishable under sections 381 and 420 of I.P.C. If the evidence of Expert is ignored, accused can get acquittal only in respect of offence of forgery. It was not necessary to prove the offence of forgery for proving the aforesaid two offences. Thus, the trial Court has committed grave error in acquitting the accused.

22. The learned counsel for accused No. 1 placed reliance on some reported cases. In the case reported as Ishwari Prasad Mishra Vs. Mohammad Isa, AIR 1963 SC 1728 : (1963) 3 SCR 722 , the Apex Court has discussed the provision of section 45 of the Evidence Act and the value of the expert's evidence. The proposition that it is opinion evidence cannot be disputed. Another case reported as The Forest Range Officer and others Vs. P. Mohammed Ali and others, AIR 1994 SC 120 : (1993) 2 Crimes 415 : (1993) 3 JT 222 : (1993) 2 SCALE 792 : (1993) 3 SCC 627 Supp : (1993) 3 SCR 497 is also on provision of section 45 of the Evidence Act. Third case reported as Mohd. Hussain Babamiyan Ramzan Vs. State of Maharashtra, (1994) CriLJ 1020 is on the point of use of evidence of stock witness under section 3 of Evidence Act. In that case, the Court disbelieved the stock panch witness by holding that Investigating Officer had knowingly taken pliable witness as panch witness and the entire raid was suspicious. The evidence of police witnesses was not found sufficient for basing conviction. This Court has already observed that it is not treat law that evidence of panch witness who has given evidence in some cases can be discarded straight way. If their evidence after close scrutiny is found to be trustworthy, such evidence can be relied upon. Further, there is evidence of police officers on both the panchanamas. This Court has already observed that the circumstance of recovery of incriminating material as against accused No. 1 even after registration of the present crime needs to be kept in mind as it shows that there was no reason for anybody to falsely implicate him in such case. Thus, the observations made by this Court in the case cited supra are of no help to the accused.

23. The aforesaid discussion shows that there is virtually no evidence given as against accused No. 2. So, it is not possible to convict accused No. 2. In the result, following order.

ORDER

"(i) The appeal as against respondent No. 1/accused No. 1 - Mohan Sampat Kharat is allowed.

(ii) The judgment and order of trial Court delivered in R.C.C. No. 432/1996, acquitting accused No. 1 of the offences punishable under sections 381 and 420 of I.P.C. is hereby set aside.

(iii) Accused No. 1 stands convicted for these offences and for each offence, he is sentenced to suffer rigorous imprisonment for one year and to pay fine of Rs. 5,000/- (Rupees five thousand) for each offence. In default of payment of fine in each case, he is to further undergo simple imprisonment for one month.

(iv) Both the sentences to run concurrently. He is to surrender to his bail bonds for undergoing the sentence.

(v) The trial Court is to send the conviction warrant if he does not surrender.

(vi) Appeal as against respondent No. 2/accused No. 2 - Uttam Banduji Sapkal

stands dismissed.

(vii) The fees of the advocate appointed through legal aid for respondent No. 2 is quantified as Rs. 3,000/- (Rupees three thousand)."