(2014) 07 BOM CK 0008

In the Bombay High Court

Case No : Criminal Appeal No. 236 of 1993

The State of Maharashtra APPELLANT

Vs

Prakash Parshuram Shirke RESPONDENT

Date of Decision : 17-07-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 408, 467, 477(A), 477A

Citation : (2014) ALLMR(Cri) 4058

Hon'ble Judges : V.K. Tahilramani, J;A.S. Gadkari, J

Bench : Division Bench

Advocate : A.S. Pai, A.P.P, Advocate for the Appellant

Judgement

V.K. Tahilramani, J.—The appellant-State of Maharashtra has preferred this appeal against the judgment and order dated 16.1.1993 passed by the learned Judicial Magistrate F.C. Khalapur, Raigad in R.C. No. 40 of 1985. By the said judgment and order, the learned Magistrate acquitted the respondent-accused of the offence under Sections 408, 467 and 477(A) of I.P.C. It is the prosecution case that the respondent was working as a Salesman in Khalapur Taluka Sahakari Kharedi Vikri Sangh, Khopoli during the period from 1.7.1981 to 12.9.1982. It is the prosecution case that during the said period the respondent was working as a Salesman in the Sahakari Sangh and he committed breach of trust, forgery of valuable security and falsification of accounts. The complaint was lodged by PW-1 Shri. Mhatre who was working as an Auditor in the Department of Agriculture and Co-operative. The work of the Audit of the said Sangh was entrusted to the complainant by the Department of Special Auditor, Konkan Bhuvan. Accordingly, the complainant was engaged in the auditing of the accounts for the period from 1.7.1981 to 30.6.1983. The respondent-accused was working as a Salesman during the period from 1.7.1981 to 12.9.1982. The complainant completed the audit on 3.10.1983 and sent a report to the higher Officers on 20.1.1984. The report stated that the accused has misappropriated several amounts by showing less sale of grains or by not depositing amount of sale in the Cash-book. The respondent has also not shown purchase price or bogus purchases. He has also made false entries in the Stock register and reduced the stock in sugar in the Stock register. He has shown the sales in the sale register and he has shown the amount in the main Cash-book. Therefore, the complainant PW-1 Mhatre lodged complaint against the respondent-accused on 20.1.1984.

2. Charge came to be framed against the respondent-accused under sections 408, 467 and 477-A of IPC. The respondent pleaded not guilty to the said charge and claimed to be tried. His defence was that he was not working as a Salesman at any time in the said society and it was not his duty to keep and maintain the accounts. His duty was only of measurer (Mapadi). After going through the evidence adduced in this case, the learned Magistrate acquitted the respondent-accused as stated in paragraph 1 above, hence, this appeal.

3. We have heard the learned A.P.P. for the State and the learned Advocate for the Respondent-Accused. After giving our anxious consideration to the facts and circumstances of the case, arguments advanced by the learned Advocates for the parties, the judgment delivered by the learned Magistrate and the evidence on record, for the below mentioned reasons, we are of the opinion that there is no merit in the appeal.

4. Only three witnesses have been examined by the prosecution. PW-1 Mhatre is the complainant. He was the Auditor of the society. He has stated that the work of audit of the society was entrusted to him for the period from 1.7.1981 to 30.6.1983. He completed the audit on 30.10.1983. PW-1 Mhatre has stated that the respondent was working as a Salesman during the period from 1.7.1981 to 12.9.1982. The complainant completed the audit on 3.10.1983 and sent a report to the higher Officers on 20.1.1984. The report stated that the accused has misappropriated several amounts by showing less sale of grains or by not depositing amount of sale in the Cash-book. The respondent has also not shown purchase price or bogus purchases. He has also made false entries in the Stock register and reduced the stock in sugar in the Stock register. He has shown the sales in the sale register and he has shown the amount in the main Cash-book. Therefore, the complainant PW-1 Mhatre lodged complaint against the respondent-accused on 20.1.1984. Thus, it is his case that in the above manner, the respondent committed the offences alleged.

5. As stated earlier, the defence of the respondent-accused is that he was not working as a Salesman at any time in the society and it was not his duty to keep and maintain the accounts. His duty was only of measurer (Mapadi). The complainant in his cross-examination has admitted that each society is bound to have bye-laws and Rules. He further admitted that the responsibility of each office bearer of the society is fixed according to Rules of the society. The complainant has specifically stated that it is the responsibility of the Secretary or the Chairman to see whether the accounts are correctly maintained including the registers. Moreover, it is pertinent to note that the prosecution as not produced

any letter or any other documentary evidence to show that the respondent was working as a Salesman in the society and his duty was to keep and maintain the accounts of the said society. It is also to be noted that PW-3 Anant has also admitted in his cross-examination that the responsibility of the maintaining of accounts of the said Sangh (society) was of the Secretary. If there was any alleged misappropriation, forgery and falsification of accounts, it appears that the respondent would not be responsible for the same.

6. As stated earlier the defence of the accused is that he was not working as a salesman but as a measurer. In this connection, evidence of PW-2 Shri. Deshmukh who was the Manager is relevant. Shri. Deshmukh has specifically admitted in his cross-examination that the respondent was working as Mapadi (measurer). As stated earlier there is no documentary evidence to show that the respondent was working as a salesman. The prosecution did not file relevant documents or Salary Certificate, Pay Roll or appointment letter to show that the respondent was working as a Salesman and it was his duty to maintain the accounts. Thus, the prosecution has not been able to prove that the respondent was entrusted with the work of maintaining accounts.

7. There is no report of handwriting expert to show that the writing in the registers which according to the prosecution, amounts to falsification of accounts by the respondent were written by the respondent. In view of this fact and the above facts, in our opinion, the prosecution has not proved that the respondent has written the accounts.

8. One other aspect which needs to be taken into consideration is that the prosecution has relied upon the sanction order which is issued by the District Special Auditor Co-Operative Societies, District Raigad. The said sanction order is at Exh. 66. It is pertinent to note that the said sanction order is a cyclostyled order. The prosecution has not proved the said order by examining the clerk or anyone from the said office. Looking to the fact that it is a cyclostyled order, it cannot be said that the sanctioning authority applied its mind while granting sanction for prosecution of the respondent. Under these circumstances, the learned Magistrate has rightly held that it cannot be said that there is proper and valid sanction while launching the prosecution against the respondent. The fact that the sanction was not proper or valid also enures to the benefit of the accused. On going through the record, we find that the evidence on record is not sufficient to convict the respondent. In this view of the matter, we find no merit in the appeal. Appeal is therefore, dismissed.