

18. We, therefore, pass following order :

- a (a) Rule is made absolute;
- (b) Criminal Writ Petition No.1936 of 2016 is allowed and thereby FIR registered vide CR No.28 of 2016 with Dindoshi Police Station on 12 January 2016 is quashed and set aside;
- b (c) Criminal Writ Petition No.1937 of 2016 is allowed and thereby FIR registered vide CR No.27 of 2016 with Dindoshi Police Station on 12 January 2016 is quashed and set aside;
- (d) Parties to act on an ordinary copy of this order duly authenticated by registry of this Court.

c **Result:-** FIR quashed and set aside.

ABC 2016 (II) 173 BOM
ACQUITTAL & BAIL CASES
d **HIGH COURT OF BOMBAY**
(Naresh H. Patil & Prakash D. Naik, JJ.)
Criminal Appeal No. 547 of 2002
Decided on 28 July, 2016

STATE OF MAHARASHTRA - Appellant(s).

e Versus

MANDABAI ASHOK SAWANT - Respondent(s).

f **Law Covered:-** (A) Code of Criminal Procedure, 1973 – Section 378 – Appeal against acquittal – Indian Penal Code, 1860 – Section 409 – Misappropriation of the money sent by money orders – Senders of Money Orders – non examination of – non-production of receipts – non-identification of signature of the accused – Panch witness – ignorance regarding the reason as to why his signature was obtained on the panchnama – Serious lacuna on the part of Investigating Officer – Defective Investigation – Held, Prosecution is not absolved of its responsibility and duties to establish the case beyond reasonable doubt – benefit of doubt – Acquittal. (Para 6 & 8)

g (B) Indian Evidence Act, 1872 – Section 3 – Relevant fact – Defective Investigation – Non-examination of the relevant witnesses – fatal to prosecution. (Para 6)

h (C) Indian Evidence Act, 1872 – Section 3 – Relevant fact – Seizure – of record from the residence of respondent – not supported

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by Panchas – but supported by the Investigating Officer – Defective Investigation – Fatal to prosecution. (Para 8)

(D) Indian Evidence Act, 1872 – Section 3 – Relevant fact – Sealing – no reference in the panchnama – Defective Investigation – Fatal to prosecution. (Para 8) a

(E) Indian Evidence Act, 1872 – Section 3 – Relevant fact – signatures of Panchas – on seized articles – Absence of – Defective Investigation – Fatal to prosecution. (Para 8) b

(F) Indian Evidence Act, 1872 – Section 3 – Relevant fact – Original receipt – Non seizer of – IO did not seize original money order receipts from the senders of money orders – serious lacuna on the part of IO – Defective Investigation – Fatal to prosecution. (Para 8) c

(G) Indian Evidence Act, 1872 – Section 3 – Relevant fact – Specimen Signature & report of Handwriting Expert – non obtaining of – Held, The Investigating Officer ought to have obtained specimen signature – and hand-writing expert report while conducting investigation – Defective Investigation – Fatal to prosecution. (Para 8) d

(H) Criminal Jurisprudence – Code of Criminal Procedure – Investigation – in the matters involving confidence of people – Duty of the Investigating agency – The Investigating Agency ought to be more vigilant. (Para 8)

(I) Indian Evidence Act, 1872 – Section 3 – Relevant fact – Standard of proof – Defect in the prosecution evidence – Impact of – Considering the nature of quality of evidence – benefit would be derived by the accused person – for the lacunas, lapses and defects in the prosecution evidence. (Para 8) e

(J) Criminal Jurisprudence – Cardinal principle – on mere conjectures and surmises a person cannot be held guilty & punished. (Para 8) f

(K) Criminal Jurisprudence – Convicting a person by drawing an inference of guilt – Held, the inference depends on the facts and circumstances of each case & the nature of evidence brought on record – Indian Evidence Act, 1872 – Section 3 – Relevant fact – Standard of proof. (Para 8) g

Facts:- At the relevant time respondent was discharging her duties as Branch Post Master. The superior officers of the Postal Department got information that money orders received by her post office, were not accounted for and the matter requires investigation. After verification it was alleged h

a that the stamp receipts which were to be issued to persons who deposited money for sending it by money order were not found. Certain record relating to receipt of money orders was found lying in the house of respondent. It was concluded that respondent had misappropriated an amount of Rs.95,396/-. However the respondent was acquitted of the charge framed u/s 409 of I.P.C. the State is in the appeal before the Hon'ble Bombay High Court in the present Appeal. The hon'ble Court found serious lacuna in the investigation and it was held that the prosecution is not absolved of its responsibility and duties to establish the case beyond reasonable doubt. Benefit of doubt was given to the respondent.

c **Law of relief:-** Non-obtaining specimen signature and non-sending them to hand-writing is fatal to prosecution.

d **Held:-** We have perused the entire record and the evidence. We find that the case could have been conducted in a more proper and appropriate manner. Learned APP is right in submitting that trial court could have been more vigilant in conducting the trial. At the relevant time, the amount which was not accounted for was a substantial amount i.e. Rs. 95,396/-. The Investigating officer ought to have taken pains to produce the prosecution witnesses cited in support of the prosecution case. The record shows that efforts were made by the Prosecutor for getting summons issued at times, even bailable warrant were issued, but for the reasons best known to the e Investigating Agency, the persons who claimed to have deposited money with the post office did not come forward to depose in favour of the prosecution. (Para 6)

f We cannot loose site of the fact that prosecution has to establish its case beyond reasonable doubt. The seizure of record from the residence of respondent was not supported by Panchas but the same was supported by the Investigating Officer. The investigating officer in the cross-examination stated that receipt books were sealed after the panchnama was drawn but there was no reference of the same in the panchnama. He further stated that receipt books do not g bear signature of Panchas but he denied suggestion that panchnama was fabricated. The Investigating officer has averred that he did not seized original money order receipts from witnesses i.e. sender of money orders. This is serious lacuna on the part of Investigating h Officer. The Investigating Officer ought to have obtained specimen signature and hand-writing expert report while conducting investigation. For the reasons best known to Investigating Officer, we

do not find such an evidence was brought on record. These are matters where confidence of people is involved. The Investigating Agency ought to have been more vigilant in conducting investigation in such cases. In this fact of scenario and considering the nature of quality of evidence, benefit would be derived by the accused person for the lacunas, lapses and defects in the prosecution evidence. It is the cardinal principle of criminal jurisprudence that on mere conjectures and surmises a person cannot be held guilty and punished. In certain situations inference could be drawn but it depends on the facts and circumstances of each case and the nature of evidence brought on record. The record reflects that respondent being Branch Post Master was Incharge of the post office. Her duties were crucial in nature and mere pleading ignorance would not suffice and mere denials are of no consequence but still the fact remains that the prosecution is not absolved of its responsibility and duties to establish the case beyond reasonable doubt. In the facts of the case, we find that benefit of doubt would go in favour of the respondent. (Para 8)

Counsel:- For Appellant(s): Mr. J. P. Yagnik, APP.

For Respondent(s): Mr. Machindra Patil Advocate.

JUDGMENT

NARESH H. PATIL, J.: - The respondent was charged for the offence under section 409 of I.P.C. By Chief Judicial Magistrate, Thane in R.C.C. No. 66/1996. At the relevant time respondent was discharging her duties as Branch Post Master, Kausa, Dist. Thane. The Inspector at Divisional Office Thane- PW2 Uday Kumar Jadhav was called by Senior Superintendent of Post Office, Central Division, Thane on 10th November, 1995 alongwith Assistant Superintendent of Post Office. They were informed that money orders received by post office, Kausa were not accounted for and the matter requires investigation. The PW2 Jadhav alongwith PW3 Forgade visited Post Office, Kausa. The respondent was present there. The cash balance, stamps, money order forms, registers and other relevant record were verified. It was alleged that they did not find the stamp receipts which were to be issued to persons who deposited money for sending it by money order. They found one book of money orders and register having scored number of receipts. The PW1 Laxman Kamble, Vigilant Inspector filed complaint against the respondent on which FIR came to be registered. The Vigilance Inspector and PW2 found that certain

a record relating to receipt of money orders was lying in the house of respondent. The record was seized. It was attached under Panchnama. The Senior Officers of the postal department after verifying the entire record and taking into consideration the complaint lodged arrived at conclusion that respondent had misappropriated an amount of Rs.95,396/-. The police after investigation filed a chargesheet against the respondent.

b 2. Seven witnesses were examined by prosecution. From the record we have noticed that summons were issued to several witnesses but it is surprising to note that prosecution was unable to record evidence of witnesses particularly the persons who claimed that they had paid money for forwarding it by money order which amount did not reach the destination. It was alleged that money was misappropriated. A long list of 130 persons was cited. PW1 Laxman Kamble is the Complaint Inspector of post office who lodged the complaint. PW2 Udaykumar Jadhav is senior Superintendent of Post Office and PW3 Dyaneshwar Forgade who was working as Superintendent at Thane Central Division was also examined in support of prosecution case. PW4 Raghunath Walekar was serving as Postman at the relevant time. PW5 is Panch witness who did not support the prosecution. PW6 is Chhotelal Verma who is a sole witness from the list of 130 persons who had deposited money to be forwarded by money order. PW7 is the Investigating Officer.

c 3. The PW2 and PW3 being officers of the post office, Central Division, Thane have deposed before the Court that the entire record of the post office was verified and it was found that respondent no.2 was entrusted with an amount of Rs. 95,396/- pertaining to money orders. The receipt books were seized from the respondent's house. Respondent claimed ignorance about the entire transaction. Her defence was of denial. The witnesses further deposed before the Court that amount was not accounted for neither it reached persons in whose favour the amount was deposited by various persons with Branch Manager of the post office i.e. respondent. The PW5 who was examined as panch witness did not support the prosecution. In paragraph 2 of his deposition he stated:

h " It is not true to say that, in my presence police had searched the house of accused. Panchnama dated 12/12/95 bears my signature. It is not true to say the Complainant Kamble had shown the money order forms 129 to the police

and two receipt books thereafter it was seized in my presence".

PW6, the person who claimed to have deposited the money could not produce receipt of payment made by him. PW4 Raghunath Walekar stated that investigation was carried out and the entire record was searched. He was discharging his duties as a postman and was in a position to identify the signature of respondent. He stated about the day to day transactions going on in the post office Kausa. He deposed that he was present during inspection but during cross examination he deposed that he did not know who used to accept money order amount in Mumbra post office. He was getting salary from Kausa post office. He deposed before the Court that he had not stated before police that he could identify signature of accused as it was not asked by police. In other words, witness expressed his opinion that he was not in a position to identify signature of respondent at exhibit 15 and 16.

4. The learned Prosecutor submitted that in fact this was a case where the trial Court ought to have been vigilant during trial for doing complete justice. It was a serious matter where money deposited by poor villagers was misappropriated by the accused. The amount was paid by various persons to the Branch Post Master, receipts were executed but the amount did not reach the destination. The learned Prosecutor submitted that relevant record was seized from the residence of respondent. The postman who was discharging duties in Kausa post office was not in a position to throw light on the day to day transactions. Panch witness Hasan Shaikh denied that in his presence police searched the house of accused and seized money order forms in his presence. He could not state the reason as to why his signature was obtained on the panchnama. His testimony ought to have been relied upon by the trial Court. In the submissions of learned Prosecutor as the respondent was entrusted with money deposited towards money orders, she ought to have accounted for the said amount. She was responsible for the amount that was not accounted for and charge framed against the respondent was clearly established.

5. Learned Counsel appearing for respondent submitted that after going through the entire evidence, the trial Court had acquitted the accused. The responsibility on the prosecution was heavy. They are supposed to establish the case beyond reasonable doubt. The respondent

a could not have been convicted on conjectures and surmises neither on drawing inferences. The learned Counsel submitted that Panchas have not supported the prosecution case though the prosecution claimed that several persons deposited money but they failed to bring such persons before the Court in support of the prosecution case. One such person deposited before the Court but his testimony is of no value as he failed to produce receipt of payment of money. Learned Counsel submitted that b the theory of prosecution that the record was seized from the house of respondent does not get credence from the evidence of independent witness. The signature on the receipts was not proved. No opinion of hand-writing expert was tried to be obtained by the prosecution. There is no evidence to show that respondent accepted the money from the persons c towards money order and executed the receipts and handed over the same to various persons. This being essential ingredient of offence, learned Counsel submits that benefit must go to respondent. Learned Counsel further submitted that being an appeal against order of acquittal, if two views are possible, the benefit shall go to respondent-accused.

d 6. We have perused the entire record and the evidence. We find that the case could have been conducted in a more proper and appropriate manner. Learned APP is right in submitting that trial court could have been more vigilant in conducting the trial. At the relevant time, the amount which was not accounted for was a substantial amount i.e. Rs. 95,396/-. The Investigating officer ought to have taken pains to e produce the prosecution witnesses cited in support of the prosecution case. The record shows that efforts were made by the Prosecutor for getting summons issued at times, even bailable warrant were issued, but for the reasons best known to the Investigating Agency, the persons who claimed to have deposited money with the post office did not come f forward to depose in favour of the prosecution.

g 7. The evidence of PW1, PW2 and PW3 who were from the department shows that entire record was scanned by them. They seized the record. The record also shows that several receipts were seized which were executed in the name of persons who paid money towards money order. The record is relevant to the allegations made. The prosecution witnesses 1, 2 and 3 calculated the amount of Rs. 95,396/- which was not accounted for. In the normal circumstances, respondent being a Branch Post Master of Kausa post office must h have been made responsible and accountable. Being a Branch Post Master, it was the responsibility and duty of the respondent to explain the circumstances and allegations made.

8. We cannot loose site of the fact that prosecution has to establish its case beyond reasonable doubt. The seizure of record from the residence of respondent was not supported by Panchas but the same was supported by the Investigating Officer. The investigating officer in the cross-examination stated that receipt books were sealed after the panchnama was drawn but there was no reference of the same in the panchnama. He further stated that receipt books do not bear signature of Panchas but he denied suggestion that panchnama was fabricated. The Investigating officer has averred that he did not seized original money order receipts from witnesses i.e. sender of money orders. This is serious lacuna on the part of Investigating Officer. The Investigating Officer ought to have obtained specimen signature and hand-writing expert report while conducting investigation. For the reasons best known to Investigating Officer, we do not find such an evidence was brought on record. These are matters where confidence of people is involved. The Investigating Agency ought to have been more vigilant in conducting investigation in such cases. In this fact of scenario and considering the nature of quality of evidence, benefit would be derived by the accused person for the lacunas, lapses and defects in the prosecution evidence. It is the cardinal principle of criminal jurisprudence that on mere conjectures and surmises a person cannot be held guilty and punished. In certain situations inference could be drawn but it depends on the facts and circumstances of each case and the nature of evidence brought on record. The record reflects that respondent being Branch Post Master was Incharge of the post office. Her duties were crucial in nature and mere pleading ignorance would not suffice and mere denials are of no consequence but still the fact remains that the prosecution is not absolved of its responsibility and duties to establish the case beyond reasonable doubt. In the facts of the case, we find that benefit of doubt would go in favour of the respondent.

9. We are informed by the Counsel appearing for the respondent that the departmental enquiry was held and respondent was dismissed from service in the year 2003.

10. There is no merit in the Appeal. Appeal is dismissed. Bail Bond of the accused stands cancelled.

Result:- Appeal is dismissed
