

(2013) 06 BOM CK 0057

Bombay High Court (Aurangabad Bench)

Case No: Criminal Writ Petition No. 287 of 2005

Suganchand Kasturchand Raka

APPELLANT

Vs

The State of Maharashtra and
Another

RESPONDENT

Date of Decision: June 12, 2013

Acts Referred:

- Penal Code, 1860 (IPC) - Section 406

Citation: (2013) ALLMR(Cri) 2924

Hon'ble Judges: A.P. Bhangale, J

Bench: Single Bench

Advocate: K.C. Sant, for the Appellant; P.P. More, APP for the Respondent No. 1 and Shri A.G. Talhar, Advocate, for the Respondent

Final Decision: Allowed

Judgement

A.P. Bhangale, J.

Heard submissions advanced by learned for respective parties. Learned advocate for the petitioner brought to my notice that, the complainant as well as the accused in the present case had moved an application dated 1.8.2011 in the pending Criminal Case No. 456/2001 and complainant did not want to proceed further with the complaint case. However, on technical ground that offence punishable u/s 406 of Indian Penal Code is non-compoundable, learned Trial Magistrate refused to dismiss the complaint.

2. Be that as it may; facts which appear from record are that the complainant had claimed interest in the registered public Trust "Shri Jain Shvetambar Murtipujak Mandir" at Jalgaon, alleging that the accused was Ex-trustee and was the President till 15.10.2000 looking after the transactions of Trust including banking etc. It is also alleged that there was a scheme sanctioned by the Assistant Charity Commissioner and rules were framed pursuant to the scheme. It is alleged that the accused and

other trustees had not called for the quotations or tenders and work of Architect was allotted to one M/s. Mahajan and associates. Thus, it was alleged that since Architect were paid by cheques, the accused had committed offence punishable u/s 406 of Indian Penal Code. Two witnesses were cited in the complaint namely Krishna Sonu Bhamre and Rajendra Malhara. It appears that the complainant had led some evidence in support of the complaint in March, 2003, which was considered and by a reasoned order the learned Trial Magistrate found that it was a case of a bonafide transaction on behalf of the Trust between the accused and the Architects namely M/s Mahajan and Associates and could not amount to offence of criminal breach of trust. In the result, therefore, the complaint was dismissed on 31.3.2003. Under these circumstances, when Criminal Revision Application No. 150/2003 came to be filed it appear that, the learned 2nd Ad-hoc Additional Sessions Judge, Jalgaon interfered with the order passed by the learned Trial Magistrate while exercising revisional jurisdiction and allowed the Revision Application, setting aside the dismissal of the complaint. It is indubitable that when learned Trial Magistrate dismissed the complaint by a reasoned order, it amounted to an acquittal which ought not to have been disturbed lightly that too in exercise of Revisional jurisdiction unless a cogent, clear and strong case is made out to do so. Looking to the facts and circumstances of the case brought to my notice that complainant himself chose not to proceed with the complaint as he had filed written application in the trial court for permission to compound the offence rendering chances of conviction bleak. Hence, the interest of justice would be secured, if the impugned order passed by the learned 2nd Ad-hoc Additional Sessions Judge, Jalgaon is quashed and set aside and order which was passed by the learned Trial Magistrate for dismissal of the complaint is restored. It also appears that accused was stated aged about 67 years in the year 2003. Considering his advanced age of 77 years (about seventy seven years) as on today, no useful purpose would be served by keeping the sword of prosecution hanging on his head and to disturb his evening of life due to his old age in the facts and circumstances of the case. Hence, petition is allowed. Impugned judgment and order passed by the learned 2nd Ad-hoc Additional Sessions Judge is quashed and set aside. Order passed by the learned Judicial Magistrate First Class dismissing the complaint is restored. Rule is made absolute.