

Bombay High Court

The State Of Maharashtra vs Bhairu Krishna Powar on 31 July, 2015

Bench: A.M. Thipsay

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.607 OF 1998

THE STATE OF MAHARASHTRA

)...APPELLANT

V/s.

BHAIRU KRISHNA POWAR & ORS.

)...RESPONDENTS

Mrs.S.Gajare-Dhumal, APP for the Appellant - State.

Ms.Madhavi Tavanandi, Advocate for the Respondents.

CORAM : ABHAY M. THIPSAY, J.

DATE : 31st JULY 2015.

ORAL JUDGMENT :

1 The respondents were prosecuted on the allegation

that they had committed an offence punishable under Section 379 of Indian Penal Code (IPC) read with Section 34 thereof. The Judicial Magistrate First Class, Gadhinglaj, after holding a trial found them not guilty and passed an order of acquittal. The State avk 1/6 21-APPEAL-607-1998.doc of Maharashtra is aggrieved by the said order of acquittal, and has, therefore, after obtaining leave of this court, filed the present appeal praying that the order of acquittal be set aside, and the respondents be convicted of the aforesaid offence.

2 I have heard Mrs.S.Gajare-Dhumal, the learned APP for the State. I have heard Ms.Madhavi Tavanandi, the learned counsel for the respondents. With their assistance, I have gone through the entire evidence adduced during the trial. I have also gone through the impugned judgment.

3 The prosecution case, as put forth before the Magistrate, was as follows :

Jyoti Rama Kapse had installed an electric motor pump on his well. On 18 th April 1997, he noticed that the said electric motor pump was missing. He did not lodge any report at that time. However, when he learnt that Ajara Police had apprehended some people who were indulging into theft of electric motor pumps, he went to Ajara Police Station, where he avk 2/6 21-APPEAL-607-1998.doc was shown certain motors. He, then, lodged a report with the police, alleging commission of theft by the respondents, whose names were disclosed to him by the police, as the persons from whom electric motors had been recovered.

4 The prosecution examined five witnesses during the trial. The first witness, as aforesaid, is the First Informant - Jyoti Rama Kapse. The second witness - Bhairu Sawant - is the one, in whose presence respondent no.1 - Bhairu Powar had supposedly made a statement to the effect that he had sold two electric motor pumps at Kolhapur, pursuant to which disclosure, twelve electric motor pumps came to be recovered by the police, in the course of investigation. The third witness - Gajanan Vichare - was declared hostile, and in any case, his evidence was not relevant. The fourth witness - Shivaji Chavan - is the one from whose grocery shop three electric motor pumps were recovered by the police. This witness did not state anything about the electric motor pumps in question having been delivered to him by any of the respondents.

He was declared hostile and the learned APP was permitted to put avk 3/6 21-APPEAL-607-1998.doc questions in the nature of cross- examination to him, but even pursuant to such questioning, nothing in favour of the prosecution could be elicited from this witness. The fifth witness - Shantaram Ajagekar - a Head Constable of Police - attached to Uttur Outpost, Ajara Police Station, is the Investigating Officer in the matter.

According to him, on 30th April 1997, he apprehended the suspects, and that pursuant to the information given by one of them, he seized two electric motor pumps under a panchnama.

He then speaks about the disclosure of further information by the suspects and recovery of a number of electric motor pumps from the various places.

5 Upon going through the evidence, it appears that there was absolutely nothing to connect the respondents with the alleged offences. As a matter of fact, the prosecution case itself was that the stolen property had been recovered pursuant to the disclosure statement made by respondent no.1, and as such, there was absolutely no case against respondent nos.2 and 3.

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6                      Apart from this, there was nothing to show that one of

the electric motor pumps, allegedly recovered pursuant to the disclosure statement made by respondent no.1, was the electric motor pump of the First Informant - Jyoti Rama Kapse. The electric motor pump was not shown to Jyoti Rama Kapse and the identity thereof as the same property that had been stolen, was not at all got established.

7 The learned Magistrate rightly observed that there was no case against respondent nos.2 and 3 at all. He also observed that the case of the prosecution was based only on an alleged disclosure statement made by respondent no.1 - Bhairu Powar -

and was of the view that the disclosure statement was not satisfactorily proved. The Magistrate observed that respondent no.1 had allegedly given information about two electric motor pumps, but actually twelve came to be seized. The Magistrate, therefore, refused to accept that the recovery of the electric motor pumps was pursuant to the information disclosed by respondent no.1.

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8                      The      Magistrate      also      observed      that      PW4      Shivaji

Chavan, from whose shop the electric motor pump was recovered did not mention about the same having been given to him by respondent no.1.

9 The conclusion arrived at by the learned Magistrate is proper and legal. As a matter of fact, that was the only conclusion that could be arrived at. There was absolutely no material against respondent nos.2 and 3, even for framing of Charge.

10 The appeal filed by the State of Maharashtra being without any merit deserves to be dismissed.

11                   The Appeal is dismissed.

(ABHAY M. THIPSAY, J.)

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