

MHKO030000142002



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Decided on : 23.10.2023.

Duration : Y. M. Ds.  
21 07 12

**IN THE COURT OF CHIEF JUDICIAL MAGISTRATE,  
KOLHAPUR.**

(Presided over by Shailesh A. Bafna)

**Regular Criminal Case No.133/2002.**

**[CNR::MHKO030000142002]**

**Exh.No.120/B.**

The State of Maharashtra,  
(Through Police Station In-charge,  
Shahupuri Police Station, Kolhapur).

..Prosecution.

**-Versus-**

1. Ananda Maruti Mhatugade,  
Age 34 Years, Occ. - Agriculture,  
R/o. Anur, Tal. Kagal, Dist. Kolhapur.

2. Pandurang Bandu Halade (**Absconding**)

3. Dnyandev Laxman Redekar,  
Age 47 Years, Occ. - Service,  
R/o. Khanapur, Tal. Bhudargad,  
Dist. Kolhapur.

..Accused.

4. Ravindra Maruti Garud,  
Age 37 Years, Occ.- Consulting Engineer,  
R/o. 201, Pandurang Apartment,  
1<sup>st</sup> Floor, 'E' Ward, Samrat Nagar,  
Vidyapeeth Colony, Near Ambai  
Defence Colony, Kolhapur.

For the Prosecution	A.P.P. Smt. A.V. Joshi.
For Accused no.1	Advocate Shri.V.V. Patil.
For Accused no.3	Advocate Shri.S.V. Rane.
For Accused no.4	Advocate Shri.R.J. Hilal.

1.	Date of Offence	In between 13.05.1995 to 18.08.2001.
2.	Date of F.I.R.	20.08.2001.
3.	Date of Charge-sheet	11.03.2002.
4.	Date of framing of Charges	06.01.2003.
5.	Date of commencement of evidence	10.07.2018.
6.	Date on which judgment is reserved	18.10.2023.
7.	Date of Judgment	23.10.2023.
8.	Date of Sentencing order, if any.	Nil.

**ACCUSED DETAILS**

Rank	Name of accused	Date of arrest	Date of release on bail	Offence charged with	Whether acquitted or convicted
1.	Ananda Maruti Mhatugade	08.10.2001	08.10.2001	Sec.420, 467, 468, 471, 475 r/w. 34 of I.P.C.	<b>Acquitted.</b>
2.	Pandurang Bandu Halde	29.09.2001	05.08.2003	--"--	(Case kept pending)
3.	Dnyandev Laxman Redekar	07.01.2002	07.01.2002	--"--	<b>Acquitted.</b>
4.	Ravindra Maruti Garud,	07.01.2002	21.01.2002	--"--	--"--

**LIST OF PROSECUTION / DEFENCE / COURT WITNESSES****A. Prosecution :**

<b>Rank</b>	<b>Name</b>	<b>Nature of Evidence</b>
Pw1	Abutalib Rahim Nadaf	Seizure panch (Exh.66)
Pw2	Nagoji Bhimrao Desai	Clerk in Pathsanth (Exh.76)
Pw3	Hindurao Dattatraya Desai	Informant (Exh.80)
Pw4	Prabhakar Balkrushna Sapale	Chairman of Pathsanth (Exh.83)
Pw5	Satish Ganpati Indulkar	Clerk in Pathsanth (Exh.91)
Pw6	Chandrakant Sitaram Pimple	Stamp Vendor (Exh.95)
Pw7	Tanaji Shankar Desai	Clerk in the Pathsanth (Exh.100)
Pw8	Anil Shivaji Mangale	Investigation Officer (Exh.103)

**B. Defence Witnesses, if any : Nil.**

**C. Court Witnesses, if any : Nil.**

**LIST OF PROSECUTION / DEFENCE / COURT EXHIBITS.****A. Prosecution :**

<b>S.N.</b>	<b>Exhibit Number</b>	<b>Description</b>
1.	Exhibit Pw1/81	Report.
2.	Exhibit Pw8/104	Seizure panchnama
3.	Exhibit Pw8/105	Panchnama of specimen handwriting of accused no.2.
4.	Exhibit Pw8/106	Panchnama of specimen signature of accused no.1.

5.	Exhibit Pw8/107	Panchnama of specimen signature of accused no.4.
6.	Exhibit Pw8/108	Letter to C.I.D. Pune sending documents for examination of handwriting.
7.	Exhibit Pw8/109 to 112.	Statement of Pw2, Pw4, Pw5 and Pw7

- B. Defence Exhibits, if any : Nil.**
- C. Court Exhibits, if any : Nil.**
- D. Material Objects : Nil.**

### **JUDGMENT**

(Delivered on 23.10.2023)

Accused are facing trial for offence punishable under section 420, 467, 468, 471, 475 read with section 34 of the Indian Penal Code.

2. The genesis of the prosecution case is that since 1992 the informant was Assistant Manager of Sahu Nagari Sahakari Pathsanth, Gargoti Dist.Kolhapur. (Hereinafter referred as 'the Pathsanth'). On 13.05.1995 to 2000 accused no.3 was Manager of Shahupuri branch Pathsanth. On 13.05.1995 accused no.1 applied for loan for business of Rs.5,00,000/- (Five lakhs only) in Shahupuri branch. Accused no.2 was their bank customer. He knew accused no.1 who was borrower and completed all requisite papers for loan. Accused no.1 mortgaged his property of Gokul Shirgaon for loan. Accused no.4 valued the said property. As per rules, on completion of papers, accused no.1 disbursed the

loan to accused no.2. The informant read in local newspaper news published that under fictitious name accused no.2 by submitting false papers had borrowed loans from various Banks. So on scrutiny of loan papers, it revealed that accused in collusion had cheated the Pathsanth for Rs.5,00,000/- (Five lakhs only) by submitting forged and false documents. Hence, the report.

3. On basis of report, Laxmipuri Police registered offence bearing no.0/2001 punishable under section 420, 467, 468, 471, 475 read with section 34 of the Indian Penal Code and forwarded to Shahupuri Police Station as it was within their jurisdiction. Pw8 investigated the matter and filed charge-sheet.

4. Charge (Exh.35) was framed for the above-mentioned offence against accused. During pendency of the case, accused no.2 absconded. So trial was separated *vide* order on application (Exh.62). Defence of accused is of total denial.

5. Heard learned counsels. The points for determination, my findings and the reasons are as under :-

<u>S.No</u>	<u>POINTS FOR DETERMINATION</u>	<u>FINDINGS</u>
1.	Does prosecution prove that, accused in furtherance of their common intention, : cheated the Pathsanth ?	<b>No.</b>
2.	Does prosecution prove that, accused in furtherance of their common intention, : prepared bogus documents and thereby committed offence of forgery ?	<b>No.</b>

3. Does prosecution prove that, accused in furtherance of their common intention, committed forgery for the purpose of cheating ? **No.**
4. Does prosecution prove that, accused in furtherance of their common intention, fraudulently or dishonestly used forged documents as genuine which you know or having reason to believe that they are forged documents ? **No.**
5. Does prosecution prove that, accused in furtherance of their common intention, counterfeited the documents, which were forged documents ? **No.**
6. What order ? **: As per final order.**

### REASONS

#### POINT NO.1 TO 5 :-

6. Pw1, Pw2, Pw4, Pw5 and Pw7 have not supported the prosecution case. Despite confronting them their respective statement, they resiled from it. No incriminating evidence could be brought on record from their mouth.

7. The evidence of Pw6 is of formal nature. He deposed that he sold stamp for loan purposes. However, he could not be shown any stamp paper as original or photo copy of loan papers were never placed on record by the prosecution. Hence, the evidence of Pw6 is of no help.

8. The informant (Pw3) corroborated his report (Exh.81). He deposed that since 1992 he was Assistant Manager

of the Pathsanth. On 13.05.1995 to 2000 accused no.3 was Manager of Pathsanth Branch Shahupuri. On 13.05.1995 accused no.1 applied for loan for business of Rs.5,00,000/- (Five lakhs only) in Shahupuri branch by mortgaging the property. He was disbursed Rs.5,00,000/- (Five lakhs only). He was unable to recall which property was mortgaged. Accused no.2 had also taken loan from their other branches and transaction with him were going on. He had repaid two loan amounts. Then he read news about Ajara Bank about accused no.1. So, he scrutinised the mortgage papers of accused no.1 and found it were forged. So, he lodged report (Exh.81).

9. In cross examination he admitted that he did not knew accused no.1 personally. Transaction of accused no.2 with Bank were going smoothly. He had no personal knowledge about loan of accused no.1. He had seen accused no.1 for first time in the Court. The loan application was first scrutinised by concerned branch. Then all getting verifying it from all department, it was sanctioned by their main branch. After it, letter was send to concerned Branch who further disburse the loan amount.

10. Pw8 the Investigation Officer deposed the manner in which he investigated the case. He seized documents pertaining to loan *vide* panchnama (Exh.104), collected the specimen signature of accused no.1, accused no.2, accused no.4 *vide* panchnama (Exh.105 to 107 respectively). Then he recorded statement of witnesses including Pw2, Pw4, Pw5 and Pw7

(Exh.109 to 112), send documents to handwriting Expert, Pune for examination vide letter (Exh.108). He concluded that accused no.1 and 2 had forged documents and borrowed loan of Rs.5,00,000/- (Five lakhs only) from the Bank, without making proper inquiry valuation of property accused no.4 issued certificate and without verifying documents and other facts, accused no.3 sanctioned loan, he filed charge sheet. In cross-examination except the fact that handwriting report has been received, only suggestions were given to him. He denied them. Nothing has come on record to disbelieve his version.

11. The spine and heart of the prosecution case, the alleged seized documents along with loan papers or loan files are not produced by prosecution. They were send for expert opinion. But till day, they are not received or any expert opinion has come on record. Pw8 had not even taken pains to keep its photocopies on record for perusal of the Court.

12. Apart from the documentary evidence, the oral evidence of the prosecution witnesses is short to hold accused guilty. The informant admitted that he has no personal knowledge about the loan. From his admission that only on basis of local newspapers news, he lodged report goes to show that his evidence is hearsay evidence. It is not reliable nor acceptable. Further, he admitted that it was head office who sanctions the loan on recommendation of branch office. So, it was job of the head office and not accused no.3 the then Manager of the

Pathsanth to verify the genuineness of the document. The prosecution failed to prove accused no.3 had *mens rea* in getting loan sanctioned on basis of false or forged documents.

13. The prosecution has not produced so called forged documents. In absence of it, mere words of Pw8 no inference that documents were forged or false can be drawn. Further, the lethal snag to prosecution case the panch to seizure of documents have not supported the prosecution case.

14. The prosecution has not adduced any documentary evidence to support their oral version that loan of Rs.5,00,000/- (Five lakhs only) was disbursed to accused no.1. Further, mere hearsay evidence of the informant and fact that stamp were provided for loan, cannot be said to be any incriminating evidence against accused. The vital and main evidence that is documents and report of expert to term alleged documents submitted for loan and on that basis loan was disbursed is absent.

15. The entire prosecution evidence is vague, ambiguous and sham. There is no iota of evidence against accused no.1, 3 and 4. Moreover, the prosecution failed to prove that they shared common intention with other accused. In the absence of alleged loan documents and opinion of expert, it is difficult to hold that accused played any role in the alleged cheating and forgery. On the contrary, the prosecution failed to prove that accused committed cheating, forged documents and use them for obtaining loan and thereby cheated the Pathsanth. The

prosecution utterly failed to prove the basic ingredients of offence charges levelled against accused no.1, 3 and 4. Hence, I answer *point no.1 to 5* in the *negative*.

**POINT NO.6 :-**

16. For the aforesaid reasons, accused no.1, 3 and 4 are entitled for acquittal. The case papers and muddemal needs to be preserved till conclusion of trial of absconding accused no.2.

17. In view of ratio of **Ranjana Shantilal Suryawanshi Vs. Jaiprakash Tulsiram Gupta & Ors MANU/MH/0761/2020**, the concern clerk is directed to send the copy of judgment to the District Magistrate, Kolhapur as per Section 365 of the Code of Criminal Procedure. Hence, the following order :-

**ORDER**

- 1) Accused no.no.1, 3 and 4 are acquitted of the offence punishable under Sections 420, 467, 468, 471, 475 read with section 34 of the Indian Penal Code *vide* section 248 (1) of the Code of Criminal Procedure.
- 2) Their bail bonds are cancelled.
- 3) The case be kept pending against accused no.2 (Pandurang Bandu Halade).
- 4) Issue standing warrant against accused no.2 as already proclamation is ordered.
- 5) The muddemal be preserved till conclusion of the trial of absconding accused.

- 6) Accused no.1, 3 and 4 to execute bail bond under Section 437-A of the Code of Criminal Procedure in the sum of Rs.15,000/- (Fifteen thousand only) each with one surety in the like amount to appear before the Higher Court.
- 7) The copy of judgment be forward to District Magistrate, Kolhapur as per Section 365 of the Code of Criminal Procedure.

Kolhapur.  
Date: 23.10.2023.

**(Shailesh A. Bafna)**  
Chief Judicial Magistrate,  
Kolhapur.