

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/CRIMINAL REVISION APPLICATION (AGAINST ORDER PASSED BY
SUBORDINATE COURT) NO. 677 of 2013**

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR

Approved for Reporting	Yes	No
		✓

BALUBHAI THAVRABHAI BHABHOR

Versus

STATE OF GUJARAT

Appearance:

MR PAWAN A BAROT(6455) for the Applicant(s) No. 1

MS MONALI BHATT, APP for the Respondent(s) No. 1

CORAM: HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR

Date : 15/04/2026

ORAL JUDGMENT

1. By way of the present Revision Application under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 (for short, "CrPC"), the applicant has prayed for quashing and setting aside the judgment and order dated 25.10.2013 passed by the learned Additional Sessions Judge, Dahod in Criminal Appeal No. 17 of 2009, whereby the judgment and order of acquittal dated 22.10.2008 passed by the learned JMFC, Dahod in Criminal Case No. 2324 of 2004 came to be reversed.

2. Heard learned advocate Mr. Pawan A Barot for the applicant and Ms. Monali Bhatt, learned APP appearing for respondent-State.

3. It is the case of the applicant that the applicant, who was the original accused in Criminal Case No. 2324 of 2004, was prosecuted for the offence punishable under Section 409 of the

Indian Penal Code on the allegation that, while working as a Treasurer at Zalod Sub Post Office, a shortage of Rs. 65,694/- was detected during a surprise inspection carried out on 05.07.1997. The applicant pleaded not guilty and claimed to be tried. Upon appreciation of the evidence on record, the learned JMFC, Dahod, by judgment and order dated 22.10.2008, acquitted the petitioner of the said offence. Being aggrieved by the order of acquittal, the respondent-State preferred Criminal Appeal No. 17 of 2009 before the Sessions Court, which came to be allowed by the learned 2nd Additional Sessions Judge, Dahod, vide judgment and order dated 25.10.2013, whereby the order of acquittal was reversed and the petitioner was convicted and sentenced to undergo three years' simple imprisonment with a fine of Rs. 20,000/-, and in default of payment of fine, to undergo further simple imprisonment of four months.

4. Learned advocate for the applicant has submitted that the impugned judgment of conviction and sentence passed by the learned appellate court is erroneous, perverse, and contrary to the settled principles governing appreciation of evidence in criminal trials. It is contended that the appellate court has failed to evaluate the prosecution evidence in its true perspective and has wrongly reversed the acquittal without any cogent or convincing reasons. The court has misread and improperly relied upon the panchnamas at Exhibits 22 and 23 and the depositions at Exhibits 13, 14, 15, 24, and 27, despite the fact that the same were not duly proved in accordance with law. It is further submitted that the conviction is primarily based on the cash book at Exhibit 12, without any independent corroboration, and

the prosecution has failed to establish the charge beyond reasonable doubt. The learned advocate has also pointed out that the appellate court has overlooked material evidence, particularly the deposition of Ramsinghbhai Matabhai Bhabhor (Exhibit 27), which clearly indicates that on 04.07.1997, the applicant had left the office early due to ill health and was not present at the relevant time. It is thus submitted that the findings recorded by the appellate court are based on assumptions and presumptions, and the provisions of Section 67 of the Indian Evidence Act have been misconstrued. In such circumstances, it is urged that the prosecution has failed to prove its case beyond reasonable doubt, and the impugned judgment deserves to be quashed and set aside..

5. Learned APP appearing for the respondent-State has opposed the present Revision Application and submitted that the impugned judgment passed by the learned appellate court is legal and proper. It is contended that the appellate court has rightly reappreciated the evidence on record and assigned cogent reasons while reversing the order of acquittal. The prosecution has proved its case through oral and documentary evidence, including Exhibits 12, 22, 23, and relevant witness depositions. It is further submitted that the defence of absence taken by the applicant has been rightly disbelieved, and the appellate court has correctly applied the provisions of the Evidence Act. It is therefore urged that no interference is warranted in revisional jurisdiction and the application deserves to be dismissed.

6. Having heard learned advocates appearing for respective

parties and perusing the record, it appears that the learned trial court had considered the provisions of Sections 8 and 67 of the Indian Evidence Act while appreciating the evidence on record. Section 8 pertains to the conduct of the accused, including motive, preparation, and subsequent conduct, whereas Section 67 relates to the proof of signature and handwriting. It appears that the prosecution relied upon the conduct of the accused, namely the alleged deposit of the amount after the incident. However, the learned appellate court committed an error in placing undue reliance on Section 67 without proper proof of authorship of the documents in accordance with law. While dealing with an appeal against acquittal, it is well settled that although the appellate court has the power to reappraise the evidence, interference with an order of acquittal must be based on cogent and convincing reasons. The appellate court must bear in mind the strengthened presumption of innocence in favour of the accused and the advantage enjoyed by the trial court in observing the demeanour of witnesses. If two views are possible on the basis of the evidence on record, the view favourable to the accused is required to be adopted.

7. In the present case, a careful scrutiny of the evidence reveals that as on 04.07.1997, the cash on hand was stated to be Rs. 1,28,891/-, leading to the filing of the complaint. The prosecution witness, Sub-Postmaster Ramsingh Matabhai Sangada (Exhibit 27), has admitted that he had no personal knowledge of the incident. He further admitted in his cross-examination that the accused had voluntarily deposited an amount of Rs. 29,000/- and that, as the in-charge, he used to

verify the daily cash and keep it in the locker. It has also come on record that the tenure of the accused had ended on 30.06.1997, and that the accused had not signed the cash book indicating the closing balance as on 04.07.1997. Moreover, it is evident that on the relevant date, the accused was on half-day leave and was not present when the surprise inspection was carried out and the alleged shortage was detected.

8. Thus, in absence of any cogent evidence establishing that the accused was in possession of or responsible for the cash on the relevant date, the foundational facts necessary to bring home the charge under Section 409 of the IPC are not proved. The learned trial court, therefore, rightly extended the benefit of doubt and acquitted the accused. The learned appellate court, however, reversed the acquittal mainly on the basis of the conduct of the accused and by invoking Sections 8 and 67 of the Evidence Act, without proper appreciation of the evidence on record. The findings of conviction appear to be based on assumptions and selective reading of evidence, without addressing the material contradictions and admissions brought out in cross-examination.

9. In view of the above, this Court is of the opinion that the learned appellate court has committed an error in interfering with the well-reasoned order of acquittal passed by the trial court. Accordingly, the impugned judgment and order passed by the learned appellate court deserve to be quashed and set aside.

10. In the result, the application is allowed. The impugned judgment and order dated 25.10.2013 passed by the learned Additional Sessions Judge, Dahod in Criminal Appeal No. 17 of 2009 is quashed and set aside. Rule is made absolute. Direct service is permitted.

(HASMUKH D. SUTHAR, J.)

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