

HIGH COURT OF JUDICATURE AT BOMBAY**Bench: Prakash D. Naik, J.****Date of Decision: 20 October 2023**

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 477 OF 2019

Dr. (Mrs.) Nirmala Jaywant Patil ... Applicant

V e r s u s

1. Mr. Arjitsingh Dattajirao Ghatge, Adult, farmer Indian
Inhabitant, Residing at Ranmala, Kagal, Dist. Kolhapur.

... Respondent nos. 1 2.

Mr. Sakharam Ganpati Nikam

3. The State of Maharashtra, Laxmipuri Police ... Respondent no. 3
Station, Kolhapur.

Sections, Acts, Rules, and Article:

Sections 181, 420, 465, 468, 471, 406, and 34 of the Indian Penal Code
(IPC)

Section 319, 378, 372 of the Code of Criminal Procedure (CrPC)

Subject: Criminal Revision – Reconsideration of Acquittal – Appeal
challenging the acquittal under Sections 181, 420, 465, 468 read with
Section 34 of IPC – Remand of the case for fresh consideration.

Headnotes:

Criminal Revision Application - Challenge to Judgment and Order of
Sessions Judge - Prayers for setting aside the judgment and directing the
District Judge and Sessions Judge to decide the matter based on evidence

and law under Sections 406, 420, 465, 468, and 471 read with Section 34 of the Indian Penal Code (IPC). [Para 1-2]

Background - Applicant is the informant in a complaint related to property disputes - Accusations of fraudulent property transfer by the accused - Chargesheet filed under various IPC sections - Trial and acquittal of accused - Appeals by the State and applicant - Sessions Judge's decision partly allowed the appeals, confirming acquittal for some charges and ordering re-trial for Section 406 of IPC against one accused - Detailed description of the case background. [Para 3-10]

Criminal Revision – Reconsideration of Acquittal – Appeal challenging the acquittal under Sections 181, 420, 465, 468 read with Section 34 of IPC – Remand of the case for fresh consideration – Application allowed. [Para 13-20]

Evidence and Intent – Examination of evidence and intention of the accused – Observations by the Appellate Court regarding the admissibility of documents and incriminating evidence – Remand ordered to re-evaluate charges under Sections 406, 420, 465, 468, 471, read with Section 34 of IPC – No express findings on the merits of the case. [Para 20]

Procedural Order – Impugned judgment and order set aside – Directions for the rehearing of appeals before the Sessions Court – Parties to appear before the Appellate Court – Six-month time frame for deciding the appeals – No expression of opinion on the merits of the case. [Para 20]

Referred Cases:

Representing Advocates:

Mr. Manoj J. Patil, Advocate for Respondent nos. 1 and 2.

Mr. S. R. Agarkar, APP for Respondent-State.

CORAM: PRAKASH D. NAIK, J.

RESERVED ON : 27th JUNE, 2022

PRONOUNCED ON : 20th OCTOBER, 2023

(THROUGH V.C.)

ORDER

1. The applicant has challenged the Judgment and Order dated 26.07.2019 passed by the learned Sessions Judge, Kolhapur, in Criminal Appeal no. 74 of 2017 and Criminal Appeal no. 128 of 2018 and has prayed for setting aside the said Judgment and direct the learned Principal District Judge and Sessions Judge, Kolhapur to decide the matter as per evidence and law under Sections 406, 420, 465, 468 and 471 read with Section 34 of the Indian Penal Code (IPC).
2. The applicant is the informant in complaint dated 11.09.2016, forwarded to the District Superintendent of Police of Kolhapur. On the basis of the said complaint, Crime bearing no. 38 of 2007 was registered with Laxmipuri Police Station for offences under Sections 467, 468, 471 and 420 read with Section 34 of IPC. The respondent nos.1 and 2 are original accused nos. 1 and 2.
3. The accused were chargesheeted for the offences punishable under Sections 181, 420, 465, 468 and 471, read with Section 34 of IPC. Initially, charge was framed under Section 181, 420 and 465 of IPC against accused no.1. Subsequently, additional charge was framed against accused nos. 1 and 2 for offences punishable under Sections 468 and 471 read with Section 34 of IPC.
4. Briefly stated, prosecution case is as under :

The applicant made a complaint to the Superintendent of Police on 11.09.2006. According to the applicant-complainant, she is residing at Mumbai. She is having four brothers namely, Abasaheb, Nanasaheb, Vijaysingh and Ajitsingh and three sisters namely, Vimlabai, Lilabai and Mrs. Vijaymala. Her elder brother Abasaheb died in 1993. Her father

Dattajirao Ghatge, expired in 1987. Her father had some properties, out of which City Survey no. 2123, C ward, Kolhapur, is one of them. It is alleged that in March 2006, the complainant collected papers from City Survey Officer under Right to Information Act and came to know that her brothers namely, Nanasaheb and Ajitsingh fraudulently by making use of Power of Attorney of her mother Durgabai, transferred some properties in their name. In that regard, they made applications, affidavits, before the City Survey Office, Kolhapur, with intent to cheat the informant. FIR was registered. On completing investigation, chargesheet was filed.

5. The accused were tried before the Court of learned 9th Joint C.J.J.D. & J.M.F.C., Kolhapur.
6. Prosecution examined Nirmala J. Patil (Pw.1), Abutalib Rahim Nadaf (Pw.2), Mahanmadhanif Abbas Maldar (Pw.3), Anil Dattatray Kudalkar (Pw.4), Sakharam Ganpati Nikam (Pw.5), Shivaji Hanmant Bhosale (Pw.6), Vanita Dilip Gune (Pw.8), Baburao Sadashiv Jadhav (Pw.9) and Arun Laxman Salunkhe (Pw.10).
7. The learned Magistrate vide Judgment and Order dated 15.03.2017, acquitted accused nos. 1 and 2 for offences punishable under Sections 181, 420, 465, 468 and 471 read with Section 34 of IPC.
8. The State of Maharashtra preferred Criminal Appeal no. 128 of 2018 challenging the impugned Judgment and Order dated 15.03.2017 passed by the learned J.M.F.C. in Regular Criminal Case no. 722 of 2007. Whereas, the applicant-informant filed Criminal Appeal no.74 of 2017, challenging the judgment of trial Court.
9. The learned Sessions Judge, Kolhapur, vide Judgment and Order dated 26.07.2019, partly allowed the appeals. The appeals qua respondent no.2- Sakharam Ganapati Nikam, were dismissed and the judgment and order of acquittal of the the offences punishable under Sections 181, 420, 465, 468 and 471 of IPC passed by the trial Court was confirmed. The judgment and order dated 15.03.2017 passed by the learned J.M.F.C., Kolhapur, as against respondent no.1, was set aside on the terms that the charge under Section 406 of IPC is framed against respondent no.1 and case is remanded back to the Chief Judicial Magistrate, Kolhapur with a direction to try and decide the case against respondent no.1 for the offence

punishable under Section 406 of IPC only afresh in view of the observations enumerated in the judgment. The prosecution was granted liberty to rely upon the same evidence.

The accused-respondent no.1 was at liberty to recall the witnesses for cross examination in respect of offence punishable under Section 406 of IPC. Respondent no.1 was directed to appear before the Chief Judicial Magistrate, Kolhapur, on 19.08.2019 for re-trial. The Chief Judicial Magistrate, Kolhapur, was directed to make an endeavour to complete proceedings preferably within six months. The trial Court was directed not to be influenced with the observations made by the Court in the said judgment. Records and proceedings were directed to be sent to the trial Court. The learned Sessions Judge, Kolhapur, had observed that the respondent no.1-accused no.1, with dishonest intention, is making submission of documents at exhibits 156 and 157. He was claiming it for himself and on behalf of Durgabai. The trial Court while concluding on this part has stated that accused no.1 has acted as an Agent on behalf of Durgabai and, therefore, he is not guilty. This is not acceptable. Ajitsingh was beneficiary of the entire exercise committed by him on behalf of Durgabai. He acted beyond the scope of Power of Attorney. His act on remaining silent on the statement that Dattajirao had only three legal heirs itself is indicative of attracting dishonest intention. However, such an act is neither punishable under Sections 465, 468 and 471 of IPC. Dattajirao was holding ancestral properties as well as self acquired properties and the legal course to divide these properties is partition and separate possession and file a civil suit in the Court of law. Every co-sharer is open to follow such law.

It is clear from the record that instead of pursuing such law, the accused opted to prefer application at exhibits 154 to 164 before City Survey Officer, Kolhapur, on the strength of statements. Firstly, properties are partitioned and secondly that there are only three heirs of this Dattajirao. It is further observed that the trial commenced firstly against respondent no.1 for the offences punishable under Sections 181, 420 and 465 of IPC and later on respondent no.2 was added as an accused under Section 319 of Cr.P.C., wherein charge under Sections 468 and 471 of IPC was framed against him. The learned Magistrate acquitted both the accused for the offences punishable under Sections 181, 420, 465, 468 and 471 read with Section 34 of IPC. The learned Sessions Judge held that the said acquittal does not require interference. However, there was no charge under Section 406

of IPC in the trial before the Magistrate and there was an error apparent on record. The said error needs to be corrected. In the light of Section 386-(a) of Cr.P.C., it would be appropriate to correct the error to frame charge under Section 406 of IPC and the case is required to be committed for re-trial before the learned Magistrate and it be tried as per the provisions of law. Charge under Section 406 of IPC would be applicable only against the accused no.1 and not against accused no.2. The act of respondent no.2 is only in terms of documents at exhibit 157, wherein he makes a statement and submitted before the lawful authority for which Section 181 of IPC is attracted. It was required to be a separate proceeding at the instance of lawful authority which is not in present proceeding and his acquittal is accordingly justified. The learned Sessions Judge called upon the accused no.1 to explain to him the charge under Section 406 of IPC and directed him to appear before the learned Chief Judicial Magistrate for re-trial to the extent of that charge. The learned Sessions framed a charge against respondent no.1 under Section 406 of IPC stating that he had a dominion over the property CTS no. 2123, C Ward, Kolhapur, by virtue of it being ancestral and self acquired property Of late Dattajirao. He was legally bound to state names of all legal heirs before City Survey Officer by concealing names of all legal heirs. He along with Nanasaheb mutated his name by giving false information to City Survey Officer that property is already partitioned amongst himself and converted the property for his use with dishonest intention and thereby committed the offence under Section 406 of IPC.

- 10.** The applicant submitted that the impugned judgment and order dated 26.07.2019 confirming acquittal is required to be set aside as the Appellate Court has not considered evidence on record. It is submitted that the applicant filed complaint with the police. She obtained certified copies of the documents from the City Survey Office under Right to Information Act and she recognized the signatures of her brother Nanasaheb and Ajitsingh who fraudulently submitted documents and gave false statements before the City Survey Officer, Kolhapur, and transferred the properties stating that there are no legal heirs of Dattajirao except Nanasaheb, Ajitsingh and Durgabai. Dattajirao Yashwantrao Ghatge, died on 15.04.1987, leaving behind nine legal heirs. Durgabai Dattajirao Ghatge, is the mother of the applicant. She died on 13.01.1994. After the demise of Durgabai Dattajirao Ghatge, the applicant filed Special Civil Suit No. 482 of 1994 in Civil Court,

Kolhapur, for her share in all properties of Dattajirao since he had no income except from the ancestral property. The applicant collected documents. Suit was decided on 31.01.2014. Dattajirao had no income other than the income from the properties and hence part of two-third property of CTS no. 2123/1 to 6, 2123/10A and 2123/11 purchased by Dattajirao from his brothers is also ancestral property. Appeals were filed by the parties against orders passed in the suit. On the basis of complaint of the applicant, Crime no. 38/2007 was registered with Laxmipuri Police Station, Kolhapur. Durgabai Dattajirao Ghatge prepared Power of Attorney in the name of Ajitsingh Dattajirao Ghatge on stamp paper of Rs.20/-. It was purchased by Tukaram Shankar Ghorpade. The Power of Attorney was notarised on 20.07.1978. On the basis of statement of Dattajirao Ghatge, the City Survey Officer, Kolhapur, passed Order dated 07.01.1983. Names of Nanasaheb and Ajitsingh Dattajirao Ghatge were recorded on the property. On 26.10.1989, Ajitsingh Ghatge gave application to City Survey Officer, Kolhapur, as Power of Attorney of Durgabai Dattajirao Ghatge, stating that her husband died on 15.04.1987 and on his name is the house at CTS No. 2123, C Ward, Kolhapur. In this property CTS no. 2123/1 to 6, 2123/10A and 2123/11, the applicant's husband has 5 Anna 4 Pai share and her shares each have 5 Annas 4 Pai per share. Ajitsingh made a statement before the City Survey Officer on 17.01.1990 as Power of Attorney of Durgabai stating that to the property at CTS 2123/1,2, 2123/3, 4, 5, 6, 11, 10A, C Ward, Kolhapur, his father Dattajirao Ghatge's name was recorded. Dattajirao Ghatge had legal heirs. Nanasaheb Ghatge and Ajitsingh Ghatge gave statement before City Survey Officer that the property CTS no. 2123/1, 2, 3, 4, 5, 6, 11, 10A, C Ward, Kolhapur, his father Dattajirao Ghatge's name is recorded to one-third share. The applicant/complainant gave several such instances about false statements and fabrication of documents by the respondent. It is submitted that the order of the learned District Judge has resulted in miscarriage of justice. The respondent nos. 1 and 2 are wrongly acquitted by the Court although the Sessions Court had appreciated as the documents exhibited as L, N, P, R, T, U, Y, AA and AC are admissible and that their contents can be read in the evidence. The accused were acquitted. Exhibit L to this application is application of respondent no.1 to the City Survey Officer, Kolhapur, as Power of Attorney of Durgabai Dattajirao Ghatge stating that her husband died on 15.04.1987. As per exhibit N, the respondent no.1, as Power of Attorney of Durgabai, gave statement on oath before the City Survey Officer

Mr. Mahammadhanif Abbas Maldar, relating to property CTS no. 2123/1 to 6, 10A and 11, where the father's name was recorded. The property was partitioned. The Sessions Judge failed to appreciate that being son of Durgabai and Dattajirao, accused was aware about their heirs but deliberately gave the application to transfer the property in the name of Durgabai so that after her death, respondent no.1 and Nanasaheb to whom police had not made accused and died during the hearing of the application of the petitioner to make them accused. The Power of Attorney was illegal. Durgabai had signed it on 17.07.1978. Notary had signed it on 20.07.1978. There is no witness neither there is an acceptance of Ajitsingh Dattajirao Ghatge to act as Power of Attorney. Statement of the witness shows the involvement of the accused. There is voluminous evidence in the nature of documentary as well as oral evidence adduced before trial Court. Several documents of admission have been ignored by the Appellate Court. The trial Courts Judgment is contrary to evidence. All the offences were made out against the accused. The Sessions Judge failed to look into the evidence given by the informant. It ought to have been considered that on the basis of the application and statements, the property was transferred. The Sessions Judge is silent about the documents at exhibits T, U, W, Y, AA, AC and AD. These documents are not analysed for coming to the proper decision which has resulted in acquittal of the respondents. The stamp paper was purchased by respondent no.1 and signed partitioning the property by making forged document which was used for his benefit. Exhibit W is a forged document and witnessed by Sakharam Ganapati Nikam i.e. respondent no.2, who acted in connivance with respondent no.1 and involved in the offence. The learned Sessions Judge has not appreciated the documents on record in proper perspective which has resulted in error in judgment. The Appellate Court is silent about the documents viz Exhibits 160/C, Article A, Exhibit 161/C, 162/C, 163/C and 164/C. The learned Sessions Judge has committed an error in confirming the acquittal. The case relates to ancestral properties of the father late Dattajirao Yashwantrao Ghatge. The finding of *prima facie* commission of offence under Section 406 of IPC is correct. The other offences charged against accused are also proved through evidence. The applicant had preferred an application on 25.08.2008 to make Nanasaheb Ghatge as accused. The application was decided on 06.04.2011. Nanasaheb Ghatge expired. The respondent no.2 was added as additional accused, which order was confirmed by the Sessions Court and the High Court. Dattajirao

Yashwantrao Ghatge died on 15.04.1987. The respondent no.1 gave application dated 26.10.1989 as Power of Attorney holder of Durgabai to the City Survey Officer, Kolhapur for transferring one-third share of Dattajirao in her name by falsely stating by her that it is given to her for maintenance.

The applicant had identified the signature of respondent no.1. On 17.01.1990, respondent no.1 as Power of Attorney holder of Durgabai, gave statement to the City Survey Officer that Dattajirao died on 15.04.1987 and is survived by three heirs namely Durgabai, Nanasaheb and respondent no.1 and one-third share of Dattajirao be transferred to Durgabai. There were several aspects on record in the nature of evidence which were overlooked by the Sessions Court. The learned Sessions Judge has ignored the law and various judgments on the principles of law.

11. Learned Advocate for respondents submitted that no case is made out for interfering in the impugned judgment. There is no evidence against the respondents to convict them for the offence punishable under Sections 181, 420, 465, 468 and 471 read with Section 34 of IPC. The learned Sessions Judge and the learned Magistrate has appreciated the evidence and held that the accused deserves to be acquitted. The respondent no.2 was initially examined as a witness and subsequently he was impleaded as an accused by invoking Section 319 of Criminal Procedure Code. The prosecution had failed to establish any offence against the accused. The trial Court has rightly acquitted both the accused and decided that the acquittal has been rightly confirmed by the Sessions Court. The learned Sessions Judge has given a finding that the evidence on record does not make out the offences under Sections 181, 420, 465, 468 and 471 of IPC against the accused. Section 195 of Cr.P.C. provides for the manner in which prosecution for contempt of lawful authority of a public servant has to commence. No cognizance under Section 181 of IPC can be taken unless complaint in writing of the public servant is filed. When there is no complaint of the concerned public servant i.e. City Survey Officer, Kolhapur, cognizance of the said Act cannot be taken. To constitute the offence under Section 415 of IPC, there has to be dishonest intention to induce the person to deliver property. The documents at exhibits 156 and 157 were in respect of mutation of names of Durgabai, Nanasaheb and Ajitsingh. It would not construe the offence of cheating under Section 415 of IPC. Section 465 of IPC defines forgery by making any false document within the meaning of

Section 464 of IPC. The person making such document wanted another person or authority to believe that the person making such document has proved it to show that he is the same person. For the purpose of scrutiny of documents at exhibits 156 and 157, if Section 463 and 464 of IPC is perused, it is clear that the same is not attracted. Late Dattajirao Ghatge died on 15.04.1987. Smt. Durgabai died on 13.01.1994. Late Dattajirao Ghatge died leaving legal heirs as wife Durgabai, sons Abasaheb, Nanasaheb, Vijaysingh and Ajitsingh and four daughters Vimlabai, Lilabai, Vijaymala and Nirmala. Abasaheb died in 1993, Nanasaheb died in 2009 and Vimlabai died in 2007. Prosecution examined the witnesses but could not prove the charges. The trial Court has analyzed all the documents and gave a finding of acquittal. Durgabai Ghatge, through Power of Attorney holder Ajitsingh Ghatge, preferred application to the City Survey Officer, Kolhapur to mutate her name to the property bearing CTS no. 2123. The application was preferred to mutate her name in the place of her husband. The application was not for mutating legal heirs of Dattajirao Ghatge. Ajitsingh had signed the said application as Attorney of Durgabai. Power of Attorney was not challenged by Durgabai. The statement before City Survey Officer mentioned that Durgabai through Attorney Ajitsingh stated that her husband is having 5 Anna 4 pai share in the property bearing CTS no. 2123/1 to 6, 2123/10A and 2123/11. The properties are partitioned and names of Nanasaheb and Ajitsingh are mutated. She requested to mutate her name in place of name of her husband. Statement of Nanasaheb Ghatge and Ajitsingh Ghatge before City Survey Officer, exhibit 158, shows that Nanasaheb and Ajitsingh stated that their father Dattajirao was having 5 Annas 4 Pai in the properties bearing CTS No. 2123/1 to 2123/6, 2123/10A and 2123/11. Name of Durgabai was mutated on 18.01.1990 to the CTS extract. The City Survey Officer has mutated the name of Durgabai on the basis of application exhibit 154 and not as a legal heir of deceased Dattajirao. Joint statement of witnesses dated 29.08.1990 show that they stated that the names of Durgabai, Nanasaheb and Ajitsingh are mutated to the said property. The properties were partitioned vide Partition Deed. It was executed by Durgabai, Ajitsingh and Nanasaheb. Ajitsingh had signed for himself and as attorney of Durgabai. The trial Court has observed that the allegation of the informant in complaint, exhibit 55, that in the month of March 2006, after receiving the information under Right to Information Act, she came to know about fraudulent acts of accused no.1 and Nanasaheb by making use of Power of Attorney of Durgabai,

transferred some properties on their names, is afterthought. The documentary evidence shows that the informant was conscious about mutation entries in 1994 in respect of CTS no. 2123. The Power of Attorney executed by Durgabai in favour of accused no.2 was executed on 17.07.1978. Durgabai died in 1994. The Power of Attorney was not challenged by the complainant. Ajitsingh, the accused no.1, had signed the application, exhibit 154, as attorney of Durgabai. In her cross examination, the informant admitted that she does not know as to any sub-division in CTS no. 2123, C Ward, Kolhapur. City Survey extract no. 2123 and sub division exhibits 78 to 89 were shown to her. She admitted that she moved an application to enter the names of all legal heirs. The said application was moved in 1994. The informant had admitted that as per mutation entry no. 551 from exhibit 83, names of all legal heirs were entered to the property CTS no. 2123/1 to 2123/6. The informant also admitted that after receiving relevant documents relating to CTS no. 2123, she filed partition suit. She was not aware as to what orders were passed regarding CTS no. 2123. She admitted that CTS no. 2123 was ancestral property of Dattajirao Ghatge. Mutation of names of her uncle along with Dattajirao as owners of CTS no. 2123/1 were made in 1975. In 1979, Dattajirao Ghatge had purchased shares of Shankarrao and Jaysinghrao in CTS no. 2123/1. She also admitted that she had perused all the documents at the time of filing partition suit. Portion of property purchased by Dattajirao was his self acquired property. The informant has not alleged in the complaint exhibit 55 that Ajitsingh and Nanasaheb cheated her by preparing illegal Partition Deed. Informant admitted that after demise of her father, one-third share was mutated in the name of her mother. It was illegally mutated. She admitted that as per exhibit 109, her father had given two-third share to Nanasaheb and Ajitsingh. The said mutation entries were not challenged by the informant. She did not file any complaint against her mother during her lifetime. The evidence of all the other witnesses would also indicate that there is no substance in the allegations made by the complainant. Several documents were seized during investigation. The prosecution failed to prove the charges beyond doubt. There are two concurrent findings of acquittal which need not be interfered by this Court. The revisional Court has limited jurisdiction. The prayer sought in this application cannot be granted No element of forgery or cheating is involved. It is the imagination of the complainant to allege that the accused had committed the said offences. The respondent no.2 has no role to play

in the transactions relating to mutation of properties. The accused cannot be subjected to prosecution repeatedly. They have been facing the proceedings since long. Both the Courts have acquitted the accused. The case need not be remanded back to the Sessions Court as prayed by the applicant. Hence, the application may be rejected.

- 12.** Learned Additional Public Prosecutor submitted that the prosecution had adduced sufficient evidence before trial Court to prove the offences. The evidence was ignored.

- 13.** It is not in dispute that the trial Court has acquitted the accused of the offences under Sections 181, 420, 465, 468 and 471 read with Section 34 of IPC. The acquittal has been confirmed by the Sessions Court. The judgment of the trial Court was challenged by the informant in accordance with Section 372 of the Code of Criminal Procedure and by the State vide Section 378 of the Code of Criminal Procedure. The Appellate Court however found that *prima facie* case is made out against accused no. 1 for facing prosecution under Section 406 of IPC and remanded the case back to the trial Court by framing charge against accused no.1 for offence under Section 406 of IPC. The Order of remand for offence under Section 406 of IPC is not challenged by accused. The prayer that has been sought in the revision application is to set aside the judgment dated 26.07.2019 passed by the Appellate Court and direct the said Court to decide the matter as per the evidence in law under Sections 406, 420, 465, 468 and 471 read with Section 34 of IPC. This Court had granted interim stay to the appellant of this order during the pendency of this application. The question is whether this case can be remanded back to the Appellate Court for its consideration by setting aside the judgment dated 26.10.2019.

- 14.** It is pertinent to note that the trial Court vide judgment dated 15.03.2017, has acquitted the accused. This Court is conscious of the fact that the trial Court as well as the Sessions Court has concurred with the acquittal of the accused for the offence as stated herein above and the reasoning for remanding back the case to the Sessions Court, will have to be restricted only for considering whether the Sessions Court has not appreciated the evidence in proper perspective as contended by the applicant in this revision application. The grievance of the applicant is that there is sufficient evidence before the Court to convict the accused for all the offences which

is not taken into consideration by proper perspectives by the Sessions Court.

15. The revision-applicant is the first informant. She filed police complaint on 11.09.2006. Dattajirao Ghatge is father and Durgabai Ghatge is the mother of the applicant. Abasaheb, Nanasaheb, Vijaysingh and Ajitsingh are brothers of applicant and Vimlabai, Lilabai and Vijaymala are her sisters. Dattajirao Ghatge died on 15.04.1987. Durgabai Ghatge died on 13.01.1994. The informant filed a suit for partition. The suit was decided by judgment and order dated 31.01.2014. The prosecution examined several witnesses including informant and others. Accused no.2 was examined as Pw.5. he did not support the prosecution case. Application under Section 319 was filed and he was summoned as an accused in the proceedings. He was tried as accused no.2.

16. The revision-applicant was examined as Pw.1. Her evidence has been discussed in paragraph 27 of the trial Court's judgment. The investigating officer had collected several documents. Panchanama, exhibit 175 was recorded. Thirteen documents were seized vide panchanama. The documents comprise applications made to City Survey Officer, statements recorded by City Survey Officer, Orders and documents produced before the Officer. They are pertaining to mutating legal heirs of Dattajirao Ghatge. Accused no.2 was examined as Pw.5. He admitted his acquaintance with Ajitsingh (accused no.1). He admitted that he might have signed document as witness. Partition Deed was shown to him. He admitted that signature resembles to his signature, which appears on the Deed. He is not sure whether he signed it or not. He denied the contents of Partition Deed and statement made before the City Survey Officer and signature on it. He was working as Peon in Kagal Municipality. He was declared hostile and the prosecution was permitted to put leading questions in the form of cross-examination to him. He admitted that he knows Dattajirao very well. His son is working at Gokul Dudh Sangh. Pw. 4 was examined to prove that accused no.1 has given job to son of accused no.4. His evidence discloses that Satish Sakharam Nikam is working in their Milk Sangh as Chemist. Satish Nikam was the son of accused no.2. The trial Court observed that though due to recommendation of accused no.1, son of accused no.2 was appointed, the evidence of the witness does not show that he was not eligible. The trial Court had also observed that there is no expert evidence on record whether the

accused no.2 had signed Partition Deed as witness or has given statement before the City Survey Officer. Accused no.2 denied his signature on Partition Deed and fact of giving statement before City Survey Officer. He was previously mentioned by police as a witness. He has admitted that signature on Partition Deed resembles with his signature. Accused no. 1 and he are acquainted with each other's signature since long. On comparing signature of accused no.2 and signature appearing on Partition Deed and statement, it appears that the same are of accused no.2.20th

- 17.** The Appellate Court in paragraph 11 of the impugned Judgment had given a finding that the documents brought on record at exhibits 154 to 164 and 176 are admissible and their contents can be read in evidence. However, the documents at exhibits 156 and 157 cannot be termed as making false documents within the meaning of Section 464 or forgery under Section 465 of IPC by respondent nos. 1 and 2 and cheating under Section 420 of IPC. The Appellate Court however gave a finding that Section 406 of IPC has been made out against respondent no.1. The Court also opined that the impugned judgment and order dated 15.02.2017 requires interference and reversal of the finding. Application exhibit 154 was preferred by respondent no.1 as Power of Attorney holder of Durgabai Ghatge to mutate her name to the property CTS no. 2123. In paragraph 15 of the judgment passed by the Appellate Court, it was observed in a statement on oath, City Survey Officer, Kolhapur, dated 17.01.1990, the Respondent no.1 appears to have stated on oath that his father Dattajirao Ghatge was having share of 5 Anna 4 Pai to the property CTS No. 2123/1 to 2123/6, 2123/10A and 2123/11. It is stated that Dattajirao died on 15.04.1987 leaving behind his heirs Durgabai, Nanasaheb and Ajitsingh as sons. It is further stated that the properties are already partitioned and accordingly names of Nanasaheb and Ajitsingh are mutated. This appears to be a statement indicative of the intention of respondent no.1 that he wanted the City Survey Officer to believe that the partition has already been partitioned. Another joint statement of Nanasaheb and Ajitsingh at exhibit 158 dated 17.01.1990, repeated the same intention which is requesting to mutate name of their mother Durgabai in place of their father Dattajirao Ghatge.
- 18.** In paragraph 16, it is observed that the joint statements of witnesses Nabiso Maldar and Sakharam Ganpati Nikam dated 17.01.1990, exhibit 157, on oath before City Survey Officer, makes out statement that deceased Dattajirao Ghatge left behind him heirs i.e. wife and

two sons and except them there is no other legal heirs. The learned Magistrate termed this application only for the purpose of mutating names based upon earlier mutation entries. However, true glaring factors out of these statements at exhibits 156 and 157 that firstly representing before the City Survey Officer that partition had already been taken place and secondly Dattajirao is surviving by only three legal heirs, wife and three sons. This is the crux of the entire allegation where the prosecution attributed dishonest intention on the part of respondent no.1. In paragraph 17 of the judgment, the learned Sessions Judge has observed that the copy of Power of Attorney of Durgabai, at exhibit 176, is perused. This Power of Attorney nowhere indicates that intention of Durgabai to assign the task of partition to respondent no.1 nor he had authority to make such a statement. It is further clear from such contents that she had not even asked respondent no.1 to make statement on her behalf that Dattajirao had only three legal heirs. Therefore, it is a false statement by respondent nos. 1 and 2 before the City Survey Officer, Kolhapur, wherein Dattajirao had four sons and four daughters. In paragraph 21, further the learned Sessions Judge held that Section 415, 463, 464, 465, 468 and 471 of IPC are not attracted.

19. In paragraph 26 of the judgment, it was observed that there cannot be any doubt that respondent no.1 with dishonest intention is making submission of documents at exhibit 156 and 157. The trial Court had observed that respondent no.1 was acting as an agent on behalf of Durgabai, hence, he is not guilty. This is not acceptable. Ajitsingh was beneficiary of entire exercise conducted by him on behalf of Durgabai. He acted beyond the scope of the Attorney. Therefore, his act of remaining silent on the statement that Dattajirao had only three legal heirs itself indicated the act of dishonest intention. Such act is neither punishable under Section 465, 468 and 471 of IPC. Respondent no. 1 had dominion over the property and acted in violation of law with dishonest intention to convert the property for its own use by making to believe false statement.

20. The evidence on record and the observations of both the Courts and observation of the Appellate Court would indicate that the documents collected by the Investigating Officer referred to herein above were admissible. The Appellate Court has also referred to incriminating evidence against respondent nos. 1 and 2. The Appellate Court had also observed that there was dishonest intention on the part of respondent no.2, however,

acquitted them for the offences relating to forgery and cheating. The Appellate Court also framed charge under Section 406 of IPC and remanded the case back to the trial Court as against accused no.1. The Appellate Court did not find any reason to convict respondent no. 2. Taking into consideration the observations of the Appellate Court and the evidence on record, without expressing or giving opinion or giving finding on judgment of acquittal and since the relief sought in this application is only to remand the case back to the Appellate Court for re-consideration, I find that the prayer sought in this application can be granted. The Appellate Court is requested to take into consideration all the documents on record. The evidence in the nature of oral and documentary in nature and re-considered whether the offences for which the accused were charged are made out against the respondent nos. 1 and 2. Apart from that, the Appellate Court has already given a finding that the offence under Section 406 of IPC is made out against accused no.1, which is not disturbed by this Court.

ORDER

- (i) Criminal Revision Application no. 477 of 2019 is allowed.
- (ii) The impugned Judgment and Order dated 26.07.2019 passed by the learned Sessions Judge, Kolhapur, confirming the acquittal under Sections 181, 420, 465, 468 read with Section 34, is set aside.
- (iii) The learned Sessions Judge is directed to rehear the appeals afresh for considering the evidence on record and law for deciding the offences under Sections 406, 420, 465, 468, 471, read with Section 34 of IPC.
- (iv) The parties are directed to appear before the Appellate Court on 4th December, 2023.
- (v) The Appellate Court shall decide the appeals within a period of six months from the first date of appearance.
- (vi) It is clarified that this Court has not expressed any opinion about the merits of the case and the Appellate Court shall decide the appeal in the light of the observations made in this Order and it

may not be construed that this Court has given any finding about commission of any offences by the respondents.

(vii) Application stands disposed of.

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