IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL REVISION APPLICATION (AGAINST CONVICTION) NO. 413 of 2004

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE J. C. DOSHI

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	No
2	To be referred to the Reporter or not ?	No
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

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AKBARALI MEHBOOBALI SAIYED

Versus

STATE OF GUJARAT

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Appearance:
MR ZUBIN F BHARDA(159) for the Applicant(s) No. 1
MR SOHAM JOSHI, APP for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE J. C. DOSHI**

Date : 08/05/2024

CAV JUDGMENT

1. This Revision Application filed under section 397 read with section 401 of Cr.P.C. challenges concurrent findings recorded by learned Court below, whereby, learned CJM, Vadodara in Criminal Case No.3345 of 1992 vide order dated 14.12.2000 convicted the petitioner for the offence punishable under section

409 of IPC and imposed punishment of 7 years Simple imprisonment and fine of Rs.5,000/-, in default thereof, punishment of 6 months was imposed. Said conviction and sentence has been unsuccessfully carried to challenge before the learned Sessions Court, Vadodara in Criminal Appeal No.52 of 2000, whereby, learned Sessions Judge in exercise of powers under section 374 of Cr.P.C. did not find any fault with the judgment passed by learned CJM, Vadodara and as such dismissed the Criminal Appeal vide order dated 03.06.2004.

2. Facts of the case are as under :-

2.1. The present appellant is the original accused of the Criminal Case No.3345 of 1992, filed under section 409 of the Indian Penal Code. The offence was registered at the Chotaudaipur Police Station. That during the tenure of the present appellant as the Nazir & C.O.C. at Civil & Judicial Magistrate's Court Chotaudaipur, when the then District Judge Mr. N.K.Desai visited the Chotaudaipur Court on 14.11.1991 for surprise visit, during this visit they found that there was some muddamaal covers in a torn condition and some mudamaal articles were missing. That on enquiry it was found that a total sum of cash of Rs.80,833.92/- i.e. rupees eighty thousand eight hundred thirty three and ninety two paise and silver ornaments and a wrist watch was missing. That when the total amount was calculated it turned up to Rs.85,465.92/- i.e. rupees eighty five thousand four hundred sixty five and ninety two paise. Hence on not getting the account of such a big amount from the Nazir's custody, a complaint was lodged against the present appellant

before the Chota Udaepur Police Station under section 409 of 1.P.C. Thereafter on completion of investigation the charge sheet was filed. That the appellant submits that on receiving the charge sheet the Chief Judicial Magistrate summoned the appellant for the charges leveled against him in the charge sheet, but the appellant refused to accept the charges and did not plea guilty hence the Hon'ble C.J.M. framed the charges against the appellant and the appellant stood for the trial. After the perusal of oral & documentary evidences the Hon'ble C.J.M. found the appellant guilty and convicted him under the section 409 of 1.P.C. for a period of seven years simple imprisonment and a fine of Rs. 5000/-, in default of payment of fine more six months of imprisonment. The said order was passed on 14.12.2000. Aggrieved by said order, the petitioner preferred Criminal Appeal No.52 of 2000 before the learned Appellate Court and said appeal also came to be dismissed on 03.06.2004.

2.2. Hence, present Revision Application.

3. Heard learned advocate Mr.Zubin Bharda for the revisionist / accused (herein after referred to as "accused") and learned APP for the respondent – State.

4. Learned advocate Mr.Bharda for the accused would submit that though revisional jurisdiction of this Court under section 397 read with section 401 of Cr.P.C. is limited only to examine record of any proceedings for the purpose of satisfying as to correctness or legality of any finding in the order, the High Court under revisional jurisdiction can appreciate legal aspect whether

the Courts below have committed any illegality in appreciating the evidence. In other words, learned advocate for the accused would submit that though this Court cannot re-appreciate the evidence, but in order to avoid miscarriage of justice, this Court can certainly find out whether there is any illegality exists in the findings of the learned Courts below.

4.1. Arguing under limited revisional jurisdiction of this Court, learned advocate for the accused submitted that learned Courts below have committed serious error in appreciating the evidence as alleged. The case pertains embezzlement of valuable muddamal of the Court. Submitting further, it is argued that the Court below have appreciated and re-appreciated the evidence from one way view, as it was alleged that accused was COC and Nazir of Court of Civil Judge, Chhotaudaipur and it was found that valuable muddamal of Rs.80,883.92/-, silver ornaments of Rs.4632/- and wrist watch, in total valuable muddamal of Rs.85,465.93 was missing. This allegation has weighed the learned Trial Court to convict the accused since he was serving as COC cum Nazir at relevant time without appreciating the evidence which ought to have been appreciated as per Evidence Act. It is submitted that finding of the learned CJM is perverse to the extent that learned Trial Court overlooked deposition of peon against deposition of one Civil Judge on the ground that deposition of learned Judge is more valuable then deposition of peon but while holding so, learned CJM failed to appreciate that both were prosecution witnesses and when evidence is to be sift and weigh, it cannot be done under the pretext that evidence of learned Judge has more value than the evidence of peon. Value

of prosecution witness cannot be appreciated upon the post they were holding. He would submit once inconsistent version of prosecution witness raise doubt on correctness of the case of prosecution, benefit should go in favour of the accused but this basic principle has lost eye, in present case.

4.2. Putting facts of the case to the notice of the Court, learned advocate for the accused would submit that learned District Judge, Vadodara has taken surprise visit of JMFC Court, Chhotaudaipur on 14.11.1991 and has verified balance on hand but he could not verify value of muddamal on that day and therefore, he directed learned Civil Judge and JMFC to apply seal on valuable and non valuable muddamal and to keep keys of them with him with further direction that he would come on 15.11.1991 for further surprise checking, but due to work load, he could not come on 15.11.1991. It is submitted that on that day, one unusual thing happened, though on 14.11.1991 learned District Judge had verified balance on hand and kept remaining surprise checking of valuable and non valuable muddamal to be done on next day, learned JMFC Mr.Chanderkar on 15.11.1991 after office hours on his own opened the rooms where muddamal were kept and started checking it and continued his checking upto 9.00 pm night. It is submitted that one more surprising aspects comes that even in absence of electricity, he had checked muddamal under lantern lamp upto 9.00 pm night. No explanation is given by learned JMFC that why he has taken checking of muddamal when learned Principal District Judge was seized with process. Learned advocate Mr.Bharda would submit that this is

mysterious act on the part of learned JMFC, since remained unexplained, it cause and cast serious doubt in prosecution case. He would submit that this aspect assume significance as on the next day, during surprise checking valuable muddamal was found missing. He would further submit that during three days of checking, petitioner - accused was on leave. It is submitted by learned advocate for the accused that these vital aspect are not examined by learned Court below in its true perspective. It is submitted that evidence to that fact, since has not been properly examined, the finding is erroneous. Even behaviour of learned Judge Mr.Chandekar has been overlooked by the learned Appellate Court and thus there is serious flaw in appreciation of evidence.

4.3. It is further submitted that in order to prove offence under section 409 of IPC, prosecution is required to prove entrustment of the property to the accused or he has any dominion over the property in his capacity as public servant. Referring to evidence on record, it is submitted that evidence on record consistently indicates that from 14.11.1991 the accused was not in dominion over the valuable or non valuable muddamal. It is submitted that on 14.11.1991, the day on which the then learned District Judge made surprise checking, he handed over dominion of valuable and non valuable muddamal to Mr.Chandekar, learned JMFC. Second surprise checking took place on 16.1.1991 and some valuable muddamal were found missing and on that day, accused was not in dominion over the valuable muddamal. This aspect has been overlooked by the learned Appellate Court and thereby patent illegality has been committed.

4.4. Taking this Court through the judgment of learned Appellate Court, learned advocate for the accused would submit that learned Appellate Court under section 374 of Cr.P.C. was duty bound to re-appreciate the evidence. He would further submit that learned Appellate Court to some extent has also done re-appreciating of evidence, however, if we go through judgment of learned Appellate Court, two views are expressed by the learned Appellate Court and that implies that there was doubt in the mind of learned Appellate Court but still learned Appellate Court lean towards prosecution on the ground that FIR has been filed by learned JMFC, as such, learned Appellate Judge has committed serious error of understanding provision of law.

4.5. Learned advocate Mr.Zubin Bharda would further submit that some of the conduct of learned JMFC Mr. Chandekar was found to be suspicious in the mind of learned Appellate Court but still learned Appellate Court did not consider this aspect in favour of the accused and allowed it to go by. This is patent error on the part of the learned Appellate Court.

4.6. Referring to finding of learned Appellate Court in para 6 to 11 of the impugned judgment, learned advocate for the accused would submit that there was some doubt in the mind of the learned Appellate Court in the evidence of prosecution yet learned Appellate Court has not considered doubt in favour of the accused but answered those doubts as to save skin of learned JMFC.

4.7. Learned advocate Mr.Bharda would further submit that in fact accused was not in dominion of any valuable muddamal after 14.11.1991, the accused was made scapegoat by the prosecution. Conduct of learned JMFC though found suspicious could not be considered in favour of the accused and thereby learned Appellate Court overlooked fundamental cannon of criminal jurisprudence that accused cannot be held guild till the evidence beyond reasonable ground found him guilty. Prosecution who is seeking to establish guilt of the accused has to prove evidence from the angle of beyond reasonable doubt. It is submitted that there was no evidence indicating that prosecution has proved the case from the angle of beyond reasonable doubt. It is submitted that learned Appellate Court owes duty to re-appreciate the evidence independently and to view the entire dispute without being biased of the order of learned Trial Court. It is submitted that in the present case, learned Appellate Court has failed to adhere to the settled principle and thereby committed patent illegality which can be cured in this Revision Application. This Court in revisional jurisdiction is expected to correct illegal finding.

4.8. With above submission, learned advocate for the accused submitted to allow this Revision Application and remit the matter for fresh disposal.

5. On the other hand, learned APP submits that revisional jurisdiction of this Court is limited. This Court under revisional jurisdiction cannot disturb concurrent findings. It is submitted that it is exceptional jurisdiction and person seeking to invoke

jurisdiction of this Court under section 397 read section 401 of Cr.P.C. has to establish that it is exceptional case. It is submitted that in the present case, if we go by evidence on record it does not shake basic version of the prosecution and thus finding need not be disturbed. It is submitted that there are atleast three witnesses from prosecution side, who are consistent and by thier deposition establish and prove case of the prosecution. One of them was learned JMFC. All three witnesses have deposed that accused was ostensibly in dominion of valuable muddamal as he was COC and Nazir of the Court of JMFC, Chhotaudaipur. It is submitted that valuable muddamal is missing, is a fact and could not be denied. It is submitted that surprise checking took place on 14.11.1991 and on that day only balance on hand was checked. On 15.11.1991 further checking could not happen because of work load of learned District Judge and on 16.11.1991 when checking of valuable muddamal took place, it was found that some of the articles and valuable muddamal were missing, in view of that presumption would go against the accused that he has misappropriated and embezzled those valuable muddamal. It is submitted that both the Courts below have appreciated and re-appreciated the evidence on record and in that view present Revision Application is bereft of merits and thus, it is submitted to dismiss the Revision Application.

6. Replying argument of learned APP, learned advocate for the accused submitted that the accused is 85 years. It is submitted that though accused has not committed any offence, he has deposited the amount equal to the value of muddamal found

missing. So this aspect may also be considered.

7. Having heard learned advocates for the parties, at the outset, apt to note that this Court under revisional jurisdiction possess very limited power. This Court cannot embark in depth inquiry or re-examine the evidence both oral and documentary to reach to the conclusion contrary to the one reached by the Courts below but under revisional power finding reached by the learned Trial Court can be surely examined by this Court so as to avoid miscarriage of justice. It is true that this Court while exercising revisional jurisdiction to find out correctness of findings or conclusion arrived by the Court below as affirmed by the learned Appellate Court, cannot find out discrepancy which do not go to the root of the matter and shake version of prosecution witness and cannot weigh undue advantage to any other witness. Probable factor echoes in favour of the version narrated by the witness can be respected. Normal error and minor contraction in the deposition of the witness cannot be re-examined as to weigh case of the accused. The Court cannot dwell at length upon facts and evidence of the case but the Court in revision can consider material only to satisfy itself about the correctness, legality and propriety of the findings, sentence or order, however, refrain from substituting its own conclusion on an elaborate consideration of evidence.

8. In the case of **Municipal Corporation v/s. Girdharilal [AIR 1981 SC 1169],** the Hon'ble Apex Court while observing about powers of Revisional Court held that section 397 does not indicate any method by which the superior court should be

apprised of the irregularities in the proceedings of the inferior court and it cannot be limited to cases in which the Judge of such court happens to have personal knowledge leading him to suspect any irregularity. The revisional power may be exercised even suo motu and when it is exercised sout motu there is no bar of limitation.

9. In the case of **Rajendra v/s. Uttam [(1999) 3 SCC 114]**, the Hon'ble Apex Court held that the very object of conferring revisional jurisdiction upon the superior criminal courts is to correct miscarriage of justice arising from misconception of law or irregularity of procedure.

10. In the case of **Maharashtra v/s Jagmohan Singh [(2004) 7 SCC 659]**, the Hon'ble Apex Court in para 22 has held as under :-

> *"Discretion in the exercise of revisional jurisdiction should be exercised within the four corners of this section whenever there has been miscarriage of justice in any manner whatsoever. This revisional jurisdiction should not be lightly exercised as it cannot be invoked as of right. Section 397 CrPC confers power on the High Court or Sessions Court, as the case may be, "for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed and as to the regularity of any proceeding of such inferior court." It is for the above purpose, if necessary, the High Court or Sessions Court can exercise all appellate powers. Section 401 CrPC conferring powers of Appellate Court on the Revisional Court is with the above limited purpose. The provisions contained in Section 395 to Section 401 CrPC, read together, do not indicate that the revisional power of the High Court can be*

exercised as a second appellate power."

11. Summary of argument of learned advocate for the accused was to the effect that there is patent error committed by learned Trial Court as well as learned Appellate Court in appreciation of evidence. It was argued that appreciation of evidence is not truly and properly considered as FIR was filed by learned JMFC. As it is case between Judge and accused, accused has been made scapegoat. This material and vital aspect which was emerging from evidence has gone unnoticed. He also argued to the extent that it was duty of the learned Appellate Court under section 374 of Cr.P.C. to appreciate the evidence independently. In the present case, learned Appellate Court has failed to live with its duty. Scope of section 374 is wide enough to re-examine entire evidence as it can be done by learned Trial Court but learned Appellate Court has not done so.

12. Before I address above submission and embark upon to find out correctness of the impugned order passed by the learned Courts below, it is worth to refer definition of section 374 of Cr.P.C., which reads as under :-

"374. Appeals from convictions.

(1)Any person convicted on a trial held by a High Court in its extraordinary original criminal jurisdiction may appeal to the Supreme Court.

(2)Any person convicted on a trial held by a Sessions Judge or an Additional Sessions Judge or on a trial held by any other court in which a sentence of imprisonment for more than seven years [has been passed against him or against any other person convicted at the same trial] [Substituted

by Act 45 of 1978, Section 28, for "has been passed", w.e.f. 18.12.1978.], may appeal to the High Court.

(3)Save as otherwise provided in sub-section (2), any person, -

(a)convicted on a trial held by a Metropolitan Magistrate or Assistant Sessions Judge or Magistrate of the first class, or of the second class, or

(b)sentenced under Section 325, or

(c)in respect of whom an order has been made or a sentence has been passed under Section 360 by any Magistrate, may appeal to the Court of Session.

(4)[When an appeal has been filed against a sentence passed under section 376, section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB or section 376E of the Indian Penal Code, the appeal shall be disposed of within a period of six months from the date of filing of such appeal."

13. The Appeal is continuous of inferior Court's proceedings and therefore, learned Appellate Court is expected to decide all the issue both on the question of law and question of facts which include re-appreciation of evidence. Since appeal being statutory right, the appellant – accused who has been convicted by the learned Trial Court can expect from the Appellate Court to re-hear the matter both on question of law and question of facts and appreciate evidence on record. Discussion of evidence after it being re-examined is expected from the learned Appellate Court.

14. In the case of **Vijayendra Kumar [(2005) 9 SCC 252]**, the Hon'ble Apex Court has held that in an appeal against conviction the appellate court must address itself both on the question of law and questions of facts.

15. In the case of **Prakash v/s. State [(2007) 13 SCC 134]**, the Hon'ble Apex Court observed that an appeal against conviction must be disposed of with reasoned order as failure to give reason amounts to denial of justice. Reasons are live links between the mind of the decision taker to the controversy in question and the decision or conclusion arrived at.

16. In the case of **Ramreddy v/. State [(2006) 10 SCC 172]**, the Hon'ble Apex Court observed that while hearing an appeal, the appellate court should consider whether the conviction is based on proof or on merely suspicion, because suspicion however grave, cannot be a substitute for a proof.

17. Applying above ratio to find correctness of the judgment passed by learned Appellate Court, first flaw noticed is that learned Appellate Court has not framed the issue which has to be framed based upon argument canvassed before it. The issues which are framed in the judgment of learned Appellate Court are more alike issues to be addressed in Revisional jurisdiction. The learned Appellate Court instead of framing the issues based on argument of learned advocate for the parties to dispute decided the appeal, as if it is Revision. Thus failure of justice is found at first step.

18. Briefly going through the evidence, what undisputed comes on record is that that learned the then Principal District Judge, Vadodara has taken surprise checking of Court of learned JMFC, Chhotaudaipur on 14.11.1991, however, he could not check

valuable muddamal on that day and therefore, handed over valuable muddamal to the custody of learned JMFC and also ordered to apply seal on it and keys of strong room was handed over to learned JMFC. Initially, it was decided to continue surprise checking on 15.11.1991 but it could not be done because of some work load. Then surprise checking was done on 16.11.1991 and during surprise checking it was found that silver ornaments and other valuable articles were missing and therefore, it is believed that accused who was in-charge of valuable muddamal has embezzled it. Suspicious aspect which could be noticed is that on intervening day i.e. on 15.11.1991, learned JMFC without any order of the then learned Principal District Judge has opened up strong room and examine muddamal upto 9.00 pm night even in absence of electricity but under lantern light without any order / direction from the then learned Principal District Judge.

19. If we examine evidence of R.C.Chauhan, Clerk of District Court, who has been examined at Exh.19, he had carried surprise checking on 14.11.1991 along with learned Principal District Judge, he found that some of the currency notes are stuck due to moisture, thus he found some suspicion, hence decided that valuable muddamal is required to be verified but time could not have permitted and valuable muddamal could not be verified on 14.11.1991. The then learned District Judge on that day has directed Mr.Chandekar, learned JMFC to apply seal on valuable muddamal. He deposed that he and learned District Judge could not come on 15.11.1991 for re-checking. On 16.11.1991 checking took place and valuable muddamal was

found missing. Cross examination indicates that he has accepted that no anomaly or irregularity has ever reported prior to checking. He has also admitted that learned District Judge has given oral instructions to Mr.Chandekar, learned JMFC to apply seal on the valuable muddamal boxes and keep keys of strong room with him and not to open strong room without any instructions from learned District Judge. This fact coming from cross examination indicates that though Mr.Chandekar, learned JMFC was prevented from opening strong room, without taking any order from the then learned District Judge on 15.11.1991, on his own has opened room where valuable and non valuable muddamal are kept and continued his checking even after court hours but upto 9.00 pm mid night under lantern light. This act and action on the part of learned JMFC Mr.Chandekar was astonished and startling. The prosecution has not produced any documentary evidence to establish that whether Mr.Chandekar has made any note in the register or order indicating under which direction he has opened up strong room and what was urgency which constrain him to open muddamal room on intervening day without taking any orders from the then learned District Judge when entire verifying process was seized with the then learned Principal District Judge.

20. Another witness examined by prosecution is Mr. Shivaji Gadge at Exh.59. He was working as peon at relevant time. He was examined as prosecution witness. In his deposition, he has narrated that on 15.11.1991, the accused as absent. He has further narrated that Mr. Chandekar, learned JMFC on that day along with Mr.Dilip Tadvi acting Nazir has opened muddamal

room after office hours. He has narrated that he was told to bring lantern lamp and both of them continued process of verifying muddamal both valuable and non valuable till 9.00 pm night. In cross examination, he has admitted that on 15.11.1991, the accused was absent and charge of Nazir was lying with Mr.Dilip Tadvi. He has also admitted that on 15.11.1991, Mr.Chandekar has opened the seal of strong room and continued to verify muddamal till 9.00 pm night. The witness is not declared hostile.

21. Mr.Chadekar, learned JMFC was examined at Exh.62. On going through his deposition, what appears that he has admitted that on 15.11.1991, he has opened muddamal room but he explained that he has verified only non valuable muddamal. His close allay Mr.Dilip Tadvi was examined at Exh.67 and Mr.Shankarbhai Mohanbhai was examined at Exh.70. They both have deposed that on 15.11.1991, strong room was not opened. In wake of above evidence, while appreciating the evidence on record, learned Trial Court as well as learned Appellate Court has given more weightage to the evidence of Mr.Chandekar, learned JMFC on the ground that evidence of learned Judge stand on higher footing then deposition of Peon. Exh.74 panchnama was taken into consideration where panchas have supported panchnama to support finding that Mr.Chandekar, learned JMFC has not tinkered with non valuable muddamal.

22. On appreciating the evidence, the fact which could not go in controversy is that accused was not in dominion over the valuable or non valuable muddamal after 14.11.1991 prior to

which no illegality or missing muddamal was ever reported. What further could be noticed that the then learned Principal District Judge was seized with verifying process of valuable and non valuable muddamal which started from 14.11.1991 and ended on 16.11.1991. On intervening day i.e. on 15.11.1991, Mr.Chandekar, learned JMFC having no urgency, having or order and having not entered in register opened muddamal room. According to this deposition, he has only verified non valuable muddamal. According to deposition of Mr.Shivaji Gadge, he also verified valuable muddamal. Now it was for witness Mr.Chandekar, learned JMFC to explain that which aspect has restrain him to open up muddamal room on intervening day without order of learned Principal District Judge. Mr.Chandekar, learned JMFC was required to depose before the Court about the reasons for opening seal on strong room and verification of non valuable muddamal. Role of Mr.Chandekar, learned JMFC is found doubtful and even in mind of learned Appellate Judge. Perusing para 9 of the impugned order of learned Appellate Court, doubtful and suspicion in the mind of learned Appellate Judge is exposed but to save skin, he has not properly addressed. At page 10 of impugned judgment, learned Appellate Judge has noted anguish on the conduct of Mr.Chandekar, learned JMFC. Two panchnama at Exh.74 and Exh.76 are taken into assistance by learned Appellate Judge to answer suspicious conduct of Mr.Chandekar, learned JMFC. According to this Court, it is not appreciable piece of evidence, it should be weighed as per Evidence Act. Learned Appellate Judge appears to be bias. In page 12 of the impugned judgment, another suspicion was recorded about question asked in the

cross examination that what has prompted Mr.Chandekar to open strong room after Court hours. In opinion of learned Appellate Judge, question was required to be asked but it was wrongly denied to asked. This observation prima facie indicates that there is suspicion of evidence. Since learned JMFC is complainant, accused has been convicted. All the suspicion raised in appreciation of evidence are answered by learned Appellate Judge to bridge gap of prosecution case. It could be noticed that on 16.11.1991 while verifying muddamal, it was found missing, but on that day, accused was not dominion over valuable or non valuable muddamal.

23. Apt to note that cannon of criminal jurisprudence expect to bring accused on touch stone of beyond reasonable doubt. This has not been observed in later and spirit by the learned Appellate Judge. Learned Appellate Judge is senior Judge, is expected to adhere with fundamental cannon of criminal jurisprudence and not to be weighed by the fact that FIR is filed by learned JMFC and accused is COC cum Nazir.

24. Entrustment and dominion over the valuable property is key factor. Even as per case of the prosecution from 14.11.1991 the accused was not in dominion over the valuable muddamal. On 16.11.1991 when muddamal was checked it was in the dominion of Mr.Chandekar. This basic and root aspect of the matter is not discussed. This aspect which touches root of the matter is not noticed by the learned Appellate Court.

25. In nutshell, this Court finds consideration in the present Revision and deserves to be allowed by remitting the matter back to the learned Appellate Court for fresh decision on appeal.

26. For the foregoing reasons, I pass following order :-

(i) The present Revision Application is allowed.

(ii) Judgment and order dated 03.06.2004 passed in Criminal Appeal No.52 of 2000 is hereby quashed and set aside and the said Criminal Appeal is remitted to learned Appellate Court for fresh decision.

(iii) The Revisionist / accused is directed to submit fresh bail bond of Rs.5000/- and surety of like amount before the learned Appellate Court, once the Court concerned issues notice. Condition of the bail bond shall be decided by the learned Appellate Court.

(iv) Record and Proceedings be sent back.

27. Needless to say that the Court Concerned shall not be influenced by the observations made herein above while deciding Criminal Appeal.

(J. C. DOSHI,J)

SATISH