IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 78 OF 2001

Namdeo s/o Gyanoba Chunchekar,
Age : 57 years, Occu. Nil,
R/o Gabale Building, Nanded
Housing Society, Vijaynagar,
Nanded-2 **APPELLANT**

VERSUS

The Union of India **RESPONDENT**

Mr. P.R. Katneshwarkar, Advocate for appellant
Mr. Alok Sharma, Assistant Solicitor General
for the respondent

[CORAM : M.T. JOSHI, J.]

[RESERVED ON : 3RD AUGUST, 2015]
[PRONOUNCED ON : 11TH AUGUST, 2015]

JUDGMENT :

1. Aggrieved by the conviction recorded for the offences punishable under section 409 and 467 of the Indian Penal Code and under section 13 (1) (c) read with section 13 (2) of the Prevention of Corruption Act, 1988 and consequential sentences to suffer rigorous imprisonment for a period of two years on each of the count and to pay fine of Rs. 500/- on each of the count,

awarded by the learned Special Judge, Hingoli in Special Case No. 7/1999, vide judgement and order dated 23.01.2001, the present appeal is preferred.

2. The prosecution case, in short, is as under :

. That, the appellant was working as sub postmaster at Akhada Balapur sub post office in District Parbhani during the relevant period. He used to make entries regarding the deposits in the passbooks of the customers at the time of depositing of the amount and used to carry other postal work.

. During enquiry, it was found that he has misappropriated an amount of Rs. 1,03,427.15 by forging signatures of the depositors in twenty two saving bank accounts.

. Further, as regards the five accounts of recurring deposits, he has misappropriated an amount of Rs. 66,593.85.

. Lastly, as regards the time deposit accounts (fixed deposits), though he used to make correct noting in the passbooks of the account holders, he used to omit to credit the same in the long register kept with the postal authorities. Thus, the credits were not transferred to the postal authorities but were directly returned to the depositors. By omitting to make entries in the long register and by making another forged list without including the misappropriated amount, he used to make fictitious entries regarding the interest in the passbooks. Thus, the appellant has misappropriated an amount of Rs. 6350/- in respect of such accounts.

. It was further alleged that during the enquiry, the appellant has admitted his guilt and has repaid the amount of Rs. 48,000/- and in the circumstances, upon making investigation, Shri Shrihari Vishnu Gadgil, Police Inspector attached to the Central Bureau of Investigation (Anti-Corruption Branch), Mumbai has filed the common FIR (certified copy is at Exhibit-36 in the present case), out of which the present crime was registered.

3. The present case pertains to four accounts.

. Firstly, as regards recurring deposit account No. 46662, the allegations are that the appellant has forged the signatures of the account holder and withdrawn an amount of Rs. 1300/- for himself.

. Secondly, as regards saving bank account No. 1051487, the appellant forged the signature of the account holder and dishonestly misappropriated an amount of Rs. 3800/-.

. Thirdly and fourthly, he has caused criminal misappropriation as regards time deposit accounts No. 181709 and 181712 by not making the entries of the credit in the long register maintained with his post office or to send the extract of the entries to the higher authorities and has thus, committed misappropriation of Rs. 2150/- and Rs. 5500/- credited in the respective accounts.

4. The submissions from both sides as well as record and papers would show that though as per the prosecution, the opinion of the handwriting expert regarding the disputed documents in the entire scandal was obtained during investigation, the said opinion or even a copy of the same is not placed on record in the present case.

5. Before the learned Special Judge, Hingoli, in all thirteen witnesses were examined and voluminous documentary evidence is placed on record.

. PW1 Vilasrao Pede is the saving bank account holder of account No. 1051487 from which allegedly, the present appellant has withdrawn an amount of Rs. 3800/- by forging the signature of this account holder. He deposed that he learnt that amounts were not properly credited in the accounts register. Therefore, he went to the post office and postal authorities recorded his statement. Upon enquiry, it was told by the authorities that an amount of Rs. 3000/- was withdrawn from his account. In the circumstances, his statement was recorded by the authorities. He, therefore, gave specimen signature to the authorities. Lateron, the postal authorities paid him back an amount of Rs. 3800/- and made necessary entry in his passbook.

. PW2 Vijaysing Bais, who was working with the present appellant, was the clerk in the said sub post office during the relevant period. He was examined to show that in ordinary course of business, he had opportunity to be conversant with the handwriting and signature of the appellant. He, therefore, proved the signature and the handwriting of the appellant on the relevant document, including the relevant pass book, regarding the long register and the relevant extract sent to the higher authorities by the appellant.

. PW3 Badrinarayan Goyanka had opened the recurring deposit account bearing No. 46662 in the name of his minor daughter Anuradha. He has deposed that he did not withdraw the amount from the said account as shown in the accounts book, neither has, at any time, closed the said account. The signatures at the relevant place in the document were shown to him and he deposed that he did not put those signatures.

. PW4 Ramrao Bondare had opened time deposit account No. 181712 in the said sub post office during the relevant period. He deposed that the entries were correctly made in his pass-book. The allegations, however, are that the present appellant has not credited the amount in the long register as well as in the extract sent to the higher authorities.

. PW5 Kishanrao Muley is the account holder of time deposit account No. 181709. He has deposed on the similar line.

. PW6 Kantraj Gangadharam was the Superintendent of post offices at Nanded Postal Division during the period from 1988 to 1990, who has issued the sanction to prosecute the present appellant.

. PW7 Govardhan Morkhade, who was the Sub-Divisional Inspector at Post Office, Hingoli, has carried the departmental investigation regarding the account of PW5 Kishanrao Muley.

. PW8 Nandlal Daima, is the another Sub-Divisional Inspector of Post Offices, who was then working at the office of Sub-Division, Sailu, in the year 1987. He claimed to be conversant with the handwriting of the appellant. Further, he had conducted the enquiry in the matter of alleged misappropriation of amount and has deposed about the investigation carried by him, specifically as regards the present case.

. PW9 Samadhan Manwar, during the relevant period i.e. in the year 1988, was working as Ledger Clerk at the Head Post Office, Parbhani. He has deposed about the ledger card of account No. 181709. He has deposed about the entries made by him in official course, upon receipt of list of transactions received from various post offices, including the present sub post office, which would show that there were no entries as regards the time deposit account in the present case.

. PW10 Narayan Patre, who was working as Marking Posting Clerk at the Head Post Office, Parbhani in the year 1988, has deposed about the preparation of the ledger cards on the basis of the list of transactions sent by the various post offices, to prove that in the relevant list of transactions, the transactions made in the time deposit account were not sent by the present appellant to the Head Post office.

. PW11 Gulab Pakvanna, who, in the year 1988, was working as Sub-Divisional Inspector, had carried general enquiry in the complaint of misappropriation said to have been made by the present appellant. He had collected the necessary documents from the said sub-post office and recorded the statements of relevant account holders.

. PW12 Yeshwant Jathar was the Superintendent of Post Offices, nanded Region in the year 1986-1987. He deposed about the receipt of telegram from the higher authorities to conduct the enquiry into the affairs of Akhada Balapur sub post office and as to what steps were taken by him.

. PW13 Shrihari Gadgil who was the then Police Inspector of Anti Corruption Branch, Mumbai, has deposed about the investigation carried by him and filing of the FIR, as detailed supra.

6. The learned Special Judge concluded that though handwriting expert's opinion is not placed or proved, there is ample evidence from the mouth of the witnesses who were conversant with the handwriting and signature of the present appellant. According to him, it was proved that the signatures were forged by the present appellant in the relevant account books and deliberately failed to make entries in the long register and other relevant statements sent to the higher authorities as regards the time deposit account. Thus, finding that the case of misappropriation is proved, the conviction and sentence, as detailed supra, came to be recorded against the appellant. Hence, the present appeal.

7. Mr. P.R. Katneshwarkar, learned counsel for the appellant, submits that though the prosecution case is that handwriting expert has given his opinion, the same is not placed on record, creating doubt regarding the genuineness of the prosecution case. He further submitted that no loss to the account holders was caused and each of the witnesses deposed only regarding handwriting or the signature of the present appellant. He further submitted that in fact, PW2 Vijaysingh Bais

was the clerk in the sub-post office whose duty was to carry all these works and therefore, he submitted that the appellant be acquitted.

8. On the other hand, Mr. Alok Sharma, learned Assistant Solicitor General, supported the reasoning of the learned Special Judge.

9. On the basis of above material on record and considering the submissions advanced on behalf of both sides, the following points arise for my determination:

(I) Whether the prosecution has proved that on 7th June, 1986, the present appellant being the sub Post Master and entrusted in such capacity with recurring deposit account No. 46662 of Anuradha Badrinarayan Goenka, has committed criminal breach of trust by misappropriating an amount of Rs. 1300/- by forging the signature and has dishonestly and fraudulently misappropriated the said amount, being a public servant ?

(II) Whether the prosecution has proved that on 5th October, 1986, at Sub Post Office, Akhada Balapur, the present appellant being sub Post Master and entrusted, in such capacity, with saving bank account No. 1051487 of Vilas Dasrao Pede, had forged his signature and committed criminal breach of trust as regards an amount of Rs. 3800/- and has also committed criminal misconduct being a public servant by dishonestly and fraudulently misappropriating the said amount ?

(III) Whether the prosecution has further proved that on 27th October, 1986, the present appellant being the sub Post Master at Akhada Balapur, being entrusted, in such capacity, with the time deposit account No. 181709 of Kishanrao Narayanrao Muley, has committed criminal breach of trust in respect of an amount of Rs. 2150/- by omitting to make entry regarding the receipt of the said amount in the account books maintained with the sub post office and by omitting to send the relevant entries to the higher authorities ?

(IV) Whether the prosecution has further proved that on 17th November, 1986, the present appellant being the Sub Post Master at Akhada Balapur and entrusted, in such capacity, with time deposit account No. 181712 of Ramrao Babarao Bondare, has misappropriated an amount of Rs. 5500/- from the said account and thus committed criminal breach of trust in respect of the said amount, being public servant and has also committed criminal misconduct ?

My findings to above points are in the affirmative. The appeal is, therefore, dismissed for the reasons to follow :

R E A S O N S

10. The testimony of PW3 Badrinarayan, the account holder would show that he did not withdraw any amount from the account when an amount of Rs. 4400/- was balance. The pass-book at Exhibit-20 produced by him supports the said fact. The witness has further deposed that the application made for withdrawal at Exhibit-21 is not signed by him.

. The evidence of clerk i.e. PW2 Vijaysingh Bais and PW8 Nandlal Daima would show that the list of transactions at Exhibit-23 and application for withdrawal of money at Exhibit-21 are in the handwriting of the present appellant. Thus, the forging of the withdrawal application in the handwriting of the present appellant is clearly proved.

11. As regards the next of the saving bank account, the evidence of PW1 Vilas would show that he had opened the said account and at the time of the transaction, an amount of Rs. 3800/- was in balance. The pass-book at Exhibit-15 bears out this fact. The withdrawal slip-cum-application at Exhibit-24 is, however, in the handwriting of the present appellant as proved by PW2 Vijaysingh Bais, which has been disowned by the account holder PW1 Vilas. The ledger card in the handwriting and under the signature of the present appellant would show that on the fateful day i.e. on 05.10.1986, withdrawal of an amount of rs. 3800/- is not shown in the same. The evidence would show that the appellant has forged the withdrawal application at Exhibit-24, withdrew the amount but did not show the same either in the ledger card, or in the pass-book of the account holder.

. In the circumstances, even in the absence of handwriting expert's opinion or evidence, the handwriting of the present appellant over the fateful document is proved by the witnesses who were well conversant with the handwriting of the present appellant.

12. As regards the time deposit accounts, PW2 Vijaysingh Bais and PW7 Govardhan Morkhade were definitely conversant with the handwriting of the present appellant. While the entries in the long register and the list of the transactions prepared were definitely proved to be in the handwriting of the present appellant by these witnesses, the omission of the credit made by the relevant account holders in the relevant time deposit accounts has been clearly proved. During cross-examination of these witnesses, no material could be brought on record to show that they are not conversant with the handwriting of the present appellant.

13. As regards the sanction, the testimony of the sanctioning authority that it has applied its mind and thereafter, the sanction was granted. In that view of the matter, the appeal fails. Hence, the following order:-

14. The appeal is hereby dismissed. The bail bonds, if any of the present appellant shall stand cancelled. The learned Special Judge is directed to take steps for securing the presence of the appellant for serving the sentence awarded to him, as per the due procedure of law.

[M.T. JOSHI]
JUDGE

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