

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 79 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. 5/1999, 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. 2250/- by forging signature of the depositor in C.T.D. account No. 2209.

. As regards the another account i.e. time deposit account No. 181678, it is alleged that the appellant being a public servant, has dishonestly and fraudulently misappropriated an amount of Rs. 11,950/- entrusted to him.

. It is alleged that 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.

. It was further alleged that during the enquiry, the appellant has admitted his guilt and has repaid certain amount 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-50 in the present case), out of which the present crime was registered.

3. The present case pertains to the alleged transactions in two accounts maintained with the said sub post office during the period the present appellant was the sub post master.

. On 5th July, 1985, PW1 Chandrarao Babarao Bondhare opened fixed deposit account bearing No. 181678 by entrusting an amount of Rs. 12,000/-. The said amount

was fixed for a period of one year. It is the prosecution case that the present appellant ha credited only an amount of Rs. 50/- in the account of the post office. However, in the pass-book issued to the account holder, he had made the entry of credit of Rs. 12,000/- as paid by the account holder.

. The another account is recurring deposit account bearing No. 2209. It was opened by one Bhagwansingh Bais (who died before the trial could begin). In the said recurring deposit account, an amount of Rs. 2250/- was in balance. The present appellant, however, on 23rd April, 1985 forged an application for withdrawal and withdrew that amount from the said account.

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 eight witnesses were examined.

. PW1 Chandrarao Bondhare is the account holder, as detailed supra.

. PW2 Vijaysingh Bais is the clerk in the said sub-post office who worked under the present appellant during the relevant period and who claimed that he was conversant with the handwriting and signature of the present appellant.

. PW3 Govardhan Nagorao Morkhade was the Sub-Divisional Inspector of Post Offices, Hingoli Sub Division during the period between 1983 to 1987 who deposed that he used to pay visit to the sub post office and was inspecting the documents and therefore, was conversant with the signature and handwriting of the appellant. He also deposed about the relevant documents pertaining to the present two accounts i.e. handwriting in the pass-books, applications, withdrawal applications, the entries made in long register, etc.

. PW4 Kantaraj Gangadharam was the Superintendent of Post Office who had granted sanction to prosecute the appellant.

. PW5 Nandlal Daima has carried the departmental

investigation regarding the alleged misappropriation of amount made by the present appellant. He has recorded the statements of the account holders and certain other witnesses as proved by him.

. PW6 Gulab Babulal Pakwanne, another Sub-Divisional Inspector has also carried the same exercise and more particularly he had also deposed about the documents in connection with the present episodes.

. PW7 Yeshwant Bhimrao Jathar was posted as Superintendent of Post Offices, Nanded Region in the year 1986. He has deposed that he caused to carry the departmental investigation on the direction of the Superintendent of Post Offices as regards the alleged misappropriation committed by the present appellant.

. PW8 Shrihari Gadgil was the then Police Inspector of Central Bureau of Investigation in Anti Corruption Branch, Mumbai who has deposed about the investigation carried by him and filing of the FIR, as detailed supra.

6. The learned Special judge came to the conclusion that though handwriting expert's opinion is not on record, there is an ample evidence from the mouth

of the witnesses who were conversant with the handwriting and signature of the present appellant. These witnesses had deposed that the handwriting of the present appellant is found in the entries made in the account books and the relevant withdrawal applications. They also proved the entries in the long register to be in his handwriting. 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 holder 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 06.07.1985, the present appellant being a public servant and sub post master at sub post office, Akhada Balapur, being entrusted with amount of Rs. 1200/- in fixed deposit account No. 181678, has committed criminal breach of trust in respect of the said amount and also has committed criminal misconduct ?

(II) Whether the prosecution has further proved that the present appellant being the sub post master of sub post office, Akhada Balapur, as a public servant, having entrusted with an amount of Rs. 2250/- in recurring deposit account No. 2209, has, on 23.04.1985, committed criminal breach of trust as regards the deposit of an amount of Rs. 2250/- in the said account and has also

committed misconduct ?

My findings to both 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 learned Special Judge has relied on the statement of one of the account holders i.e. PW1 Chandrarao Bondhare. PW2 Vijaysingh Bais, PW3 Govardhan Morkhade and PW5 Nandlal Daima were conversant with the handwriting and signature of the present appellant. Their depositions would show that the pass-book at Exhibit-21 as regards account No. 2209 shows the entry in the handwriting of the present appellant. Further, the signature of the appellant over the application made for opening of the account at Exhibit-22 is that of the present appellant. The signature over Exhibit-23 i.e. the list of transactions and over the withdrawal application (Exhibit-24) made for withdrawal of an amount of Rs. 2250/- in account No. 2209 is also proved. All these facts would show that an amount of Rs. 2250/-

was withdrawn on 23rd April, 1985. However, there is no entry in the pass-book regarding the withdrawal of the same. All these documents are in the handwriting and under the signature of the present appellant.

11. Similar is the case regarding the another account i.e. relevant documents like withdrawal application, entries in the account of the sub post office are in the handwriting and signature of the present appellant.

12. All these facts would clearly prove that the present appellant has committed the misappropriation of the amount as alleged. The learned Special Judge has rightly observed that the evidence of handwriting expert is not required in every matter and this is more so when the different entries at different places are made in the handwriting and under the signature of the present appellant, as proved by these witnesses.

12. 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:-

13. 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

npj/criapl79-2001