

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AURANGABAD

CRIMINAL REVISION APPLICATION NO. 56 OF 2002

Vasant s/o Pundlik Deshmukh,
age 60 years, occ. Agril.,
r/o Takli Dhokeshwar,
Tq. Parner, Dist. Ahmednagar

...Applicant
[Orig. Accused]

VERSUS

The State of Maharashtra

...Respondent
[Orig.Complainant]

.....
Shri V.S.Bedre, advocate for applicant
Shri V.D.Godbharle, A.P.P. for respondent
.....

CORAM : V.M.DESHPANDE, J.

DATED : 2nd February, 2015

ORAL JUDGMENT : -

1] The present Revision is directed against the judgment and order of conviction passed by the learned Judicial Magistrate, First Class, Parner on 9.3.1994 in Regular Criminal Case No. 96 of 1989, thereby the learned Magistrate recorded a finding of guilt against the present applicant that he has committed an offence punishable under Section 408 of the Indian Penal Code and directed him to suffer rigorous

imprisonment for three months and to pay a fine of Rs.1,000/-, in default to suffer further rigorous imprisonment for one month, together with the judgment and order passed by the learned Ist Ad hoc Additional Sessions Judge, Ahmednagar, dated 14.2.2002 in Criminal Appeal No. 28 of 1994, whereby the learned lower appellate court dismissed the appeal filed on behalf of the applicant and confirmed the judgment and order of conviction and sentence.

2] I have heard Shri V.S.Bedre, learned counsel for the applicant and Shri V.D.Godbharle, learned Additional Public Prosecutor in extenso. With their able assistance, I have gone through the record and proceedings.

3] At village Takali Dhokeshwar, there is a society known as, "Takali Dhokeshwar Vividh Karyakari Seva Sahakari Society Limited" (hereinafter referred to as 'the said society' for the sake of brevity). It is an admitted position that the present applicant was Secretary of the said Society.

4] The District Deputy Registrar (Cooperative) directed Shri P.V.Bora, a Chartered Accountant and the certified auditor to conduct the audit of the said society, the period of audit was 1.7.1987 to 30.6.1988. There is no dispute that during the audit period the present applicant was the Secretary of the said

society. On 2.2.1989 P.V.Bora (PW 2) conducted the audit of the said society. He verified the account books of the said society. He noticed a defalcation of an amount of Rs.6339/-. The said amount was received by the present applicant towards the interest from the members, however, the said amount was not shown in the account books. Therefore, he lodged report (Exh.22) on 14.6.1989 with police station Parner. The police station, Parner registered the first information report vide Crime No. I-0111 of 1989 on 14.6.1989. The investigating officer after completion of usual investigation found that there is sufficient material against the present applicant, and therefore, he sent the report under Section 173 of the Code of Criminal Procedure to the learned Magistrate.

5] The case was registered as R.T.C. No.96 of 1989. The learned Magistrate on 1.7.1992 framed the charge against the present applicant that he being the Secretary of the said Society and in such capacity he was entrusted with the property of the society, namely amount of Rs.6339/- and he has not shown the said amount in the ledger and thereby committed a breach and committed an offence punishable under Section 408 of the Indian Penal Code.

In order to bring home the guilt of the applicant, prosecution has examined following witnesses.

(1) PW 1 Kisan Laxman Gaikwad, panch witness, who has proved panchanama dated 28.7.1989, under which the extract of Kird dated 25.4.1988 is seized.

(2) PW 2 Prakash Bora, the Chartered Accountant, who has conducted the audit and also filed the first information report.

3] PW 3 Namdeo Gondhale, the Assistant Police Sub-Inspector, who has registered the first information report.

6] Both the courts below have placed heavy reliance for convicting the present applicant on document (Exh.26), dated 17.2.1989, which is in the nature of "Kabuli Jawab" by the applicant, by which he has admitted that due to mistake he has not shown Rs.6339/- in the ledger.

7] The defence of the present applicant from the line of cross-examination and also from the statement recorded under Section 313 of the Code of Criminal Procedure is that he has shown the amount of Rs.6339/- on the inner column, however, due to his mistake it remained to be shown on the outer column.

8] Exh.25 the extract of Kird, dated 25.4.1988 is placed on record. Perusal of Exh.25 clearly shows that the applicant has taken the entry in the said Kird under the head, "मेंबर व्याज". Thus, it is clear that in the kird, dated 25.4.1988 the present

applicant has shown in the kird that he has received the amount of Rs.6339/- towards interest.

9] The charge against the present applicant is that he has not shown this amount Rs.6339/- in the ledger of the Society. Though he is specifically charged that he has not shown the said amount in the ledger and thereby he has committed the criminal breach of trust, the prosecution has not filed the copy of the ledger of the Society or its extract. Therefore, the only point that remains for consideration is whether the said amount is shown in the ledger or not and for that purpose we have to fall back on the oral testimony of the auditor.

10] If really the applicant was having any ill-motive to misappropriate the said amount he would not have taken the entry in the kird that he has received an amount of Rs.6339/-.

11] Further it is argued by the learned Additional Public Prosecutor that this amount was not deposited by him immediately. The applicant cannot be convicted on such submission, for the reason :-

- (1) There is no specific charge to that effect;
- (2) There is no evidence brought on record by the prosecution that the applicant was under

obligation to deposit every day's amount with the bank.

12] One cannot forget the fact that the applicant being the Secretary of the Society, the possibility that in order to meet the day to day expenses of the Society, he must have retained some amount at his hand. We can deduce such opinion since in the kird dated 25.4.1988 he has specifically mentioned that he has received an amount of Rs.6339/-.

13] Further it is an admitted position that even prior to filing of the first information report the applicant has deposited Rs.6339/- in the bank account of the Society. Merely because the amount is deposited subsequently, that will not absolve the present applicant from the charge. However, in the light of the evidence and the documents brought on record by the prosecution, it is clear that he has taken the entry of the said amount in the daily kird. Further, therefore, even assuming that the said amount was not shown in the ledger, it is clear that there was no intention on the part of the present applicant to misappropriate the said amount, coupled with the fact that the amount is already deposited by the present applicant in the bank. Therefore, according to me, the prosecution has failed to prove the case against the present applicant beyond reasonable doubt.

14] In the result, the present Criminal Revision Application is allowed. The judgment and order passed by the learned Ist Ad hoc Additional Sessions Judge, Ahmednagar, dated 14.2.2002 dismissing Criminal Appeal No. 28 of 1994 filed by the applicant, thereby confirming the judgment and order of conviction recorded against the applicant, by the learned Judicial Magistrate, First Class, Parner on 9.3.1994 in Regular Criminal Case No. 96 of 1989 is quashed and set aside. The applicant is acquitted of the charge under Section 408 of the Indian Penal Code. Fine amount, if any paid, be refunded to the applicant. His bail bonds stand cancelled. Rule is made absolute.

[V.M.DESHPANDE, J.]

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