

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

CRIMINAL REVISION APPLICATION NO. 139 OF 2003

Sakharam s/o. Abhimanyu Gavane .. Applicant
Age. 49 years, Occ. Govt. Service,
R/o. Nivgha, Taluka – Hadgaon,
District – Nanded.

Versus

The State of Maharashtra .. Respondent

Mr.A.S.Deshmukh, Advocate for the applicant.
Mr.U.S.Mote, APP for respondent/State.

CORAM : SMT.SADHANA S. JADHAV, J.
DATED : 23.04.2015

ORAL JUDGMENT :-

1. The applicant herein is convicted by learned Chief Judicial Magistrate, Parbhani in R.C.C. No.36 of 1993 for the offence punishable under section 409 of the Indian Penal Code and is sentenced to suffer rigorous

imprisonment for two years and fine of Rs.1000/-, in default, further rigorous imprisonment for six months. The applicant herein being aggrieved by the said judgment and order filed Criminal Appeal No.6 of 2002 before the Sessions Court at Parbhani. Learned Sessions Court vide judgment and order dated 02.01.2003 had maintained the order of conviction. However, had modified the sentence and directed the applicant to undergo substantive sentence for six months and fine of Rs.1,000/-, in default, simple imprisonment for one month. Hence, this Revision Application.

2. Such of the facts necessary for the decision of this application are as follows :-

3. The applicant herein was working as a Range Forest Officer at Basmat in the year 1991. The applicant was entrusted with the cheque worth of Rs.35,000/- dated 05.08.1991, cheque worth of Rs.53,646/- dated 09.08.1991

and chdque worth of Rs.8,000/- dated 10.08.1991. The office had not received statement of account till 31st August, 1991 and therefore they had to depute an officer to Basmat. It was reported that the applicant was not present in the office. It had transpired in the course of enquiry that the applicant herein had encashed the cheques worth Rs.35,000/- and Rs.8,000/-. However, the bank had restrained the applicant from encashing the cheque of Rs.53,646/-.

4. Notice was issued to the accused. Pursuant to the said notice, the accused was directed to deposit the amount withdrawn by him to the extent of Rs.43,000/-. However, the accused/applicant was absconding, hence the Dy. Conservator of Forest, Parbhani was constrained to authorize an officer to lodge a report against the present applicant under section 154 of Cr.P.C. On the basis of the report lodged by the Officer of the Forest Department, Crime No.187 of 1991 was registered against

the applicant for offence punishable under section 409 of Indian Penal Code. It appears from the record that prior to filing of the charge-sheet, the applicant had deposited the amount withdrawn by him. However, charge was framed. The prosecution examined six witnesses to bring home guilt of the accused.

5. The applicant had urged that his prosecution would stand vitiated on the ground that no valid prior sanction was obtained before filing of the charge-sheet. Learned Magistrate had considered the facts of the case and had held that since the applicant was being prosecuted under section 409 of I.P.C., there was no question of obtaining valid sanction and moreover conduct of the accused was sufficient to frame charge against him under section 409 of the Indian Penal Code. Learned Chief Judicial Magistrate had considered that the prosecution had adduced cogent, convincing evidence to bring home guilt of the accused and that the accused

deserves to be convicted. Learned Magistrate had also considered the fact that the applicant had deposited the amount withdrawn by him which is sufficient evidence to indicate that he had withdrawn the said amount for himself and had committed criminal breach of trust in the capacity of public servant. Learned Magistrate had further considered the issue of entrustment having been proved against the accused. Learned Magistrate had considered that on 12.12.1975 the accused had deposited entire amount along with interest and had requested that no charge-sheet shall be filed against him since he has returned the amount. The accused/applicant had placed reliance on the circular dated 30th November, 1978, wherein the General Administration Department of the State of Maharashtra had taken a policy decision that no prosecution shall be initiated against the employees, if amount is repaid within one month from the notice of misappropriation. In the present case, the applicant was found to be absconding after the office had noticed that

he had dishonestly misappropriated the cheques entrusted to him. After filing of the report under section 154 of Cr.P.C., the applicant had deposited the said amount. Depositing the amount misappropriated would not exonerate the applicant of offence punishable under section 409 of the Indian Penal Code. Learned Magistrate had convicted the accused of the offences with which he was charged. The findings recorded by learned Magistrate were affirmed by the Appellate Court in the fitness of the circumstances.

6. It appears from the Roznama that the applicant was also accused in some other crime and was being produced in the present proceedings through jail authorities. This would simply indicate that the applicant who happened to be a public servant had some criminal antecedents. In Application under section 397 & 401 of Cr.P.C., it is not necessary to re-appreciate the evidence adduced by the prosecution. The applicant/

accused was entitled for set off for the period from 22.12.1992 to 08.01.1993, 28.04.1993 to 04.06.1993 and 29.11.1999 to 07.04.2000, during which he was in jail. Hence, it appears that the applicant has undergone the substantive sentence of about five months during the pendency of the trial and appeal. The applicant was convicted by the Appellate Court vide judgment and order dated 02.01.2003. On 15.09.2003 this Court had observed "It is submitted that the accused has already undergone the imprisonment of six months as directed by the Appellate Court" and Rule was issued.

7. This Court on perusal of the findings, recorded by the Trial Court and affirmed by the Appellate Court, is of the view that no interference is warranted in the findings recorded by both the Courts. Hence, the conviction of the applicant for offence punishable under section 409 of the Indian Penal Code is hereby maintained. The sentence of fine is also maintained.

Since the applicant has undergone the substantive sentence, it is not necessary to pass any specific order. The bail bonds of the applicant shall stand cancelled. The Criminal Revision Application stands dismissed.

[SMT. SADHANA S. JADHAV,J.]