

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

Criminal Revision Application No. 154 of 2003

Macchindra Patu Girase,
Age : 40 years,
Occupation : Service,
R/o. Vani,
Taluka : Sindkheda,
District : Dhule.

.. Revision Applicant
(Original accused)

versus

The State of Maharashtra.

.. Respondent.

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*Mr. J.K. Bansod, Advocate, holding for
Mr. S.P. Brahme, Advocate, for the revision applicant.*

*Mr. U.S. Mote, Additional Public Prosecutor, for
the respondent - State.*

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CORAM : SMT. SADHANA S. JADHAV, J.

DATE : 19TH MARCH 2015

PER COURT :

1. Heard Adv. Mr. J.K. Bansod h/f. Adv. Mr. S.P. Brahme for the revision applicant, and the learned APP Mr. U.S. Mote for the respondent - State.

2. By the present revision application, the applicant / original accused has challenged the judgment and order passed by the learned 4th Additional Sessions Judge, Dhule, dated 5th March 2003, in Criminal Appeal No. 42 of 1996, thereby confirming the judgment and order dated 30th September 1996, passed by the learned Chief Judicial Magistrate, Dhule, in R.C.C. no. 15/1989. By the order dated 30th September 1996, the learned Chief Judicial Magistrate has convicted the revision applicant of the offence punishable under Section 408 of the Indian Penal Code and sentenced to suffer simple imprisonment for 7 days and to pay fine of Rs. 1000/-, in default of payment of fine, to suffer simple imprisonment for 2 months. The revision applicant was also convicted of the offence punishable under Section 477A of the IPC and sentenced to suffer simple imprisonment till rising of the court and to pay fine of Rs. 500/-, in default of payment of fine, to suffer simple imprisonment for 15 days.

3. Such of the facts necessary for the decision of this revision are as follows :

The applicant was serving as Secretary in Devi Vividh Karyakari Seva Society Ltd., Devi [Taluka : Sindkheda, District : Dhule]. The audit of the said Society was carried out for the period from 1-11-1983 to 31-10-1984. The applicant was called upon by the Auditor to produce the record and cash in hand for the purpose of verification. The applicant / accused had failed to produce before the Auditor, cash of Rs. 3015.15. Upon verification of the account, the Auditor was of the opinion that the applicant herein has not maintained the accounts properly and, therefore, he had arrived at a conclusion that there has been falsification of accounts.

The Auditor had also arrived at a conclusion that the applicant herein has misappropriated an amount of Rs. 7015.15 out of the funds of the Society, and therefore, the Auditor had issued a notice to the applicant. The applicant herein deposited an amount of Rs. 3100/- till 16-5-1985. He had also given an undertaking in writing, that he will deposit rest of the amount of Rs. 3915.15 up to the end of 15-6-1985. The applicant had failed to abide by the undertaking given by him. The matter was, therefore, referred to the District Special Auditor and thereafter, the Special Auditor directed the Auditor to lodge a complaint against the present applicant. On the basis of the complaint of the Auditor, Crime No. 33/1988 was registered by PSO, Sindkheda. The applicant / accused was arrested on 29-11-1988. After completion of investigation, present applicant was charge sheeted for offences punishable under Sections 477-A and 408 of the Indian Penal Code. The case was registered as R.C.C. No. 15/1989.

4. The prosecution has examined as many as 7 witnesses to bring home the guilt of the accused. The learned Chief Judicial Magistrate, Dhule, after recording evidence of the witnesses, had arrived at a conclusion that the accused has committed criminal breach of the trust by misappropriating the remaining amount of Rs. 3915.15 and that the prosecution has proved the guilt of the accused beyond reasonable doubt. The learned Chief Judicial Magistrate had convicted and sentenced the revision applicant / accused as aforesaid.

5. Being aggrieved by the said judgment and order passed by the learned Chief Judicial Magistrate, the applicant filed Criminal Appeal No.

42/1996 before the Sessions Court at Dhule. The learned 4th Additional Sessions Judge, Dhule, vide judgment and order dated 5th March 2003, has been pleased to dismiss the appeal. Hence, the present revision application.

6. The learned Counsel for the applicant fairly submits that, at this stage, the applicant is not desirous to challenge the order of conviction, however, prays for modification of the sentence, on the ground that the revision is being heard after 12 years from the date of filing and that prior to 2003, the sword of Damocles was hanging on his head since 1988. The learned Counsel fairly submits that the amount of fine is deposited. He further submits that the applicant has undergone 5 days of imprisonment during the pendency of enquiry / trial / present proceedings. The applicant is sentenced to suffer 7 days simple imprisonment. The applicant, therefore, deserves to be sentenced to the imprisonment for the period already undergone by him.

7. The learned Chief Judicial Magistrate has recorded sound and justifiable reasons for recording conviction of the applicant. The learned Magistrate has rightly not relied upon judgment of the Bombay High Court in *Dagadu Shamrao Deshmukh Vs. State of Maharashtra*, reported in *1982 Cri.L.J. 559*. The learned Magistrate has taken into consideration the fact, that the entire amount defalcated / misappropriated by the applicant / accused was not deposited within a period of one month and, therefore, it was not necessary to place reliance upon the Government Circular dated 6th May 1976, wherein a policy decision has been taken in the eventuality the misappropriated amount is recovered from the delinquent person

within one month from the date of notice of misappropriation.

8. In the result, the Revision Application is partly allowed.

[1] The conviction of the applicant - accused for the offences punishable under Sections 408 and 477-A of the Indian Penal Code is maintained. The sentence of fine is also maintained.

[2] The substantive sentence of the applicant - accused is reduced to the period which he has already undergone.

[3] Bail bonds furnished by the applicant - accused stand cancelled.

9. Rule made absolute in the above terms.

(SMT. SADHANA S. JADHAV)
JUDGE

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