

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO.282 OF 2015

Ranu Dadu Sable

...Applicant

Versus

The State of Maharashtra

...Respondent

...

Mr. Sarang Kotwal i/b Mr. Shivshankar D. Patil for the Applicant.

Mr. V.B.K. Deshmukh, APP for Respondent-State

CORAM:-M.L. TAHALIYANI, J.

DATED :13th JULY, 2015.

P.C.

Admit. Heard finally.

2. Heard learned counsel for the Applicant and learned APP for the Respondent-State.

3. The Applicant has been convicted for the offences punishable under sections 409 and 420 r/w. section 34 of the IPC by the Judicial Magistrate, First Class, Solapur and his appeal has been dismissed by Sessions Judge, Solapur.

4. The Applicant was working as Assistant Cashier in District Health Office, Zilla Parishad, Solapur. Two other accused who were

working as Administrative Officer and District Health Officer respectively at Zilla Parishad, Solapur, have been acquitted by the learned Sessions Judge

5. There was misappropriation in respect of cash amount of Rs.3,55,000/-. Two demand drafts in the sum of Rs.89,000/- and Rs.2,66,000/- were received by Zilla Parishad from Directorate of Health under some scheme. It was a case of prosecution that the Applicant and other two accused in furtherance of their common intention encashed both the demand drafts and misappropriated the said amount.

6. The learned Magistrate while concluding the trial and delivering his judgment had come to the conclusion that the Applicant and accused Nos. 2 and 3 had committed alleged offences. Learned Sessions Judge took the view that there was no sufficient evidence to establish that accused Nos.2 and 3 had ever handled the said cash amount. It is stated by the learned Magistrate as well as the learned Sessions Judge in their judgments that the demand draft of Rs.89,000/- was encashed by P.W.-3 Mrs. Deshmukh and amount was given to the Applicant. Both the courts below have also come to the conclusion that demand draft of Rs.2,66,000/- was encashed by the

Applicant and the Applicant did not take entry in the cash book in respect of money handed over to him by P.W.-3 and also in respect of cash received by him after encashment of demand draft of Rs.2,66,000/-.

7. As far as amount of Rs.89,000/- is concerned evidence of P.W.-3 that she had withdrawn the amount could be accepted. There is no evidence that the said amount was handed over to the Applicant. She had not taken any acknowledgment from the Applicant nor there is anything on record to show that said amount was handed over to the Applicant by P.W.-3.

8. In my opinion it was highly risky to believe the oral evidence of P.W.-3 in the absence of any corroboration or any other document in this regard. As far as amount of Rs.2,66,000/- is concerned, it was the case the prosecution that the accused No.2 had authorised the Applicant to withdraw the said amount. Said authority letter was produced in the Court but has not been proved in accordance with law. As such, in fact there was no material to show that the accused No.2 had authorised accused No.1 to withdraw the amount. Even if it is assumed for the sake of arguments that the Applicant was authorised to withdraw the amount of Rs.2,66,000/-

from the Bank, there was no evidence that amount was actually withdrawn by the Applicant from the Bank. The prosecution has examined in all 5 witnesses. Out of which four were working in Zilla Parishad including P.W.-3 Mrs. Deshmukh. P.W.-5 is the investigating officer. No officer from the Bank has been examined to establish that amount of Rs.2,66,000/- was withdrawn by the Applicant from the Bank. The original demand draft and signatures thereon were also not collected during the course of investigation. As such, the investigating officer had no occasion to take opinion of hand writing expert also. The judgments of the learned Trial Court and learned Appellate Court appear to be based on surmises and conjectures. This view can be fortified by reproducing portion of para 23 of judgment of learned Appellate Court, which runs as under :

“23. Lastly I must refer to the evidence available on record as far as accused No.1 Sabale is concerned. Conduct of Sabale goes to show that, he has committed mis-appropriation. Firstly though the amount was given in his custody by Smt. Deshmukh, he did not take appropriate entries in the cash book. Though he was transferred from the post of cashier, he did not hand over charge of his post to his successor. Even after receiving orders in writing, he failed to hand over cash book and remaining cash to his successor. The officers were

required to bring cash book from his home. On scrutiny of the cash book they realized that, the amount of demand draft were mis-appropriated and they were not accounted for. Shri Pardeshi, learned Advocate appearing on behalf of accused attempted to convince me that, according to the Government Circular, if the mis-appropriated amount is deposited in the office, before the audit, then no offence of mis-appropriation can be said to have been committed by the accused.”

9. As such, the conviction is based on the conduct of the Applicant. There is no direct evidence that the amount was received by the Applicant and it was misappropriated by him. What is pertinent to note is that whole amount was deposited in the office of accused No.2. In view of this in my opinion, it was highly risky to base the conviction of the Applicant by relying upon the fragile evidence available in the form of oral testimony of P.W.1, 2, 3 and 4. In fact, it is not necessary to refer to the evidence of P.W.1, 2 and 4. P.W.-3 has been referred because she has specifically stated that she has handed over amount of Rs.89,000/- to the Applicant. However, as already stated this evidence could not have been relied upon. This witness does not appear to be wholly reliable in as much as this witness has not been able to give satisfactory answer as to who had

withdrawn amount of Rs.2,66,000/- from the Bank. During the course of recording her evidence this witness avoided to answer the question and said that she did not remember as to who has withdrawn the said amount.

10. For all these reasons I allow the revision application and set aside the order passed by the Courts below. The Applicant is acquitted of the offences punishable under sections 409 and 420 of the IPC. He shall be released from the prison, if not required in any other case.

11. The criminal revision application stands disposed of.

(JUDGE)