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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.667 OF 2000

The State of Maharashtra

]... Appellant.

V/s.

Smt. Suhasini S. Bhave,
Tal. Vetoshi,
District: Ratnagiri,

]..
].. Respondent
]

Mr.H. J. Dedhia, APP for the appellant State.

Mrs. Rupali Manik Shinde, appointed advocate for the Respondent

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 7th DECEMBER, 2015.

ORAL JUDGMENT : [Per : Dr. Shalini Phansalkar-Joshi,J.]

1. The State has preferred this appeal challenging the acquittal of respondent, for the offence punishable under Section 409 of Indian Penal Code, as recorded by Chief Judicial Magistrate Ratnagiri, vide his order dated 28th April, 2000 in R.C.C.No.106 of 1998.

2. The brief facts of the appeal can be stated as follows :-

Respondent in this case was working as Branch Post Master at village Vetoshi. As per prosecution case on 18th February, 1998, when complainant Mukund Keskar visited the said post office, he found that an amount of Rs.7,200/- was not deposited by the respondent though respondent has accepted the said amount while working as Accountant in the post office. When the said fact was brought to the notice of respondent, she had deposited the said amount alongwith interest of Rs.800/-. She was then prosecuted for the offence under Section 409 of the IPC.

3. On her appearance, she had preferred an application for discharge relying on the Government Circular dated 7th May, 1976. She requested that the prosecution case should be withdrawn as she has deposited alleged amount of misappropriation, immediately when it was brought to her notice. The learned APP opposed the said application on the ground that the said circular was not applicable to the employees of Central Government.

4. The trial Court, after hearing both parties was pleased to hold that as respondent has deposited the said amount immediately when it was pointed out to her, she was entitled to be exonerated. The trial Court further held that the said circular is applicable uniformly to all the employees whether of the State Government or Central Government and accordingly acquitted respondent of the offence punishable under Section 409 of the IPC.

5. This order of the Appellate Court is challenged in this appeal, by learned APP for State and supported by learned counsel for respondent.

6. According to learned APP, the circular issued by the State Government under which trial Court has acquitted respondent was applicable only to the employees of the State Government and it cannot be made applicable to employees of the Central Government and hence the impugned order of the trial Court acquitting respondent on the basis of said circular is not legal and valid as respondent was at the relevant time serving

in the postal department which comes under Central Government.

7. In my considered view, instead of entering into question as to whether said circular was applicable or not, it would be proper to look at issue from the different perspective i.e. whether essential ingredient of the offence of misappropriation has been made out or not. If as per observations made by the trial Court in paragraph No.6 of its order an amount of Rs.8,000/- was deposited on the same day and that too with interest, the essential ingredient of the offence misappropriation are also not made out and on this sole ground respondent becomes entitled to be acquitted of the offence charged against her. Hence the appeal stands dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.]

C E R T I F I C A T E

Certified to be true and correct copy of the original
signed order.