

THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

CRIMINAL REVISION CASE No. 1711 of 2007

JUDGMENT:

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The present criminal revision case is filed by the petitioner/accused under Sections 397 & 401 Cr.P.C. against the judgment dated 07.11.2007 passed by the learned II Additional District & Sessions Judge at Amalapuram, East Godavari District, in CrI.A.No.202 of 2006 whereby and whereunder the learned Judge has confirmed the conviction of the petitioner for the offence punishable under Section 420 IPC, as inflicted by the learned Additional Judicial Magistrate of First Class, Kothapeta, in C.C.No.859 of 2002 by judgment dated 31.07.2006.

The facts are as under:

The petitioner was appointed as clerk in Sri Bhuvaneswari Primary Agricultural Co-operative Credit Society Limited, P. Gannavaram (for short 'the Society') initially for the period from 13.05.1992 to 30.09.1993. Subsequently, he was allowed to work as clerk from 29.06.1995 on daily wages of Rs.13/- up to 29.07.1995. On an application filed by the petitioner for reinstatement, the Assistant Commissioner of Labour, Kakinada under Section 48 of the A.P. Shops and Establishment Act had ordered reinstatement of the petitioner and accordingly the petitioner was reinstated into service on 09.10.2000 and was working as a clerk. Thereafter, the petitioner filed a case before the Assistant Commissioner of Labour claiming a sum of Rs.1,71,891.50 ps. towards the amount payable to him and the same was dismissed. Pursuant to the orders of the Deputy Registrar of Co-operative Society, the petitioner was retrenched from service on 09.03.2001. Aggrieved thereby, the petitioner approached the Assistant Commissioner of Labour who ordered reinstatement of the petitioner. Then, the Society appealed to the Deputy Commissioner of Labour, Eluru, who set aside the orders of the Assistant Commissioner of Labour on 27.05.2002. During the period in which the petitioner worked as clerk i.e., from 16.02.1999 to 15.02.2000 the petitioner had drawn amounts towards wages from Sri Padmavathi Mahila Super Bazaar, Amalapuram.

He claimed salary from both the Society and the said Super Bazaar, intentionally misled the authorities of Labour Department and induced the Society to deliver the amounts. Hence, the Chairman of the Society filed a complaint in the Court of the Judicial Magistrate of First Class at Kothapeta which was referred to the police for investigation. After investigation, the police filed charge sheet for the offences punishable under Sections 417 and 420 IPC, which was numbered as C.C.No.859 of 2002 on the file of the Additional Judicial Magistrate of First Class, Kothapeta.

In support of its case, the prosecution examined P.Ws.1 to 5 and produced Exs.P.1 to P.32. No oral or documentary evidence was adduced on behalf of the petitioner. The trial Court, after perusing the oral and documentary evidence, held that the petitioner is guilty of having committed the offence alleged and accordingly convicted and sentenced him to undergo rigorous imprisonment for a period of one year and to pay fine of Rs.1,000/- in default to suffer simple imprisonment for one month. The petitioner was unsuccessful in the appeal filed by him. Hence, this revision.

The learned counsel for the petitioner submits that the petitioner is a daily wage earner and therefore eking out his livelihood during the period of his retrenchment cannot be said to be an offence of cheating.

The learned Additional Public Prosecutor submits that the petitioner has received wages from both the Society and Sri Padmavathi Mahila Co-operative Super Bazar for the same period and hence the findings of the Courts below cannot be interfered with.

A perusal of the record clearly shows that while working as a daily wage employee in the Society for the period from 29.06.1995 to 29.07.1995, the petitioner was paid daily wages of Rs.13/-. Subsequently, he was retrenched and was not reinstated even after a new Committee was constituted. Then, he approached the Assistant Commissioner of Labour, Kakinada, who by an order dated 24.12.1999 directed that the petitioner be reinstated. As the Society was unsuccessful in the appeal filed by it before the Deputy Commissioner of Labour, Eluru, the petitioner was reinstated into service by the Society on 09.10.2000. The petitioner also worked in Padmavathi Mahila Co-operative Super Bazar, Amalapuram, during the period from 11.06.1999 to 15.02.2000. In pursuance of the orders of the competent authority, the petitioner has drawn the wages for the period from 11.06.1999 to

15.02.2000 i.e., the period during which he was gainfully employed in Padmavathi Mahila Co-operative Super Bazar, Amalapuram. Therefore, it is a clear case where the petitioner has suppressed the factum of his working during the period of his retrenchment and claimed wages from the Society. Both the Courts below have appreciated the oral and documentary evidence in proper perspective and held that the petitioner is guilty of the offence punishable under Section 420 IPC. Upon reappraisal of the evidence on record, I see no reason to take any view other than that has been taken by the Courts below and the impugned judgment does not suffer from any irregularity or illegality or needs any interference.

However, with regard to the quantum of sentence, the learned counsel for the petitioner submits that the petitioner has been in judicial custody for nearly ten months during trial and now he is aged about 53 years and that the intention of the petitioner in working in Padmavathi Mahila Co-operative Super Bazar is only to sustain himself and this fact was informed to the Society from where he has drawn the backwages.

In view of the above and taking into consideration the facts and circumstances of the case, this Court takes a lenient view and reduces the sentence of imprisonment of one year imposed by the trial Court as confirmed by the appellate Court to nine (9) months, with the benefit of Section 428 Cr.P.C.

With the above modification, the Criminal Revision Case is dismissed. Consequently, miscellaneous petitions if any pending in the revision shall stand dismissed.

M.S.K.JAISWAL,J

5th November, 2015

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