THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

Crl.A.No.1623 of 2004

JUDGMENT

This Criminal Appeal is filed by the State challenging the judgment dt.03-12-2001 in C.C.No.14 of 1995 of the Special Court under the A.P. Cooperative Societies Act, Vijayawada.

2. Respondent Nos.1 to 4 herein are accused A-1 to A-4 in the above case.

3. The Inspector of Police, Palakole, has laid a charge sheet against the respondent Nos.1 to 4 for offences under Sections 408, 409, 477-A, 201 and 202 IPC. A-1 worked as accountant in Lankalakoderu Cooperative Rural Bank (for short 'the bank'), A-2 worked as a Junior Accountant therein, A-3 worked as a Clerk and A-4 worked as an auditor to audit the records of the said bank for the period from 1985-1986 to 1989-1990.

4. It is the case of prosecution that as per the resolution No.1 dt.28-08-1995 of the bank, A-1 as an accountant was entrusted duties of maintaining cash book, general ledger and he was also the joint custodian of the cash balance along with its Secretary; A-1 was in-charge of the affairs of the bank and A-2 used to write loan ledger and also act as cashier as per the instructions of the Secretary or the accountant; A-3 used to look after Public Distribution System and also used to function as cashier as and when directed by the Secretary and the Accountant; and A-3 also used to receive cash from salesmen of the Public Distribution System and was issuing receipts to the concerned salesmen. It is alleged that A-1 to A-3 being employees of the bank were entrusted with the bank property; that they got dominion over the said property and they had committed criminal breach of trust in

respect of bank property for the period from

01-11-1989 to 31-10-1990 as mentioned below:

S.No.	Nature of Irregularities	Amount Rs.
1.	Total mistakes in cash book	200-00
2.	D.C.S.T loans collected but not brought to cash book.	12731-00
3.	Fictitious F/D loans written in cash book	20000-00
4.	F.D. loans collected but not brought to cash book.	1489-00
	Total	34420-00

5. It is alleged that A-1 to A-3 committed criminal breach of trust of Rs.34,420/- and diverted amounts for their own purpose and thereby caused to wrongful loss to the bank; A-4 being an auditor got knowledge that A-1 to A-3 were committing criminal breach of trust, but with an intention to screen A-1 to A-3 from punishment, he caused disappearance of evidence and committed the offence of criminal breach of trust. It is alleged that A-4 failed to bring irregularities noticed by him in the audit to the notice of the higher authorities; that the District Cooperative Officer ordered to conduct of an enquiry under Section 51 of the AP Cooperative Societies Act, 1965 vide proceedings R.O.C.No.2555/92 dt.14-08-1993 by one G.B.Ramakrishna, the then Cooperative Sub Registrar and Divisional Cooperative Officer, Bhimavaram; the latter conducted an enquiry and submitted a detailed report noting down the irregularities mentioned above; on the basis of the said report, the Divisional Cooperative Officer lodged a report with Palakole Rural Police Station on 26-09-1993 against the accused.

6. Before the Court below, the prosecution examined P.Ws.1 to 8 and marked Exs.P-1 to P-10.

7. By judgment and decree dt.03-12-2001, the Court below held that the accused are not found guilty of all the offences and

acquitted all the accused. It held that the officials of the bank are not public servants and Section 409 IPC is not attracted; but they can be convicted under Section 406 IPC and therefore it altered the charge from Section 409 IPC to Section 406 IPC.

8. In the Court below, P.W.1, who was working as a Divisional Cooperative Officer, Kakinada and had previously worked as Cooperative Sub Registrar, Bhimavaram from 1987 to 1990, and had conducted the enquiry under Section 51 of the said Act into the affairs of the bank, was examined along with other witnesses. But he did not file the enquiry report of the enquiry conducted by him under Section 51 of the said Act. Thus, only his oral evidence was available. In his cross examination, he admitted that he conducted enquiry under Section 51 as per the *available* record, but some of the records were missing in the bank; that if all account books and vouchers were produced the final figure of misappropriation may vary on either side; that A-4 did not conduct audit for the year 1991 and one S.V.Rama Raju conducted final audit for the said year. He stated that certain pages in the account books were in loose condition, more particularly, in the S.B. Account ledgers; that entire records were not produced in the enquiry before him; that one cash book was not produced before him; and he cannot say about entries regarding the transactions noted in the missing cash book and he did not verify the saving bank account books in the bank. He admitted that the Secretary of the bank was custodian of the property of the bank and not any of the accused.

9. P.W.2 had worked as a Junior Inspector Assistant in Divisional Cooperative Office in Bhimavaram from 1987 to 1995. In his evidence, he had stated that he handed over the letter addressed by the Divisional Cooperative Officer to the S.H.O.,

Palakole Rural Police Station dt.19-06-1992 along with copy of the enquiry report dt.31-03-1993 and the original of the letter dt.06-06-1993 of the District Cooperative Officer, West Godavari, Eluru and the police examined him. But he admitted in cross examination that acknowledgment for the said record was received from the police but he did not file the same.

10. P.W.3 stated that he was a resident of Lankalakoderu and about 11 years ago, he deposited Rs.4,000/- in the bank and after two months, he had obtained loan of Rs.1500/- from the bank which was repaid by him. In his cross examination, he stated that he did not know whether the bank officials wrongly noted the date of payment of the loan discharged by him in the records. So P.W.3 did not support the case of the prosecution.

11. P.W.5, who is alleged to have obtained a loan on fictitious fixed deposits (item-3) irregularly, stated that she has made deposits in the bank and withdrew the entire deposits in the bank and never took any loans from the bank. But in her cross examination, she admitted that she availed loan facility from out of the deposits made by her and later withdrew the deposited amount after discharging the loan amount. Thus, P.W.5 also did not support the case of the prosecution. She was not also declared hostile.

12. The Court below also held that in the absence of Section 51 enquiry report, it is difficult to hold that the accused intentionally made mistakes in the cash books and misappropriated amounts during the period from 01-11-1989 to 31-10-1990. The Court below held that there is no incriminating material available against the accused in the evidence of P.Ws.6, 7 and 8; that some of the material records of the bank were missing and P.W.1 could not verify those missing records; and the opinion

and the finding of P.W.1 in respect of four items of the irregularities mentioned above cannot be relied upon since the same was not based on the entire material on record of the case; and therefore, the offence of misappropriation under the above four heads was not made out.

13. The learned Public Prosecutor contended that the judgment of the Court below is contrary to law and unsustainable and that on the basis of the evidence on record, the Court below should have convicted the accused of the offences alleged against them in the charge sheet. He further contended that on the basis of the enquiry under Section 51 of the said Act conducted by P.W.1, prosecution was initiated and that merely because the enquiry report of P.W.1 is not filed, the case of the prosecution cannot be thrown out.

14. The learned counsel for the respondents however sought to support the judgment of the trial Court and contended that no compelling and substantial reasons have been made out by prosecution for interference with the judgment impugned in the appeal.

15. It is not in dispute that P.W.1 admitted that the entire record of the bank was not placed before him when he conducted the enquiry under Section 51 of the said Act. So the opinion of P.W.1, expressed in the enquiry report about the misappropriation in regard to the above four items, cannot be taken as the gospel truth, since he himself admitted that if all the records were available, the final figure of misappropriation may vary on either side. P.W.1 has also admitted that the Supervisor and the Sub Registrar of Cooperative Societies would conduct inspections quarterly and half yearly and audit would also be conducted by the

District Audit Officer, but said officers in their inspections/audit did not point out any irregularities.

16. The scope of interference in appeal under Section 378 Cr.P.C. is laid down succinctly in **Chandrappa and others Vs. State of Karnataka**[1]***,*** as under :

> *"(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.*
>
> *(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.*
>
> *(3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.*
>
> *(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.*
>
> *(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."*

The above principle was reiterated in **State of Rajasthan v. Mohan Lal**[2] and recently in **Satvir Singh v. State of Delhi**[3]**.**

17. In view of this legal position, after perusing the evidence on record and the findings of the Court below, I am of the opinion that the Court below has rightly acquitted the accused of the charges alleged against them and its findings do not warrant any interference in appeal.

18. Therefore, I do not find any merit in the Criminal Appeal and the same is accordingly dismissed.

19. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S. RAMACHANDRA RAO

Date : 20-01-2015
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[1] (2007) 4 SCC 415

[2] (2009) 12 SCC 515

[3] (2014) 13 SCC 143