

HON'BLE SMT JUSTICE ANIS

CRIMINAL REVISION CASE No.269 of 2007

ORDER:

This Criminal Revision Case is directed against the judgment dated 19.01.2007, passed in CrI.A.No.260 of 2006, by the learned Special Judge for Trial of Offences under SCs & STs (POA) Act-cum-VI Additional Metropolitan Sessions Judge, Secunderabad, confirming the conviction while reducing the sentence from one year simple imprisonment to six months simple imprisonment each for the offences under Sections 408 and 420 IPC, imposed against the revision petitioner-accused through judgment dated 29.06.2006 passed in C.C.No.1505 of 2001 by the learned XI Additional Chief Metropolitan Magistrate, Secunderabad

For convenience sake, the parties hereinafter referred to as they were arrayed before the Trial Court.

It is the case of the prosecution that accused No.1, while working as Post Master at West Marredpally during 1993-94, got acquaintance with PW.3 and lured and induced PW.3 to deposit amount in the Post and Telegraph Employees Cooperative Credit Society Limited, Secunderabad (for short 'the Society') offering interest at 18%; that PW.3 made F.D.Rs; and that on maturity of FDRs, the accused failed to return. While accused No.1 was the Secretary, Accused Nos.2 and 3 are President and Treasurers of the Society. It is alleged that the accused misappropriated the amounts (mentioned in the F.D.Rs.) by not mentioning in cashbooks though entries pertaining to 1993-94 were made; and that the accused made false statements before the enquiry officer and inspecting officer to the effect that they had paid the amounts due to PW.3 without there being any vouchers on record. On a private complaint by PW.3, the learned Magistrate referred it to police who took up investigation and filed final report only as against accused No.1 for the offences under Sections 406, 408 and 420 IPC.

The learned XI Additional Chief Metropolitan Magistrate, Secunderabad, took cognizance of the offences under Sections 408 and 420 IPC against the accused; that copies of documents were furnished to the accused as contemplated under Section 207 Cr.P.C; that the accused were examined under Section 239 Cr.P.C; and that charges, under Sections 408 and 420 IPC, framed, read over and explained to them for which they pleaded not guilty and claimed to be tried. During the course of trial, the prosecution examined PWs.1 to 5 and got marked Exs.P.1 to P.7.

After closure of the prosecution evidence, the accused was examined under Section 313 (1)(b) Cr.P.C putting all incriminating material available against them. Accused No.1 denied the material evidence and examined himself as DW.1 and got marked Exs.D.1 and D.2 on his behalf.

On a perusal of the entire evidence, both oral and documentary, the Trial Court, found accused No.1 guilty for the offences under Sections 408 and 420 IPC, convicted under Section 248(2) Cr.P.C, and sentenced to suffer simple imprisonment for a period of one year and to pay a fine of Rs.5,000/-, in default, to suffer simple imprisonment for six months; and that to suffer simple imprisonment for one year and to pay a fine of Rs.5,000/- in default to suffer simple imprisonment for six months respectively; and that both sentences were directed to run consecutively.

Aggrieved by the conviction and sentence passed by the Trial Court, the accused preferred Criminal Appeal No.260 of 2006 on the file of Special Judge for Trial of Offences under SCs & STs (POA) Act-cum-VI Additional Metropolitan Sessions Judge, Secunderabad, whereby and whereunder the learned Judge, on reappraisal of evidence and material on record, dismissed the appeal, and confirmed the conviction, but reduced the sentence from one year simple imprisonment to six months simple imprisonment each for the offences under Sections 408 and 420 IPC, and the fine amount was directed to be maintained.

Being aggrieved by the judgment of the Appellate Court passed in Criminal Appeal No.260 of 2006, the petitioner/accused No.1 preferred the

present revision case.

Sri O.Kailashnath, learned counsel for the revision petitioner, argued that the petitioner is now aged about 75 years old, that he is a retired person and that since he has already undergone imprisonment for a period of one month, a lenient view may be taken.

Per contra, learned Additional Public Prosecutor appearing for the State contended that the Appellate Court took a lenient view and reduced the sentence of imprisonment; and the order under revision warrants no interference; and, therefore, prayed to dismiss the revision.

Now the point that arises for consideration is whether the petitioner is entitled to set aside the judgment of the appellate Court dated 19.01.2007, passed in CrI.A.No.260 of 2006, as well as the judgment of the trial Court dated 29.06.2006 passed in C.C.No.1505 of 2001.

Point:

A perusal of the record shows that the prosecution after examination of PWs.1 to 5 and Exs.P.1 to P.7 held that A.1 induced PW.3 to part with amount by representing that she would get more interest, if the amounts were deposited in the Society. The evidence of PW.3 is supported by other witnesses. The Trial Court convicted the petitioner – accused No.1, for the offences under Sections 408 and 420 IPC, and sentenced to suffer simple imprisonment for a period of one year and to pay a fine of Rs.5,000/-, in default, to suffer simple imprisonment for six months; and that to suffer simple imprisonment for one year and to pay a fine of Rs.5,000/- in default to suffer simple imprisonment for six months respectively while acquitting accused Nos.2 and 3. The Appellate Court confirmed the conviction but modified the sentence from one year simple imprisonment to six months simple imprisonment each for the offences under Sections 408 and 420 IPC, and the fine amount was directed to be maintained, and directed that both the sentences to run concurrently.

The offence is of the year 2001, and the Calendar Case was disposed of in the year 2006. Thereafter, Criminal Appeal was filed in the year 2006, and the judgment was passed in the year 2007 modifying the sentence of imprisonment. Learned counsel for the petitioner stated that, at the time of filing complaint, the petitioner is aged 65 years and, now he is above 70 years.

Taking into consideration the facts and circumstances of the case, while confirming the conviction passed by both the Courts below, the sentence, to undergo simple imprisonment for six months each for the offences under Sections 408 and 420 IPC, imposed by the Appellate Court is reduced to that of the period already undergone by the petitioner - accused No.1, and the fine amount is maintained. Set off under Section 428 Cr.P.C. shall be given.

With the above modification, the appeal is disposed of.

Miscellaneous petitions pending, if any, shall stand dismissed.

ANIS, J

Date:27.03.2015

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