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

Criminal Revision Case No.946 OF 2007

ORDER:-

The revision is directed against the Judgment in Criminal Appeal No.72 of 2005, dated 13-07-2007, on the file of the I-Additional District and Sessions Judge, Srikakulam, whereunder the conviction of the revision petitioner/A.2 for the offences under Sections 120-B and 420 IPC. were confirmed, however, reducing the sentence of imprisonment from two years to six months for each of the offences respectively.

2. Facts in brief are as under:-

The petitioner was A.2 in Cr.No.58 of 2000 of CID P.S., Hyderabad. Along with him, one Dr.Y.Muddu Krishna was arrayed as an accused. He having died, the case against the non-petitioner was abated as per orders dated 29-06-2005.

While the deceased-A.1 was working as a Medical Officer P.H.C., Kinthali, Srikakulam, the petitioner/A.2 was working as Senior Assistant therein. One Y.Sayanna retired from the said Office on superannuation. He was entitled to the Earned Leave Encashment amounting to Rs.58,488/-. The said amount was drawn on 23-02-1998 and paid. Again on 20-05-1998, a sum of Rs.58,488/- towards Earned Leave Encashment was drawn as being payable to Y.Sayanna (PW.5). This amount was misappropriated by A.1 and A.2. The departmental enquiries, auditing of the accounts etc., were taken up to establish that the said amount was fraudulently drawn by misrepresenting that the said amount was not drawn previously. On the basis of the complaint of the Secretary to Government, Health, Medical and Family Welfare (H.2) Department, A.P., Hyderabad, the case was registered and investigated. The investigation established that both the accused persons have committed the offences punishable under Sections 409, 420 r/w 120-B IPC.

3. The charge sheet was taken cognizance by the learned Judicial Magistrate of First Class, Srikakulam. Charges were framed under Sections 120-B, 420 and 409 IPC. The petitioner/A.2 denied the accusations. In support of its case, the

prosecution examined PWs.1 to 13 and marked Exs.P.1 to P.24. In defence, on behalf of the accused, Ex.D.1 was marked. After hearing both sides and perusing the evidence on record, by Judgment, dated 15-07-2005, the learned Judicial Magistrate of First Class found the petitioner/A.2 guilty of the charges punishable under Sections 120-B and 420 IPC., convicted and sentenced him to undergo rigorous imprisonment for a period of two years each for the offences and also fine of Rs.1,000/- each with a default clause. The learned Magistrate, however, acquitted the petitioner/A.2 of the charge under Section 409 IPC.

4. Aggrieved by the said conviction and sentence, the petitioner/A.2 preferred Criminal Appeal as stated supra. While the conviction of the petitioner/A.2 was confirmed, the sentence however was reduced to three months each for the offences under Sections 120-B and 420 IPC. The sentence of fine was sustained.

5. The petitioner/A.2 preferred the present revision questioning the correctness of the findings of both the Courts below.

6. It is contended by the learned Counsel appearing for the petitioner/A.2 that both the Courts below have failed to take into consideration the evidence on record in proper perspective and erroneously found the petitioner/A.2 guilty. It is submitted that all the documents which were relied upon by the prosecution were not furnished to the accused and the material witness in whose presence the non-petitioner/A.2 has admitted the guilt has not been examined. The Judgments of the Courts below therefore suffer from material irregularity warranting interference.

7. On the other hand, learned Public Prosecutor submits that both the Courts below have appreciated the oral and documentary evidence more particularly, the exhibits produced by the prosecution meticulously and on the basis of such evidence, found that the petitioner/A.2 in collusion with the non-petitioner/A.1 have withdrawn the amount of Rs.58,488/- from the Treasury for the second time and misappropriated the same for their personal benefit. It is also admitted fact that nearly 13 months thereafter, after departmental enquiries and auditing, the said amount has been deposited by the accused into the Treasury. Learned Public Prosecutor submits that the evidence on record clearly shows that the intentions of the petitioner and another were dishonest and have fraudulently submitted the claim and drawn the amount and utilized the same, thereby making themselves liable for the punishment. Learned Public Prosecutor submits that the evidence on record clinchingly

establishes the offences against the accused and hence both the Courts below found the petitioner/A.2 guilty, therefore the revision petition is liable to be dismissed.

8. The point that arise of consideration is as to whether the prosecution could prove its case beyond reasonable doubt so as to sustain the conviction and sentence as imposed by both the Courts below or whether the Judgments rendered by the trial Court and the first appellate Court suffer from any material illegality or irregularity warranting interference by the revisional Court?

9. **Point:-** Originally, two accused were charge sheeted in C.C.No.22 of 2003 on the file of Judicial Magistrate of First Class, Prohibition and Excise Court, Srikakulam. The offences alleged against the accused were under Sections 120-B, 420 and 409 IPC. During the course of trial, A1 died and the case proceeded against A2. The trial court has convicted the petitioner-A2 for the offences under Section 120-B and 420 IPC and sentenced him to undergo imprisonment for a period of two years for the offence under Section 420 IPC and three months imprisonment for the offence under Section 120-B IPC, apart from imposition of fine. On appeal, in Crl.A.No.72 of 2005 by order, dated 13.07.2007, learned I Additional District Judge, Srikakulam, has confirmed the conviction of the petitioner-A2, but reduced the sentence to three months imprisonment and fine was sustained.

10. Petitioner-A2 was working as a Senior Assistant, District Medical and Health Department, whereas A1 was working as a District Medical Officer. P.W.5-Y.Sayanna, who retired from the Department, was entitled to the salary in lieu of earned leave to his credit. Accordingly, a sum of Rs.58,488/- was drawn and paid to P.W.5 on 10.02.1998. Three months thereafter, once again similar amount was drawn on 20.05.1998 from the treasury towards leave encashment allowance of P.W.5. This amount was admittedly a double drawal and according to the petitioner-A2, the said amount was given by him to A1. Subsequently, during the course of audit and inspection, this aspect came to light and, accordingly, the accused have remitted back the amount so drawn to the Government account on 12.06.1999.

11. Petitioner-A2 was the person, who was responsible for preparing the bills and submitting the same to the treasury. A.1-
the non-petitioner herein is said to be the Drawing and Disbursing Officer. According to the petitioner-A2, he has drawn the amount only at the instance and under the

instructions of the non-petitioner-A1. Drawing any amount from the treasury payable to any employee is supposed to be on the basis of the proceedings of the competent authority. Merely because the non-petitioner-A1 asked A2 to claim the amount, he cannot do so. Petitioner, being a Senior Assistant, is supposed to know the rules more meticulously than anybody else. It would not be out of his knowledge that similar amount has already been drawn as recently as on 10.02.1998 and he ought not to have submitted the claim for the self same amount on 20.05.1998. Having drawn the amount, the said amount payable would go to the employee but not to the drawing and disbursing officer. The specific contention of the petitioner-A2 is that he has paid the amount to A1.
This contention itself cannot be countenanced.

12. Departmental enquiries were conducted by different authorities. The documents that are produced in the shape of Exs.P1 to P3 would clearly go to show that the amount drawn towards leave encashment, in fact, was already drawn previously.

13. Learned Counsel appearing for the petitioner/A.2 strenuously submitted that the amount was drawn under the instructions of the non-petitioner/A.1 who was the Drawing and Disbursing Officer and as a matter of fact, it is A.1 who has taken the amount and subsequently it is he who gave the said amount to be deposited in the Treasury. Learned Counsel further submits that since A.2 being a subordinate of A.1, acted as per his instructions, A.2 cannot be said to be liable. This contention of the learned Counsel has no force for the reason that A.2 himself being a Senior Assistant in the Office and who was responsible for preparation of bills, submitted the same to the Treasury, getting them encashed and disbursing to the eligible employees, cannot be heard saying that he was directed by his Officer/A.1 to make the double drawl and consequently he submitted the bills. He being a Senior Assistant is expected to know the rules and regulations of the Office. Even a novice in a Department or for that matter even a layman knows fairly well that once a claim under a particular head has been made, drawn and disbursed, the same amount cannot be once again drawn or disbursed. Absolutely, there is no controversy insofar as the factum of double drawal is concerned. As a matter of fact, the specific case of the petitioner/A.2 is that he has made the subsequent claim at the instance of his Officer/A.1. Any bill which is to be submitted to the Treasury of the Government needs a proper sanction proceedings. Without the amount being sanctioned by the competent Drawing and Disbursing Officer, no bill can be submitted to the Treasury.

If really it was A.1 who sanctioned the double claim and A.2 acted merely on the instructions of A.1, he would have certainly placed the material on record even though that by itself may not absolve the responsibility of a Senior Assistant in his act of submitting a bill knowing fully well that the self-same amount was drawn just about three months prior thereto.

14. In the instant case, more than the oral evidence, the documentary evidence clinches the issue. As stated above, Ex.P.1 is the complainant lodged by the Director of Health, A.P., Hyderabad, dated 16-12-2000, wherein all the facts are clearly mentioned. The relevant registers and documents were also submitted to the investigating authorities. Ex.P.2 is another proceedings of the D.M. and H.O. addressed to the Director of Health on 30-08-1999, on the basis of which Ex.P.1 was issued. This leter of the D.M. & H.O. records that the fact of the amount being drawn twice is admitted by the petitioner/A.2 who is also said to have been stated that the said amount has been utilized by him. Ex.P.3 is the letter of the Director of Treasuries and Accounts, A.P., Hyderabad, addressed to the Director of Medical and Health Services, A.P., Hyderabad, stating that the amount was a double claim and it is the petitioner/A.2 who has prepared the bill second time and misappropriated the same. This letter also states that necessary disciplinary action is being taken against the Treasury personnel for having admitted the claim second time. Ex.P.21 is the Government Credit Scroll of the State Bank of India, Ponduru, which shows that an amount of Rs.58,488/- has been remitted back to the Government on 12-06-1999 i.e., nearly 13 months after the amount was drawn under Ex.P.20 which is another Government Debit Scroll of the State Bank of India. Ex.P.22 is the challan under which the said amount was remitted and in that challan it is clearly mentioned that the said amount being remitted since it was erroneously drawn and recovered.

15. Insofar as the oral evidence is concerned, the evidence of PW.3 is sufficient to hold that it is the accused who has committed the offences. She is a Regional Director of Medical and Health, Visakhapatnam, at the relevant time. She deposed that on the basis of the instructions of the Director of Medical and Health, A.P., Hyderabad, she conducted the enquiry and found from the records that A.1 and A.2 have drawn the double drawl of amount in the name of Y.Sayanna (PW.5). The Officer further deposed that the enquiry report has been sent to the Director of

Medical and Health, Hyderabad. It is elicited from the cross-examination of PW.3 that it is the Senior Assistant who is responsible for maintaining the Pay Acquittance Register, Cash Register, Bill Book and that the Doctor will sign the everyday transactions in the concerned Registers.

16. Insofar as the other evidence is concerned, the same is not seriously controverted. As stated supra, both the oral and documentary evidence clearly shows that it is A.1 and A.2 who have conspired together and claimed the amount for the second time and misappropriated the same.

17. It is noticed from the evidence on record that A1 and A2 admitted before P.W.10, who is an independent witness, that there was a double drawal of leave salary of P.W.5 and A2 also stated that he may lose his job due to double drawal of salary and accordingly, P.W.10 and A2 went to the house of A1 and requested A1 for payment of the amount withdrawn with regard to the leave salary of P.W.5. It is further in the evidence of P.W.10 that A1 gave some amount and asked A2 to pay back the same in the Bank. The evidence of P.W.10 clearly demonstrates that A2 confessed before him that there was a double drawal of the leave encashment of an employee-P.W.5 and that amount was paid to A1 and subsequently after taking the amount from A1, the same amount has been remitted back to the Government account.

18. The evidence on record also shows that A.2 has taken inconsistent stand. At one point of time he stated that he has drawn the amount and gave it to A1, but subsequently, he stated that the amount so drawn was utilized by him for the purpose of treatment of his wife, who unfortunately was suffering with cancer, and subsequently succumbed to it.

19. The enquiries conducted by the departmental authorities clearly show that the amount was drawn illegally and the same was misappropriated by both A1 and A2.

20. Learned counsel appearing for the petitioner-A2 submits that since the amount that has been drawn in contravention of the Rules has been remitted back to the treasury, A2 is not liable.
This contention of the learned counsel appearing for the petitioner-A2 is unfathomable. Merely because the act of commission committed by a public servant was subsequently undone by his own act of undoing, the loss caused to the State do

not in any way absolve him of the criminal liability or for that matter, the culpability of the officer concerned. Petitioner-A2 cannot take umbrage on the fact that he has drawn the amount at the instance of A1 and paid the amount to A1 and subsequently after nearly 13 months when A1 gave that amount, he remitted back the same into the Government treasury.

21. Public servants are the custodians of the public exchequer and their trust. Any act of omission or commission on the part of the responsible officer of any Department, which result in loss to the State Exchequer, cannot be tolerated. Petitioner-A2 being a Senior Assistant cannot even feign ignorance about the Rules and Regulations of the Department. His act of preparing the Bill and submitting the same to the treasury for drawal of the leave encashment for the second time clearly demonstrate the criminal intention of the petitioner-A2. He has not only submitted the bill for the second time for the very same claim, but also went to the extent of entrusting the amount which was drawn for being paid to another employee P.W.5 to A.1. Such act of the petitioner in entrusting the amount or giving that amount to A1, who may be his superior officer, itself is a serious lapse. If the claim was made by the accused out of ignorance or the mistake, the same would have been remitted back to the treasury at the earliest possible time. That would have been one of the mitigating circumstances in favour of the accused. In the instant case, the act of the petitioner-A2 drawing the amount for the second time came to the notice only after the enquiry was conducted or for that matter the non-petitioner-A1 remitted the amount back to the treasury.

22. Both the courts below have appreciated entire voluminous documentary and oral evidence on record and came to the conclusion that the petitioner-A2 has committed the offence alleged against him and sentenced him accordingly.

23. Learned Counsel appearing for the petitioner/A.2 finally submits that the petitioner/A.2 is now aged about 64 years. He retired from service on superannuation on 31-03-2009. The petitioner/A.2 was suspended from service during the period from 04-11-1999 to 22-06-2001. It is further submitted that in view of the conviction and sentence the petitioner/A.2 has been denied of his terminal benefits and he is not even getting pension and finding it difficult even to survive. Learned Counsel further submits that taking into consideration the above facts and circumstances a lenient view may be taken.

24. As already noticed, when the trial Court has imposed punishment of rigorous imprisonment of two years each for the offences under Sections 120-B and 420 IPC., and fine of Rs.1,000/- each, the appellate Court has reduced the sentence to six months each. Considering the fact that the incident took place in 1998 and the petitioner/A.2 suffered the departmental punishment and also retired about six years back, and the fact that the amount which was drawn for second time has been remitted back to the Government account, I feel that the sentence of imprisonment already undergone by the petitioner/A.2 during the pendency of the case may be set off while sustaining the sentence of fine. Subject to this modification, the revision is liable to be dismissed.

25. In the result, subject to the above modification, the Criminal Revision Case is dismissed. The sentence of imprisonment for three months each for the offences under Sections 120-B and 420 IPC., is reduced to the period already undergone. Sentence of fine is sustained.

Miscellaneous Petitions, if any, pending in this Criminal Revision Case shall stand closed.

M.S.K.Jaiswal, J

June, 2015

Smr/lmv