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

Criminal Revision Case No. 1213 of 2007

Judgment:

This Criminal Revision Case is directed against the judgment, dated 31.08.2007, passed in Criminal Appeal No. 442 of 2003 by the learned VI Additional District and Sessions Judge (Fast Track Court), Tirupati, whereby and whereunder the conviction and sentence imposed against the revision petitioner/accused by the learned Judicial Magistrate of First Class, Puttur, in CC No. 28 of 1999, dated 27.10.2003, has been confirmed.

2. The facts, in brief, are as under. The second respondent-Bank instituted a private complaint against the revision petitioner/accused alleging that he was the panel advocate of the Bank and was entrusted with the work of attending the matters in the Courts. It is alleged that during the period from 15.11.1988 to 23.10.1989 the revision petitioner/accused, being the panel advocate of the Bank, has received a total sum of Rs.6800/- in different EPs from the judgment debtors, but he remitted only Rs.3450/-, thereby misappropriated the balance amount of Rs.3350/-, hence he is liable for punishment under Section 409 IPC.

3. The learned Magistrate, after following the procedure prescribed under law and upon perusing the evidence of PW.1 and Exs.P1 to P14, found the revision petitioner/accused guilty of the charge and, accordingly, convicted and sentenced him to under go rigorous imprisonment for a period of one year and also to pay a fine of Rs.500/-, in default to undergo simple imprisonment for a period of one month. Aggrieved by the said conviction and sentence, an appeal was preferred, which was also dismissed. Hence, the revision petitioner/accused filed the present revision case.

4. The contention of the learned counsel for the revision petitioner/accused is that

the second respondent-Bank has not initiated steps immediately, but filed the complaint after a period of 10 years. He further submitted that both the Courts below have erred in appreciating the oral and documentary evidence in proper perspective and, even though the amount in question was accounted for, both the Courts below have erred in finding the revision petitioner/accused guilty of the alleged offence.

5. On the other hand, learned Additional Public Prosecutor representing the State submitted that both the Courts below on proper appreciation of the entire oral and documentary evidence on record concurrently held that the revision petitioner/accused has committed the alleged offence and there are no grounds to interfere with the said concurrent findings.

6. Heard both sides and perused the entire material on record.

7. There is no controversy in so far as the revision petitioner was a senior counsel of Puttur Bar and empanelled as advocate to represent the second respondent-Bank. It is also not in controversy that during the relevant period from 15.11.1988 to 23.10.1989 the revision petitioner in his capacity as standing counsel for the second respondent-Bank has received certain payments from the judgment debtors in different EPs and the same was not deposited in the Bank. The fact of the amount being collected by the revision petitioner and non-deposit thereof is borne out from the voluminous oral and documentary evidence produced by the second respondent-Bank. When the revision petitioner/accused was called upon to pay the amount, he has addressed the letters Exs.P4 to P7, wherein he sought for some time to make the payment. On behalf of the second respondent-Bank, PW.1 was examined and the documents that were produced clearly go to show that in several EPs filed by the second respondent-Bank against the JDRs, certain payments were made by the JDRs, which were received by the revision petitioner/accused for and on behalf of the Decree Holder-Bank. Though the revision petitioner/accused has contended that he made the deposits in the Bank, but he failed to produce any iota of evidence either oral or documentary to substantiate his contention that the amounts which he received in the Court from the JDRs for and on behalf of the Decree Holder-Bank, have been deposited in the Bank. On the other hand, the

ledgers and other account books produced by the second respondent-Bank clearly demonstrate that no such deposits have been made by the revision petitioner-accused.

8. Both the Courts below have minutely considered the entire oral and documentary evidence on record and have rightly come to the conclusion that the revision petitioner has failed to explain or account for the amounts which he received from the JDRs for and on behalf of the second respondent-Bank, thereby committed the alleged offence. Upon perusal of the evidence on record, I see no reason to take a different view than the view already taken by both the Courts below.

9. Learned counsel for the revision petitioner, however, submits that taking into consideration the fact that the alleged offence took place as long back as in the year 1989 and the fact that the revision petitioner who was the then practicing advocate, but has since ceased to practice and he is now aged about 72 years, a lenient view in the matter of imposing sentence may be taken.

10. Taking into consideration the nature of offence committed by the revision petitioner/accused and the amount misappropriated, I feel that the ends of justice would be met if the sentence of imprisonment is reduced to that of the period already undergone by the revision petitioner/accused, while sustaining the fine amount.

11. With the above modification, the Criminal Revision Case is disposed of.

12. As a sequel thereto, the miscellaneous petitions, if any, pending in the Criminal Revision Case shall stand closed.

M.S.K. JAISWAL, J.

Date: 15.06.2015

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