

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

Criminal Revision Case No.863 of 2007

ORDER:-

The revision is filed by the petitioner/accused questioning the correctness of the Judgment, dated 28-06-2007 in Criminal appeal No.74 of 2005 on the file of the I-Additional District and Sessions Judge, Srikakulam. The said appeal was filed by the petitioner/accused against the Judgment in C.C.No.7 of 2000 dated 30-07-2005 on the file of the Judicial Magistrate of First Class, Palakonda. The learned Magistrate found the petitioner/accused guilty of the charge under Section 408 IPC., and sentenced him to undergo simple imprisonment for one year and a fine of Rs.1,000/- and in default simple imprisonment for one month. In appeal, the learned sessions Judge has confirmed the conviction but modified the sentence to six months imprisonment and sustained the amount of fine. Aggrieved by the same, the present revision is filed.

2. The case of the prosecution in nutshell is as follows:-

The petitioner/accused was working as Assistant Depot Clerk in APSRTC at Palakonda Depot. From November, 1998 till the end of March, 1999 he was entrusted with the duty of selling the monthly season tickets, renew the bus passes and has to remit the amounts with the concerned authority. It is alleged that from 01-03-1999 to 14-03-1999 the petitioner/accused has collected a sum of Rs.27,380/- but failed to handover the cash in the concerned section. The routine audit inspection of the Depot was scheduled to be held during 19-03-1999 to 05-04-1999. The petitioner/accused was informed about the same and was asked to keep ready the necessary records for audit inspection. Even though, the audit party came to inspect the section of the petitioner/accused on 24-03-1999 with prior notice, the petitioner/accused did not turn up to his duty on 24-03-1999 and 25-03-1999. Therefore, the tray box of the accused was directed to be broke open in the presence of the audit party and other Officers and when that was done, it was found that transactions amounting to Rs.27,380/- were carried out by the petitioner/accused during the relevant time but the said amount was not remitted. The

petitioner/accused did not turn up to his duty even on 26-03-1999 and thereafter. Preliminary enquiry was conducted and the petitioner/accused was found to have misappropriated the said amount. Regular departmental enquiry was initiated where he was found guilty and dismissed from service. He was unsuccessful in the Labour Court at Visakhapatnam. A police complaint was filed and after investigation, charge sheet is filed.

3. The contention of the petitioner/accused is that on 24-03-1999 and 25-03-1999 on an official duty, he went to Vizianagaram Depot to place an indent and thereafter he fell sick and applied for leave and in his absence, the developments took place behind his back and he was placed under suspension. It is further contended that his predecessor by name Rama Rao did not handover the charge of the section and even he was found to have committed the irregularities, for which he was suspended and dismissed from service. The petitioner/accused denied the accusation that he has misappropriated any amounts of the Corporation.

4. The prosecution has examined PWs.1 to 8 and produced Exs.P.1 to P.33 to prove its case. The accused denied the evidence on record. No defence was produced. After hearing the arguments of both sides and having perused the material on record, the learned Magistrate has found the petitioner/accused guilty of the charge and sentenced him as stated above which was confirmed in appeal with a modification in the sentence which was reduced from one year simple imprisonment to six months simple imprisonment.

5. In the revision case, the contentions that were advanced before the trial Court as well as the Appellate Court are reiterated. The specific contention is that at the relevant time, he was, no doubt, handling the section dealing with selling the tickets, renewing the bus passes, season tickets etc., and the misappropriation if any pertains to the period of his predecessor. With regard to his absence on 24-03-1999 and 25-03-1999, even according to the superiors of the accused, he went on other duty to Vizianagaram Depot and thereafter he fell sick and in his absence, the

audit was proceeded and finding the short fall in the amounts, he was placed under suspension and subsequently dismissed.

6. Learned Public Prosecutor submits that the prosecution has proved its case and both the Courts below have properly appreciated the evidence on record and found the petitioner/accused guilty, that the explanation offered by the petitioner/accused with regard to his absence from duty from 26-03-1999 till he was suspended is not substantiated and even though he contended that he applied for leave on medical grounds, no proof thereof is produced. Both the Courts below have taken this conduct of the petitioner/accused in absconding from duties from 26-03-1999 till he was suspended, as his complicity in the alleged offence. Hence, the conviction of the petitioner/accused is liable to be sustained.

7. The admitted facts are that the petitioner/accused was working as Assistant Depot Clerk in Palakonda Depot and was entrusted with the concerned section dealing with the sale of tickets, bus passes etc., from November, 1998. He succeeded B.Rama Rao who was suspended for the alleged irregularities. Prior to his being promoted as Assistant Depot Clerk, the petitioner/accused was working as Conductor for about 15 years. Upon carefully perusing the oral and documentary evidence on record, the facts that emerge are that during 01-03-1999 to 14-03-1999 transactions worth Rs.27,380/- were done by the petitioner/accused and the said amount has not been accounted for. It is not the contention of the petitioner/accused that he has remitted the amounts on day-to-day basis as is required. Even subsequently, he has not remitted the said amount. It is also in the evidence that there was prior communication from the audit party that they will be inspecting the Depot during March and April. 24-03-1999 was the specific date fixed for inspecting the transactions being handled by the petitioner/accused. He was informed about the same well in advance. In spite of that, he went to Vizianagaram Depot along with another clerk for placing the indent on the date when the audit party was to inspect his section. Even though, it is admitted that he was deputed on official work, he ought not to have left the section on the date when the audit party was due to inspect his accounts. Even on 25-03-1999 he did

not turn up. He was supposed to be on duty on 26-03-1999 but he claims to have fell sick and applied for medical leave by producing the certificate of the Medical Officer. Absolutely, no documentary evidence is produced on behalf of the accused to show that he fell sick from 26-03-1999 and therefore he applied for leave and during the pendency of the leave he was suspended. The leave applications that were filed, marked Exs.P.24 and P.25, are not the relevant leave applications for the period in question. They were obtained only for the purpose of specimen handwriting and signature of the accused. Even though, it is admitted by PW.3 that the accused applied for medical leave., in absence of any documentary evidence to show that he was sick and physically immobile to attend to an important duty in the Depot where his section was being audited by the audit party who came from Hyderabad creates any amount of doubt about his *bona fides*. Any servant who is entrusted with handling the cash is required to be more cautious and careful in discharge of his duty, more particularly, when the audit party is scheduled to inspect his section. The petitioner/accused has completely failed to act diligently in the matter and this according to the prosecution is due to the fact that he was aware about non-remittance of the cash collected during the check period which was ultimately found out during the inspection.

8. The material evidence in the record comprises of PWs.1 and 3 who are the superior authorities of the petitioner/accused. PW.1 is the then Senior Traffic Inspector and he deposed about the fact that the petitioner/accused was working as Assistant Depot Clerk from June, 1997 to 15-04-1999. He speaks about the nature of duties that were entrusted to the accused. It is in his evidence that the petitioner/accused was to remit the cash collected on day-to-day basis in the evening in the cash counter. He also deposed that they were informed by the audit party that they will be inspecting the Depot. They were also informed that the bus pass section which was being dealt with by the accused will be audited on 25-03-1999. It is also in his evidence that it is the duty of the Depot clerk to place indents for bus pass tickets and monthly season tickets and on some occasions, the accused used to accompany the Depot Clerk to

Vizianagaram to place the indents. It is also in the evidence of PW.1 that when the accused did not attend to his duties on 26-03-1999, they came to know that the petitioner/accused accompanied the Depot Clerk to vizianagaram Depot to place the indent. It is also spoken to by PW.1 that till 31-03-1999 the accused did not return to his duties and absconded from 26-03-1999. The audit party inspected the accounts and the irregularities were noticed. It is specifically spoken to by PW.1 that there was shortage of 101 student bus passes worth Rs.7,600/-, that there was shortage of 43 monthly season tickets worth Rs.12,200/-, and the student bus passes numbering about 86 worth Rs.7,530/-. The total of the said amount came to Rs.27,380/-. This amount was not remitted by the petitioner/accused. PW.1 has produced the documents in support of his evidence. Even though, PW.1 was elaborately cross-examined, nothing concrete is elicited from him for disbelieving his claim that there was proof to the effect that a sum of Rs.27,380/- was collected by the petitioner/accused but was not remitted in the cash counter. Similar is the evidence of PW.3 who is the then Depot Manager of Palakonda. One admission which is obtained from the mouth of PW.3 is that the petitioner/accused has submitted a sick certificate from the Doctor in the month of April, 1999.

9. What is noticed from the evidence of the above two material witnesses is that the allegation of the prosecution stands proved beyond reasonable doubt that it is the accused who has committed the acts of failing to remit the cash collected on day-to-day basis in the cash counter for a period about 14 days which totalled to Rs.27,380/- and without any just and reasonable cause, the petitioner/accused did not turn up on 25-03-1999 when the audit party was to inspect the seat handled by the petitioner/accused. Even thereafter, for about four days i.e., till 31-03-1999, the petitioner/accused did not turn up and only in April, 1999, he is said to have submitted a leave application along with medical certificate. The defence of the accused that his predecessor Rama Rao did not handover the charge to him has no relevance since admittedly from November, 1998 he was holding the charge of the section and at no point

of time, he has complained to his superior authorities that the charge was not handed over to him by his predecessor or that there were certain acts of irregularities on the part of the predecessor which is likely to reflect upon his functioning. May be the predecessor Rama Rao was suspended and dismissed from service for the irregularities but they are all prior to the transactions which took place prior to November, 1998. Once the petitioner/accused took charge and he had been in the section for more than five months, he cannot be heard saying that the shadow of irregular activities of his predecessor reflected upon the irregularities which were noticed by the audit party during March, 1999. Upon carefully perusing the evidence on record, I have no hesitation in holding that both the Courts below have properly appreciated the material on record and found the petitioner/accused guilty of the offence punishable under Section 408 IPC., which cannot be interfered with.

10. With regard to the quantum of sentence, as already stated, though the trial Court has imposed punishment of one year simple imprisonment and a fine of Rs.1,000/-, the appellate Court taking into consideration the fact that the petitioner/accused has since been dismissed from service and his age and other circumstances, has reduced the period of imprisonment from one year to six months simple imprisonment. Learned Counsel appearing for the petitioner/accused submits that the alleged incident took place in March, 1999 and subsequently, the petitioner/accused has already been severely punished by the Department in the departmental proceedings. He is now said to be aged about 67 years and therefore a lenient view in the matter of sentence may be taken. It is further submitted that the petitioner/accused was in judicial custody for about a fortnight during the pendency of the proceedings. It is also submitted that the petitioner/accused is now suffering from several ailments and has virtually become crippled both physically and financially.

11. Taking into consideration the above facts and circumstances, I feel that ends of justice will be met if the sentence of imprisonment is further reduced to the period already undergone and the additional fine of

Rs.10,000/- be imposed. Subject to this modification, the revision is liable to be dismissed.

12. In the result, the revision is dismissed. The sentence of imprisonment imposed against the petitioner/accused is modified to the extent of the period already undergone, and the petitioner/accused is imposed fine of Rs.10,000/- (Rupees ten thousand only) in addition to Rs.1,000/- which has already imposed by the Courts below, in default to suffer simple imprisonment for a period of three months.

Miscellaneous petitions, if any, pending in this revision shall stand closed.

M.S.K.Jaiswal, J

31st August, 2015
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