

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO. 3 OF 2014

GOVERNMENT ENGINEERS CO-OPERATIVE CREDIT SOCIETY LTD
AHMEDNAGAR
VERSUS
POPAT SHANKAR GORE AND ANOTHER

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Advocate for Applicant : Mr. Kulkarni Girish N. (Mardikar)
Advocate for Respondent No. 1 : Mr. D. R. Jayabhar and Mr. K. S. Patil
AGP for Respondent No. 2 : Mr. S. N. Kendre
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CORAM : V. K. JADHAV, J.

DATED : 18th JANUARY, 2016

PER COURT :-

1. The revision petitioner is a registered co-operative credit society and respondent No. 1/original accused was working in the said society as a Secretary in between the years 1995 and 1996. During the said period, respondent No. 1/original accused has misappropriated the funds of petitioner society. Auditor of the petitioner society for the said period lodged a complaint against respondent No. 1/original accused for misappropriation of funds of petitioner society under different charges. Respondent No. 1/accused was tried in R.C.C. No. 416 of 1999 by Chief Judicial Magistrate, Ahmednagar, for the offences punishable under Sections 408 and 468 of I.P.C. Learned Chief Judicial Magistrate convicted respondent No. 1/accused for the aforesaid offences and sentenced him to undergo R.I. for one year and to pay fine of Rs.1,000/-, i/d to undergo S.I. for one month. Respondent No. 1/accused is also found guilty of the offence punishable under Section 477-A of I.P.C. and

sentenced to undergo R.I. for one year and to pay fine of Rs.1,000/- i/d to undergo S.I. for one month.

2. Respondent No. 1/original accused preferred Criminal Appeal No. 108 of 2007 before the Sessions Judge, Ahmednagar. Learned Sessions Judge, Ahmednagar, by judgment and order dated 07.12.2013, partly allowed the appeal and modified the order passed by learned Chief Judicial Magistrate. Respondent No. 1/accused is convicted for the offence punishable under Section 408 of I.P.C. and is sentenced to undergo simple imprisonment till rising of the Court and to pay fine of Rs.3,000/-, i/d to undergo simple imprisonment for one month. Further, respondent No.1/accused is also convicted for the offence punishable under Section 468 of I.P.C. and is sentenced to undergo simple imprisonment till rising of the Court and to pay fine of Rs.3,000/-, i/d to undergo simple imprisonment for one month. Respondent No.1/accused is also convicted for the offence punishable under Section 477-A of I.P.C. and is sentenced to undergo simple imprisonment till rising of the Court and to pay fine of Rs.3,000/-, i/d to undergo simple imprisonment for one month.

3. Learned counsel for the applicant submits that respondent No. 1/accused has misappropriated the funds of the society and though he has deposited the amount misappropriated by him, he should have been convicted and sent to jail for imprisonment as per order passed by learned Chief Judicial Magistrate. Learned counsel further submits that learned Sessions Judge has unnecessarily shown leniency to respondent

No.1/accused.

4. Learned counsel for respondent No.1/accused submits that the applicant has no locus to file Criminal Revision Application. Learned counsel further submits that respondent No.1/accused is suffering from H.I.V. and since he has already deposited the amount alleged to have been misappropriated by him, learned Sessions Judge has rightly taken a lenient view and accordingly modified the sentence passed against him by the Chief Judicial Magistrate.

5. I have also heard learned APP for State.

6. As per provisions of Section 377 of Cr.P.C., the State Government may direct the Public Prosecutor to present an appeal against the sentence on the ground of its inadequacy, to the Court of Session, if the sentence is passed by the Magistrate and to the High Court, if the sentence is passed by any other Court.

7. In view of this, the petitioner society has no locus to challenge the inadequacy of the modified sentence passed by learned Sessions Judge, Ahmednagar by impugned judgment and order dated 07.12.2013.

8. Learned counsel for respondent No.1/accused has pointed out the observations made by learned Sessions Judge in paragraph No. 21 of the judgment dated 07.12.2013. In paragraph No. 21 of the judgment, learned Sessions Judge has observed that respondent No.1/accused has filed one application Exh. 23 whereby he requested the Court to accept amount of

misappropriation, and accordingly, the amount was accepted without prejudice to the right of the society. Furthermore, respondent No.1/accused has also filed an affidavit before the Sessions Judge contending therein that he is suffering from incurable disease HIV/Aids. Even in support of that, respondent No.1/accused has filed documents issued by Civil Surgeon, General Hospital, Ahmednagar along with list at Exh.19. Learned Sessions Judge has observed that the documents placed on record unmistakably point out that the present respondent No. 1/accused is suffering from Aids and is HIV positive. In view of the aforesaid facts, learned Sessions Judge has rightly reduced the sentence and accordingly, modified the order passed by learned Chief Judicial Magistrate. The impugned order calls for no interference.

9. The Criminal Revision Application is hereby dismissed. No costs.

(V. K. JADHAV, J.)

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