IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.339 OF 2000

Sharad s/o Kishanrao Jantikar,
age : 59 years, Occu.: Service,
r/o. Patoda, Tal. Patoda,
District Beed ..APPELLANT

VERSUS

1) The State of Maharashtra,
Through Anti Corruption
Bureau, Beed

2) Ramesh s/o Keshavrao Mekhe,
age : 53 years, Occu:Service,
R/o. Patoda, Tal. Patoda,
District Beed

(As per Courts order dated
9th July, 2014 respondent
no.2 is deleted) ..RESPONDENTS

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Mr.Joydeep Chatarjee, advocate for appellant

Mr.R.V.Dasalkar, A.P.P. for respondent-State

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CORAM : M.T. JOSHI, J.
RESERVED ON : JANUARY 06, 2016
PRONOUNCED ON : JANUARY 20, 2016

JUDGMENT :

Heard both sides.

2] Present appellant was convicted by learned Additional Sessions Judge/Special Judge, Beed in Special Case No.1 of 1989 on 23rd June, 2000 for the offences punishable under Section 5(1)(c) read with Section 5(2) of the Prevention of Corruption Act, 1947 and also for the offences punishable under section 477-A and 409 of the Indian Penal Code.

. He was sentenced to suffer rigorous imprisonment for a period of two years and to pay a fine of Rs.2000/- for the offences punishable under Section 5(1)(c) read with Section 5(2) of the Prevention of Corruption Act, 1947 and Section 409 of Indian Penal Code. He was also sentenced to suffer rigorous imprisonment for one year and to pay a fine of Rs.1000/- for the offences punishable under section 477-A of the Indian Penal Code. Both the sentences were directed to run concurrently.

. Aggrieved by the said order, present appeal is preferred.

. Present appellant along with original accused no.1-Ramesh s/o Keshavrao Mekhe, Sub-Divisional Engineer, Sub-Division, Patoda, were tried for the said offences. Original accused no.1-Ramesh was, however, acquitted by the learned Special Judge.

3] The prosecution case, in brief, is as under:

. That, while original accused no.1-Ramesh was working as Sub-Divisional Engineer, present appellant - Sharad was posted as a Clerk/Accountant in the Public Works Department, Sub-Division, Patoda, District Beed, during the relevant period. It was alleged that during the period from 30th June, 1983 to 6th April, 1984, both of them being public servants, had dishonestly misappropriated an amount of Rs.14,945=89 ps. from the accounts of the Office. It was alleged that double payments were shown towards the same work under the Employment Guarantee Scheme against which, an amount of Rs.48,049=55 ps. was misappropriated.

. The original accused no.1 had, in fact, sent a confidential letter to PW 5 - the then Executive Engineer Shri Mohd. Abdul Aziz on 6th March, 1984 that the present appellant/original accused no.2 had misappropriated some government amount and even was using the amount of regular public works and was not maintaining the account books properly. On the basis of this confidential letter Exhibit-241, PW 5 had visited the said office on 8th March, 1984 along with his Divisional Accountant i.e. PW 8 - Vasant Deshmukh and other staff members. At that time, when the cash-in-hand was inspected, it was found to be Rs.12,351/-. When the appellant was asked to bring the cash book, it was found that he had not written up-to-date cash book, as it was maintained only upto

28th February, 1984. Therefore, on that day, present appellant updated the entires in the cash book. Upon updating all the accounts by the present appellant, it was found that an amount of Rs.8,579=19 ps. should have been cash-in-hand in the regular works account. However, actually there was no cash-in-hand towards the said account.

. As regards the cash under the Employment Guarantee Scheme Work, upon inspection it was noticed that the cash-in-hand should have been Rs.18,717=70 ps. However, the only available cash that was produced by the present appellant was Rs.12,351/-. The short-fall of Rs.6,366.70ps. was noticed.

. Upon further inspection of the account of Employment Guarantee Scheme, it was found that under the muster rolls, four works were carried and for that, amount was shown to be disbursed. However, again in the next two months, amount was shown disbursed against the very same four muster-rolls and thus, there was misappropriation of an amount of Rs.48,049=50ps. on this count by showing double payments. Thus, the total misappropriation of Rs.62,995=44 ps. was made.

4] PW 5 – Executive Engineer took all the necessary documents in his custody by issuing blank account books for maintaining further daily accounts. He also took custody of four muster-rolls with a direction to PW 8 - Vasant Deshmukh to keep its custody. Thereupon, PW 5 asked the acquitted accused no.1 in writing, to remit the amount. The acquitted accused no.1 thereupon deposited the amount. PW 5 thereafter, sent a confidential letter to the Superintending Engineer, Public Works Department, Osmanabad, informing about the entire episode. The Superintending Engineer issued instructions to the Executive Engineer that he should lodge a complaint against both the accused and as such, the complaint came to be filed at Exhibit-64 with Patoda Police Station.

5] PW 3 - P.S.I. Devidas Padaikar registered the crime and handed over the investigation to the Anti Corruption Bureau, Beed. The Deputy Superintendent of Police Mr.Sangale and other Officers conducted the investigation. Two cash-books and four muster-rolls along with the extract of the cash-book and other relevant documents, were seized from PW 8 - Vasant Deshmukh. The specimen handwriting and signatures of the both the accused persons were obtained in presence of the panch witnesses including PW 7 - Ramakant Shengole. The specimen handwriting, specimen signatures along with cash-book and extract of the cash-book were forwarded to the Examiner of Documents, Aurangabad. PW6 - Vishwas Ranjangaonkar, the State Examiner of Documents, carried examination of these documents. All the documents were found in the handwriting of the present appellant and under necessary signatures at necessary places either of the appellant or accused no.2.

. Thereupon, all the papers were sent to the Public Works Department, Government of Maharashtra, for according sanction. Accordingly, Smt.Nisha Choubal, the Deputy Secretary, accorded the sanction at Exhibit-49 and thereupon, the charge sheet came to filed.

6] While the acquitted accused no.1 submitted that the entries were to be taken in the account books by the present appellant and as he used to maintain the cash-in-hand, the present appellant was responsible for the misappropriation, he was only the controlling authority. When he came to know of the misappropriation, according to prosecution itself, he had sent the confidential letter to his superior i.e. the Executive Engineer, who visited the Office and found the misappropriation committed by the present appellant. Only because of the direction of the Superintending Engineer, the complaint came to be filed against him also.

7] According to the present appellant, he used to act under the directions of the acquitted accused no.1. The cheques used to be passed as per the directions of acquitted accused no.1. He merely used to bring the amount from the bank and used to give money to the Junior Engineer for making payments to the labourers who worked under the Employment Guarantee Scheme. The appellant merely used to handover the bills and vouchers for taking entries in the cash-book and was not concerned with the direct payments. In the circumstances, he submitted that there was no question of any misappropriation so far as he himself, is concerned.

8] Before the learned Special Judge, in all nine witnesses were examined, as detailed supra. The learned Special Judge found that though the acquitted accused no.1 was the controlling authority, the prosecution case would show that the actual cash used to remain with the present appellant and he used to make payments. Admittedly, the amount is shown paid twice for the same four works under the Employment Guarantee Scheme. In the regular accounts also, the cash-in-hand used to remain with the present appellant. He, however, failed to explain deficit of the cash-in-hand though he had updated the cash-book on the day PW 5 had visited the Office with PW 8. Therefore, the conviction and sentence, as detailed supra, came to be recorded.

9] Mr.Joydeep Chatterjee, learned counsel for the appellant submitted before me that in fact, the acquitted accused no.1 was the Drawing and Disbursing Authority. The prosecution case itself would show that the amount from the bank used to be brought, upon passing of cheque by the acquitted accused no.1. Therefore, merely because the present appellant was maintaining the accounts as a Clerk, he cannot be held responsible for the same.

. In the alternative, he submitted that now the appellant is above 75 years of age and is bed-ridden. Therefore, if this Court comes to the conclusion that the conviction recorded by the learned Special Judge is proper, leniency in awarding sentences may be shown.

10] On the other hand, learned A.P.P. took me through the evidence on record and submitted that the appeal deserves to be dismissed.

11] On the basis of this material following points arise for my determination :-

(I) Whether the prosecution has proved that the present appellant being a public servant willfully and with intent to defraud, made false entries in the account books by showing double payments under the four muster-rolls for Employment Guarantee Scheme and misappropriated an amount of Rs.48,049=45ps. entrusted to him ?

(II) Whether the prosecution has further proved that the present appellant has additionally misappropriated an amount of Rs.14,945=89ps. placed under his control dishonestly or fraudulently ?

. My findings to the above points are in the affirmative. The appeal as regards the conviction, therefore is dismissed, however, as regards the sentence, the same is partly allowed, for the reasons to follow.

R E A S O N S

12] During the trial, it was not disputed that the account-books and all the files regarding the transactions used to be maintained by the present appellant. There was no cross-examination of the panch witness as regards collection of the specimen handwriting and the signatures of the present appellant. Further, the handwriting expert, who had examined the specimen on the documents and account-books, was also not cross examined by the present appellant. Thus, these facts were admitted.

13] The evidence of PW 5 - Executive Engineer and PW 8 - Divisional Accountant would show that upon receipt of the complaint from the acquitted accused, they had visited the office of the Sub-Division at Patoda, District Beed. Thereat, as detailed above, the cash-in-hand was found deficit. Even after the present appellant had updated the incomplete regular account-books. The account-book regarding the Employment Guarantee Scheme would show that the muster-rolls bearing nos.13018, 13019, 13020 and 13038, were shown entries of the amount under those muster-rolls in the account-book to debit side twice i.e. on 14.10.1983, 15.10.1983, 20.10.1983, 10.11.1983 and again on 20.01.1984, 20.02.1984, 19.11.1983 and 20.02.1984 in respect of amount of Rs.48,049=55 ps.

. As regards the cash-in-hand in the regular account book, we have already found the evidence of PW 5 and PW 8 unequivocal. The only defence of the appellant was that he was merely working as an Account Clerk and as such, he was not responsible for any deficit in the amount or even towards the double payments shown for the same work. It is further an admitted fact that he used to handle the cash. The cash-in-hand used to remain with him. Further, he used to maintain the accounts and the acquitted accused no.1 was used to order for withdrawal of money from the bank, as and when required. No date and signatures in the account-book was there, however, primarily, present appellant used to deal with the cash-in-hand as well as the payments to the various persons. No sooner the acquitted person got knowledge of the misdemeanor of the present appellant, he immediately sent his report to PW 5. When PW 5 gave the surprise visit to the said Office, he found actual deficit in the cash-in-hand with the present appellant. In that view of the matter, the appreciation of the evidence made by the learned Special Judge on this count, cannot faulted with. The prosecution has, therefore, proved beyond reasonable doubt that the present appellant has committed the said offence. In view, the conviction on all the counts, therefore, deserves to be maintained.

14] As regards the sentences, however, it is evident that the appellant is now above 75 years of age. When the charge sheet was filed in the year 1989, his age was 49 years. Now, therefore, he is more than 75 years old. Upon his conviction, he has already lost his job. In the circumstances, in my view, so far as the sentences are concerned, certain leniency is required to be shown.

15] The provisions of sub-Section (2) of Section 5 of the Prevention of Corruption Act, 1947, would provide that the minimum sentence for the offence defined under Section 5(1)(c) of the Act would be one year, for any special reasons, the Court may impose sentence of imprisonment of less than one year.

. For the offence punishable under Section 409 of the Indian Penal Code, the Court may award punishment for imprisonment of life or with imprisonment of either description for a term which may extent to ten years and may impose a fine.

. For the offence punishable under Section 477-A of the Indian Penal Code, the term of the imprisonment may extend to seven years or with a fine or both.

16] In the circumstances, considering the over all facts on record, so also considering the old age of the appellant, in my view, the following order would meet the ends of justice:-

(A) The appeal is hereby partly allowed.

(B) The conviction awarded by the learned Special Judge, Beed, in Special Case No.1/89, vide the impugned judgment and order dated 23rd June, 2000, for the offences punishable under Section 5(1)(c) read with Section 5(2) of the Prevention of Corruption Act, 1947; and also for the offences punishable under section 409 and 477-A of the Indian Penal Code, is hereby maintained.

(C) The appellant is hereby directed to suffer simple imprisonment for six months and to pay a fine of Rs.2,000/-, in default, to suffer simple imprisonment for fifteen days for the offences punishable under Section 5(1)(c) read with Section 5(2) of the Prevention of Corruption Act, 1947 and

Section 409 of the Indian Penal Code, on each of the count.

. For the offence punishable under Section 477-A on the Indian Penal Code, the appellant is directed to suffer simple imprisonment for six months and to pay a fine of Rs.1,000/-, in default, he suffer simple imprisonment for fifteen days.

(D) All the sentences shall run concurrently.

(E) Bail bonds of the appellant shall stand cancelled.

(F) Learned Special Judge, Beed, is directed to secure presence of the appellant to serve the sentences now awarded to the appellant.

[M.T. JOSHI, J.]

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