

THE HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL REVISION CASE No.1665 of 2006

JUDGMENT:

1. This revision is filed by the petitioner-accused against the judgment dated 6.10.2006 passed in CrI.A.No.144 of 2003 by the I Additional District & Sessions Judge, Srikakulam.

2. The case of the prosecution is as follows:

The accused worked as salesman in District Co-operative Marketing Society, Arasavilli Depot. He was entrusted with the work of sale of fertilizers, paddy seeds and essential commodities. He has to remit the sale proceeds of fertilizers, paddy seed and essential commodities to the Head Office by way of cash or claims on the next day of sales and he has to submit the stock statements and accounts once in three months during the financial year 2000-2001. The accused received stock worth Rs.4,02,155.55 ps. During the audit conducted by P.W.8, it was found that Rs.1,36,874.20 ps., was not accounted for. Hence, a report was forwarded to P.W.1. Thereafter, a complaint was lodged against the petitioner-accused, basing on which, a case was registered and investigated into. After completion of the investigation, charge sheet was filed. The learned Judicial Magistrate of First Class, Srikakulam took the case on file as C.C.No.469 of 2001.

3. The trial Court framed charges under Sections 408 and 420 IPC against the accused, read over and explained to him, for which he pleaded not guilty and claimed to be tried.

4. During the course of trial, P.Ws.1 to 9 were examined and Exs.P1 to P28 were marked on behalf of the prosecution. No oral or documentary evidence was adduced on behalf of the accused.

5. On appreciation of both oral and documentary evidence, the trial Court having found the appellant-accused guilty for the offence under Section 408 IPC, convicted and sentenced him to undergo simple imprisonment for a period of two years and to pay a fine of Rs.1,000/- in default to suffer simple imprisonment for a period of five months, while acquitting him for the offence under Section 420 IPC. Aggrieved by the conviction and sentence imposed by the trial Court, the petitioner-accused filed appeal viz., Crl.A.No.144 of 2003 before the I Additional District and Sessions Judge, Srikakulam. The learned I Additional District & Sessions Judge confirmed the conviction imposed by the trial Court and modified the period of sentence of two years simple imprisonment to that of one year while maintaining the sentence of fine. The petitioner filed this revision challenging the conviction and sentence imposed by the learned I Additional District & Sessions Judge for the offence under Section 408 IPC.

6. Learned Counsel for the petitioner-accused submitted that there are material discrepancies in the evidence of the prosecution witnesses regarding the quantum of amount alleged to have been misappropriated by the petitioner and that there is no evidence of entrustment and that the Courts below failed to appreciate the evidence in a proper perspective.

7. Learned Additional Public Prosecutor submitted that the conviction and sentence imposed by the Court below against the petitioner-accused for the offence under Section 408 IPC do not warrant any interference by this Court.

8. The evidence of P.Ws.1 to 4 coupled with Exs.P1 to P.18 establishes that the petitioner was entrusted with commodities and the petitioner-accused used to remit the amounts. The petitioner-accused failed to give any reasons for the alleged shortfall in remitting the amounts. Nothing was elicited from the cross-examination of the prosecution witnesses to disprove their evidence. Thus, the petitioner committed criminal breach of trust. In this regard, both the Courts below gave concurrent findings.

9. In the facts and circumstances of the case and in view of the concurrent findings of both the Courts below, this Court is not inclined to interfere with the conviction recorded by the Courts below.

10. At this stage, the learned Counsel for the petitioner prayed for reduction of the sentence.

11. Considering the submission of the learned Counsel for the petitioner, this Court is inclined to reduce the sentence of imprisonment.

12. In the result, the conviction imposed by the Courts below against the petitioner-accused for the offence under Section 408 IPC is confirmed. However, the period of sentence of one year rigorous imprisonment imposed by the lower appellate Court in Crl.A.No.144 of 2003 is modified to that of the period, which the petitioner-accused has already undergone, while confirming the sentence of fine with default sentence.

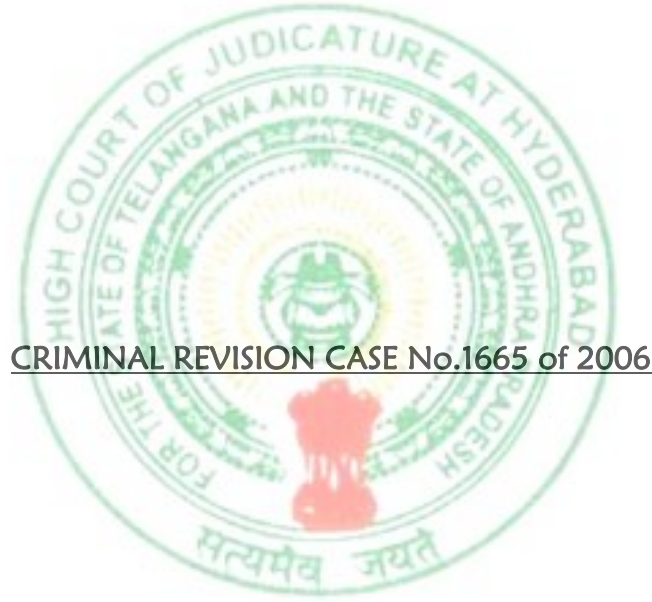
13. Accordingly, the Criminal Revision Case is partly allowed. Consequently, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE RAJA ELANGO

Dated:8th September, 2016

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8.9.2016

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