

THE HON'BLE SRI JUSTICE RAJA ELANGO

CRIMINAL REVISION CASE No.1259 of 2006

JUDGMENT:

1. This Criminal Revision Case is filed by the petitioner-accused against the Judgment dated 24.7.2006 passed in CrI.A.No.78 of 2005 by the IX Additional District & Sessions Judge (FTC), Guntur.

2. The case of the prosecution is as follows:

About 32 staff members of the office of L.W.1 had availed loan facility from L.W.25-Andhra Bank, Patnam Bazaar, Guntur, on the guarantee given by L.W.1 to recover the monthly instalments from their salaries and remit the same towards the loans of the said employees. The petitioner-accused used to attend to the drawal of pay and allowances of the staff members and collect the loan monthly instalments from the members i.e., L.Ws.2 to 24. After recovery of the amounts from the salaries of L.Ws.2 to 24, the accused used to prepare the schedules of details of recoveries and get it signed by L.W.1 to remit the amount into the bank. But the accused while sending the amount to the Bank, he prepared another schedule every month showing less amounts of few employees and remitting the said less amount. He used to misappropriate the balance amounts for his own purpose. Thus, he did not remit the amounts recovered from L.Ws.2 to 24 every month. On 3.2.2003, L.W.25 sent a notice to L.W.1 about the non-payment of loan amounts in full relating to the loans taken by his staff. On 10.2.2003, L.W.1 enquired the accused and verified the same. Then, the accused admitted the fraud played by him before L.Ws.1 to 24. On verification, L.W.1 found that a total amount of Rs.1,93,250/- was not remitted into the account of L.Ws.2 to 24 by the accused and the accused misappropriated the same. The accused requested time to remit the amount. On 15.3.2003, the accused remitted Rs.45,000/- into the bank and he did not pay the balance

amount. Hence, L.W.1 gave a report in Nagarampalem L & O Police Station, basing on which, a case was registered against the petitioner and investigated into. After completion of the investigation, charge sheet was filed against him.

3. The learned Special Mobile Magistrate, Guntur took the case on file as C.C.No.229 of 2003 for the offence under Section 409 IPC. The learned Magistrate framed a charge for the offence under Section 409 IPC, against the petitioner-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 P35 were marked on behalf of the prosecution. No oral or documentary evidence was adduced on behalf of the accused.

5. On appreciation of oral and documentary evidence, the trial Court found the accused guilty for the offence under Section 409 IPC, convicted and sentenced him to suffer rigorous 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 three months. Aggrieved by the same, the petitioner-accused filed appeal viz., CrI.A.No.78 of 2005 before the IX Additional District & Sessions Judge (FTC), Guntur. The learned Additional District & Sessions Judge allowed the appeal in part. The learned Additional District & Sessions Judge set aside the conviction and sentence imposed by the trial Court against the petitioner-accused for the offence under Section 409 IPC and acquitted him for the said offence. However, the learned Additional District & Sessions Judge convicted the petitioner-accused for the offence under Section 408 IPC and sentenced him to suffer simple imprisonment for six months and to pay a fine of Rs.500/- in default to suffer simple imprisonment for a period of 15 days. Aggrieved by the said conviction and sentence, the petitioner-accused filed this revision.

6. Learned Counsel for the petitioner submitted that the complainant concerned viz., J. Salamma, who is working as Mali in NSP Irrigation Canal Department, Guntur, executed a Special Power of Attorney authorizing one of the victims viz., P.W.5 to settle the issue as the petitioner paid the entire money misappropriated by him. The learned Counsel for the petitioner also produced the said power of attorney executed in favour of P.W.5, before this Court. Further, it is submitted by the learned Counsel for the petitioner that the petitioner retired from service and he is aged about 72 years and the offence under Section 408 IPC is compoundable.

7. P.W.5, who appeared before this Court, submitted that the petitioner paid the entire amount. The identity of P.W.5 was not disputed by the learned Additional Public Prosecutor.

8. Considering the facts and circumstances of the case and the submissions made by the learned Counsel for the petitioner and in view of the fact that the petitioner paid the entire amount to the victims, who are co-workers of the petitioner, this Court is of the view that the conviction and sentence imposed by the lower appellate Court against the petitioner accused can be set aside.

9. Accordingly, the Criminal Revision Case is allowed setting aside the conviction and sentence imposed by the learned IX Additional District & Sessions Judge (FTC), Guntur, against the petitioner-accused for the offence under Section 408 IPC. The fine amount paid of any, shall be returned to the petitioner. Bail bonds shall stand cancelled. Miscellaneous petitions pending, if any, shall stand closed.

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RAJA ELANGO, J

12th August, 2016

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THE HON'BLE SRI JUSTICE RAJA ELANGO

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