

THE HON'BLE SRI JUSTICE RAJA ELANGO

CRIMINAL REVISION CASE No.1405 of 2006

ORDER:

The petitioner-Accused No.2 preferred the present Criminal Revision Case by invoking the provisions under Sections 397 & 401 of the Code of Criminal Procedure being aggrieved by judgment, dated 04.08.2006, passed in CrI.A. No.165 of 2002 by the I-Additional District & Sessions Judge, Kurnool, whereby the learned Sessions Judge dismissed the appeal by confirming the judgment, dated 09.09.2002, passed in CC No.27 of 2002 by the II-Additional Judicial Magistrate of First Class, Kurnool, whereby the learned Magistrate found the petitioner guilty of the offence under Section 409 r/w.34 IPC and, convicted and sentenced him to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.3,000/- in default to suffer simple imprisonment for a period of three months, for the said offence.

The case of the prosecution is that the petitioner-A2 and another i.e. A1 are employees in postal department in Kurnool District. During October 1991, and January 1992, A1 was Post Master of Dhone sub Post Office and the petitioner – A2 was Treasurer-cum-joint custodian. At that time, A1 was the overall charge of the office including cash and he was authorised to draw cash and keep on hand not exceeding Rs.25,000/- on any day. But, during that above mentioned period, though there was no immediate necessity or demand, he retained cash in excess of permitted limit on several days and misappropriated an amount of Rs.1,72,228.15 ps., and used the same for his own and to cover up the said fraud, he created a theft in the office and gave a complaint to the police. After investigating the matter, the investigating officer filed a final report stating that the said complaint

was false. Thereafter, on a report given by the Sub-Divisional Inspector (Postal), Dhone, the Sub-Inspector of Police, Dhone, registered a case and took up investigation and after completion of investigation, he filed charge sheet against both the accused.

The trial Court took cognizance of the case for the offence under Section 409 IPC. After the presence of the accused was secured, they were examined under Section 239 Cr.P.C., by the trial Court and that the trial Court had framed charge under Section 409 IPC against A1 and under Section 409 r/w.34 IPC against A2 and 211 IPC against both the accused.

To prove its case, the prosecution examined PWs.1 to 21 and marked Exs.P1 to P71. On behalf of the accused, DWs.1 to 5 were examined and Ex.D1 was marked.

The trial Court, after considering the evidence on record, found A1 guilty of the offences under Sections 409 and 211 IPC and found the petitioner-A2 guilty of the offence under Section 409 r/w.34 IPC and accordingly, convicted and sentenced A1 to undergo rigorous imprisonment for a period of three years and also to pay a fine of Rs.3,000/- in default to undergo simple imprisonment for a period of three months for the offence under Section 409 IPC and also sentenced him to undergo rigorous imprisonment for a period of one year with a fine of Rs.1,000/-, in default to suffer simple imprisonment for one month for the offence under Section 211 IPC. The trial Court sentenced the petitioner - A2 to suffer simple imprisonment for a period of three years with a fine of Rs.3,000/- in default to suffer simple imprisonment for a period of three months for the offence under Section 409 r/w.34 IPC. Challenging the same, both the accused preferred CrI.A. No.165 of

2002 before I - Additional District & Sessions Judge, Kurnool, and the learned Sessions Judge, after re-appreciation of the evidence, dismissed the appeal by confirming the judgment of the trial Court, vide judgement impugned. Challenging the same, the present revision is filed by the petitioner –accused No.2.

Heard and perused the material available on record.

On perusing the judgments of both the Courts below, this Court is not inclined to interfere with the factual aspects of the case, since the findings of both the Courts below are concurrent in nature.

When this Court pointed out that there are no merits in the revision, learned counsel for the petitioner-accused No.2 submitted that the petitioner is aged about 65 years, and therefore, he requested to take a lenient view, while imposing punishment against the petitioner.

Considering the facts and circumstances of the case and also taking into consideration that the case pertains to the year 2002, this Court is inclined to reduce the sentence of imprisonment imposed by the trial Court on the petitioner –A2, as confirmed by the appellate Court, for the above offences, to that of the period, which the petitioner has already undergone.

In the result, the conviction recorded against the petitioner-accused No.2 by the II-Additional Judicial Magistrate of First Class, Kurnool, in CC No.27 of 2002 vide judgment, dated 09.09.2002, as confirmed by the I-Additional District & Sessions Judge, Kurnool, in Crl.A. No.165 of 2002, vide judgment, dated 04.08.2002, for the offence under Section 409 r/w.34 IPC, is confirmed. However, the sentence of imprisonment imposed by the trial Court against the petitioner-A2 for

the above offence, as confirmed by the appellate Court, is modified and reduced to the period, which the petitioner has already undergone. The fine amount is not interfered with.

Accordingly, the Criminal Revision Case is partly allowed. Miscellaneous applications, pending if any, shall stand closed.

RAJA ELANGO, J

August 09, 2016.
KTL

