

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO.60 OF 2017
(Kirma s/o Demshya Padavi Vs. The State of Maharashtra)
WITH
CRIMINAL APPLICATION NO.1124 OF 2017

Mr.R.S.Shinde, learned counsel for the applicant.
Mr.K.D.Mundhe, APP for the State.

(CORAM : V.L.ACHLIYA, J.)

DATE : 21/03/2017

PER COURT :

1. Heard the learned counsel for the applicant and the learned APP for State and further perused the copy of the impugned judgment and depositions.

2. The applicant/accused has been held guilty of offence punishable u/s 409 of IPC and sentenced to suffer SI for (1) one year and fine of Rs.5,000/- with an allegation that he has misappropriated the amount of Rs.50,573/- received as a grant to be payable to Narmada Mahila Bachat Gat.

3. Learned counsel for the applicant submits that even if the entire case of the prosecution goes unchallenged, still no conviction can be awarded u/s 409 of the IPC. In this context, learned counsel

for the applicant has invited attention to the reasons and findings recorded by the Trial Court and the copies of the depositions of witness Nos.5 and 6 whose testimony has been referred and relied to base the conviction. He submits that in the facts and circumstances of the case and the evidence adduced, at the most, it can be stated that the amount was retained by the applicant for the period of about one month. He submits that there is no evidence that the amount received was either converted for own use or it was temporarily misappropriated.

4. Upon considering the submissions advanced in the light of the reasons and findings recorded by the Trial Court as well as the Sessions Court and further perused the copies of the depositions, I am of the view that arguable case has been made out to be considered in revision. There appears to be some force in the submissions of learned counsel for the applicant that there is no sufficient evidence to prima facie establish that amount was misappropriated by the applicant. He submits that in the facts and circumstances of the case and the evidence adduced, at the most, it can be stated that the amount was retained by the applicant for the period of about one month. He submits that there is no evidence to show that the amount received was either converted for own use or it

was temporarily mis-appropriated.

5. In this view, I am inclined to admit the revision petition and pass the following order :-

O R D E R

[a] **Rule.**

[b] Call record and proceedings.

[c] Learned APP waives service of notice on admission.

[d] Pending disposal of the revision application, the execution of substantive sentence stands suspended subject to deposit of fine amount by the applicant.

[e] Pending disposal of the revision application, the applicant be enlarged on bail on his furnishing bail in the sum of Rs. 50,000/- (Rupees Fifty Thousand only) with one surety in the like amount, on following conditions -

- (i) Pending disposal of the revision application, the applicant shall attend Police Station Dhadgaon, Tq.Dhadgaon, Dist.Nandurbar, on the last day of each month in between 10.00 to 11.00 a.m.
- (ii) The applicant shall not indulge into any offence of similar nature during the pendency of the revision application.
- (iii) The applicant shall furnish the names of his 3 close relatives with their addresses and phone numbers.

[f] Bail be furnished in the Trial Court within a period of 3(three) weeks from the date of this order, else the order passed stands vacated.

[g] In the event of breach of any of the conditions as above, the bail granted to the applicant will be liable to be cancelled.

[h] The Officer-In-Charge of the Police Station Dhadgaon, Tq.Dhadgaon, Dist.Nandurbar, is directed to submit the report of compliance of conditions of bail after every six months.

6. In view of the order passed, Criminal Application No.1124/2017, filed by the applicant for bail, stands disposed of in the above terms.

(V.L.ACHLIYA, J.)