IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 472 OF 2000

The State of Maharashtra,
through Damodar Wasudeoacharaya
Apsingekar, Age 54 years,
Occu. Service, R/o. Beed. **....Appellant.**

Versus

Manohar s/o. Shivram Bugey,
Age 39 years, Occu. Treasury Officer,
Ashti, Now at Beed in Ganesh Nagar,
Tq. & Dist. Beed. **....Respondent.**

Mr. R.V. Dasalkar, APP for appellant/State.

Mr. S.D. Joshi, Advocate for respondent.

CORAM : T.V. NALAWADE AND
SUNIL K. KOTWAL, JJ.
RESERVED ON : 03/08/2017
DECIDED ON : 04/08/2017

JUDGMENT : [PER T.V. NALAWADE, J.]

. The appeal is filed against judgment and order of R.C.C. No. 154/1999, which was pending in the Court of Chief Judicial Magistrate, Beed. The Trial Court has convicted and sentenced the respondent, accused for offences punishable under sections 409, 467, 468, 471 and 201 of Indian Penal Code (hereinafter referred to as 'IPC' for short). As the substantive sentence is till the rising of the Court, though total fine of Rs.5500/- is imposed, the State has come in appeal for enhancement of the sentence. Both the sides are heard.

2) The facts leading to the institution of the appeal can be stated as follows :-

Accused was working as Sub Treasury Officer at Ashti. The incidents involved were of for the period from 27.1.1997 to 15.5.1997. The incident of misappropriation came to be noticed by higher authority when they were comparing, reconciling the accounts of sub treasury office with the other record. It was noticed that there was difference in the amount which was shown to be withdrawn from sub treasury and the other relevant record. A particular kind of modus operandi was used. When there was the cheque of Rs.7,000/- for withdrawal dated 31.3.1997, in daily book the amount was mentioned as Rs.17,000/- and actually the amount of Rs.17,000/- was withdrawn. It was also noticed that the respondent, accused had created false record of making payments of amount from treasury as against lottery tickets of State Lottery. Total amount was of Rs.65,000/-. Another modus operandi was noticed that when the amount needs to be disbursed to the institutions under the head of salary and other heads, more amount was shown to be paid under those bills when the bills showed different amount.

3) A notice was given by the Treasury Office to respondent, accused of show cause and explanation was called with regard to the

aforesaid irregularities. In reply, the accused admitted that he had created such false record and he had misappropriated the amount of Rs. 65,000/-. The F.I.R. was then given in respect of these irregularities and the crime came to be registered at C.R. No. 13/1998 in Ashti Police Station for aforesaid offences. After making investigation and collecting the aforesaid record, chargesheet came to be filed. Charge was framed for aforesaid offences. The accused pleaded not guilty. The prosecution examined only one witness viz. Damodar (PW 1), who was working in District Treasury Office. He has given evidence about the aforesaid irregularities. The documents which were scrutinized to ascertain irregularities are mentioned in his evidence. His evidence shows that the accused was in a position to withdraw the amounts due to his post. The procedure of making disbursement of the amount on the basis of record like bills is given by him in the evidence. The specific evidence is given in respect of specific instances, making change in the amount like making it Rs.17,000/- when the cheque was of amount of Rs.7,000/-, on creation of false record of lottery tickets for withdrawal of the amount under that head and on making over payments in respect of the bills submitted to the Sub Treasury.

4) In the cross examination, it is only suggested to the witness that accused had sent a letter to the office when show cause

notice was issued. He had admitted the guilt and then after holding the departmental inquiry, he was compulsorily retired. It is suggested that due to transfer from Gangapur to Ashti, he was disturbed and he had challenged the transfer order. It is also suggested that his Last Pay Certificate (LPC) was not received till March 1997 by the next station and due to that salary was not paid. Suggestion is also given that one son of accused was suffering from cancer. Some suggestions of aforesaid nature are admitted by the witness. But that does not mean that due to existence of such problems, the accused was entitled to create the false record and misappropriate the Government money. There is the letter dated 15.5.1997 written by the accused to the superior officer and it shows that indirectly he had given threat of committing suicide. He, however, admitted that he had become acquainted to one laundry owner and due to that, he was addicted to bad vices. In the letter, he had mentioned that his Service Book and LPC were sent late to new station and he did not want to resume duties at new station. He had contended that he was mentally disturbed as he was not liking to work at that station and entire amount was spent by him on bad vices.

5) In the evidence of Damodar (PW 1), the relevant record is proved by prosecution as Exh. 19 to 35. Everything is a matter of

record. In the statement given under section 313 of Criminal Procedure Code, the accused admitted the aforesaid evidence.

6) The aforesaid circumstances show that serious offence was committed by the respondent - Sub Treasury Officer. He created false record by using different modus operandi. Due to the nature of modus operandi used by him, it cannot be believed that he was mentally disturbed. Further, he admits that he was addicted to bad vices and he spent entire amount which was around Rs.65,000/- on bad vices during the aforesaid period. The Trial Court took a lenient view due to the circumstance that the respondent is compulsorily retired. The Trial Court also considered the circumstance that within few days of notice, he deposited entire amount.

7) It needs to be kept in mind that when there is conviction for offences of aforesaid nature, the employer, the State is entitled to terminate person like the accused. If the departmental inquiry was held prior to the conclusion of the case and he was compulsorily retired, it can be said that proper procedure was not followed. When it was not advisable, lenient view was taken in his favour by the State. Due to these circumstances, it could not have been presumed that already the respondent, accused had suffered. It is the duty of the Court to see that the penalty is imposed in proportion of the

offences. On this point, both the sides placed reliance on some observations made in following cases :-

(i) Judgment delivered by the Supreme Court in Criminal Appeal No. 1159/2012 dated 3.8.2012 [Sadhupati Nageswara Rao Vs. State of Andhra Pradesh],

(ii) Judgment delivered by Supreme Court on 9.11.2000 [Madhukar Bhaskarrao Joshi Vs. State of Maharashtra]

(iii) 2000 Cri.L.J. 2428 [State by P.S.I. Ilkal, Bijapur Vs. Hanamappa].

The facts and circumstances of each and every case are always different. When the offence is punishable under section 409 of IPC, the Court is not expected to take a lenient view. Though under section 409 of IPC, no minimum period of imprisonment is mentioned, the circumstance that maximum sentence of life imprisonment is provided, needs to be kept in mind. That is done by the legislature due to seriousness of such offence. This Court holds that due to the nature of offence committed by the accused, it was not proper on the part of the Trial Court to sentence him till rising of the Court. Only because many years have passed since the decision of the Court, this Court holds that atleast for some period like period of six months, the respondent, accused needs to be kept in jail. In the result, following order is made :-

O R D E R

1) The appeal is allowed. The judgment and order of the Trial Court is modified for enhancement of the sentence. Sentence is enhanced as follows :-

2) For the offence punishable under section 409 of Indian Penal Code, the accused is sentenced to suffer rigorous imprisonment for six months and to pay a fine of Rs.2000/-. In default of payment of fine, he is further to undergo simple imprisonment for one month.

3) The accused is sentenced to suffer rigorous imprisonment for six months for the offences punishable under sections 467, 468, 471 of Indian Penal Code and he is to pay fine of Rs.2000/-. In default of payment fine, he is to undergo simple imprisonment for one month.

4) The substantive sentences are to run concurrently.

5) The sentence for offence under section 201 of the Indian Penal Code is maintained. The respondent accused to surrender to bail bonds for undergoing the sentence.

[SUNIL K. KOTWAL, J.] **[T.V. NALAWADE, J.]**

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