

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL REVISION APPLICATION NO. 290 OF 2004

Deoram Chintaman Patil
Age: 67 years, Occu.: Agri.,
R/o Samner, Tq. Pachora,
Dist. Jalgaon.

..APPLICANT

VERSUS

State of Maharashtra

..RESPONDENT

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Mr. B.R. Warma, Advocate for applicant.
Mr. G.O. Wattamwar, A.P.P. for respondent - State.

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**CORAM : T.V. NALAWADE, J.
DATED : 25th JANUARY, 2017**

ORAL JUDGMENT :

1. The proceeding is filed to challenge the judgment and order of Chief Judicial Magistrate, Jalgaon delivered in R.C.C. No. 121 of 1989 and also judgment and order of Criminal Appeal No. 44 of 1999 which is decided by Additional Sessions Judge, Jalgaon. Both sides are heard.

2. The charge-sheet was filed against the present applicant – Deoram and one more person Ramdas for the offences punishable under Sections 408, 477-A read with 34 of the Indian Penal Code. There was

allegation against them that they had created false record in the account of co-operative society by name 'Samner Dudh Vyavsayik Sanstha Maryadit, Samner' and by creating false record of account, they had misappropriated the amount of Rs.2,800/-. The present petitioner was Chairman of the society and another accused was working as Secretary and in that capacity the offence was committed. The aforesaid sections were used against them. The prosecution examined witness like auditor to prove the offence. The record contains purchase bills in respect of cattle feed. Some boxes were purchased @ Rs90/- per box and some boxes were shown to be purchased @ Rs.102/- per box. Even if these rates are accepted, the total value of boxes shown to be purchased was Rs.18,180/- however, in the Kird Book the entry was made to show that society had made payment of Rs.20,980/-. Thus, when actual payment of Rs.18,180/- was made, the amount of Rs.2,800/- was shown in access. The record of purchase bears the signatures of present applicant as he was Chairman of the said society.

3. In view of the aforesaid record and circumstances, the Chief Judicial Magistrate, Jalgaon gave conviction and applicant was sentenced to suffer simple imprisonment for one month and fine of Rs.200/- for offence punishable under Section 408 of the Indian Penal Code and

simple imprisonment for one month and fine of Rs.100/- for offence punishable under Section 477-A of the Indian Penal Code. Similar sentence was imposed on secretary. The Appellate Court has reduced the substantive sentence to make it simple imprisonment for fifteen days on both counts.

4. The Secretary did not challenge the decision given by the Trial Court. Learned Counsel for applicant submitted that it is the job of Secretary to check the bills and orders and if he has created some false record, the Chairman of society cannot be blamed for it and he cannot be convicted for the said offence. This submission is not at all acceptable. The aforesaid record of bill shows that present applicant was witness of the incident of purchase and bills were bearing his signatures. As per the procedure, the payment is required to be made only after the amount is withdrawn from the bank as per the order or permission given by Chairman or cheque of the society is signed by the Chairman. Further, the Chairman is also expected to verify the Roj Kird and he is expected to make signature on the Roj Kird so that amount actually spent tallies with the amount shown in Roj Kird. In view of these circumstances, it cannot be said that present applicant was not party to the aforesaid misappropriation.

5. The Appellate Court has reduced the sentence as amount involved was Rs.2,800/- and the offence was of 1985. Learned Counsel for applicant submitted that even as per the record present applicant has crossed the age of 75 years now. He has produced on record the record of treatment received by present applicant. It shows that he has heart problem and he has undergone coronary angiography and bypass surgery on 12th October, 2010. Learned Counsel submitted that in view of these circumstances, the applicant may not be sent to jail. He submitted that as per record, the applicant was kept behind bars at least for seven days when appeal was dismissed. Learned Counsel submitted lenient view needs to be taken in view of aforesaid circumstances.

6. In view of the aforesaid circumstances and considering the age of present applicant, this Court holds that it is not desirable to send him behind the bars after so many years and after attending such age by applicant. However, the circumstance that he misappropriated the amount of society which was under his control cannot be ignored. The society has sustained loss. Unfortunately meager amount of fine was imposed by the Court below and nothing is directed to be paid to the society. In view of these circumstances, this Court holds that society needs to be given compensation to the possible extent. This Court holds

that if applicant is made liable to pay compensation of Rs.25,000/-, the society will receive the amount due and the applicant will be also made to realise that crime never pays. In view of this circumstance, this Court holds that proceeding needs to be partly allowed.

7. In the result, petition is partly allowed to modify the sentence given by the Additional Sessions Judge, Jalgaon. The sentence for both offences will be for the period under gone which is around seven days and the applicant will be required to pay compensation of Rs.25,000/- (Rupees Twenty Five Thousands Only) to the aforesaid society. The amount of compensation needs to be deposited in the Court of Chief Judicial Magistrate, Jalgaon prior to 24th February, 2017. After depositing the amount, said amount is to be sent to the concerned society. If this amount is not deposited, the applicant will undergo the simple imprisonment for fifteen days. In the result, revision application stands disposed of as partly allowed.

(T.V. NALAWADE, J.)

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