THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL REVISION CASE NO.1420 OF 2005

ORDER:

This criminal revision case is filed under Sections 397 & 401 of Cr.P.C, questioning the propriety and legality of the order in Crl.A.No.26 of 2003 dated 23.08.2005 passed by the III Additional District & Sessions Judge, F.T.C, Ranga Reddy District, whereby, the Appellate Court modified the substantive sentence of imprisonment awarded by the Trial Court to that of Rigorous Imprisonment of one year with fine of Rs.5,000/-.

The case of the prosecution in nut-shell is that, the accused while working as Extra Departmental Branch Post master at Janwada Branch Post Office attached to Chaitanya Bharathi Sub-Post Office, Gandipet, Hyderabad, accepted an amount of Rs.4,200/- as money order from one Ramesh Mallik, including the commission of Rs.200/- to send the same to one Dussana Mallik of Bhadrak of Orissa State. It is alleged that the accused misappropriated the said amount for his personal use by issuing Rs.20/- with Rs.1/- commission as against the money order of Rs.4,200/-, which the accused, with a malafide intention, misappropriated the said amount to Sri Datta Sachitanandam Nagora Trust, Machilipatnam with the sender's name mentioned as Manjulatha of janwada. In another incident also, on 19.05.1998, one Dular Chowdary paid an amount of Rs.1,000/- with Rs.50/- commission towards money order to be sent to Subhakala Devi Bhilani Puwai to post Lohut District, Bihar State. Though the accused received Rs.1,000/- towards money order, he made an entry in the office record for Rs.60/- payable to M.s Bhaktha Nivedan, Seetanagaram, Guntur District by misappropriating the money being a government servant with a fraudulent intention by issuing receipts to the remitters and thereby committed criminal offence. Thereupon, complaint was registered and F.I.R was issued.

The Trial Court took the case on file and upon securing the presence of the accused by issuing summons after compliance of necessary formalities, necessary documents were made available to the accused as contemplated under Section 207 Cr.P.C and framed charges against the accused for the offence punishable under Section 409 IPC. The accused was examined under Section 239 Cr.P.C explaining the accusation made against him, but he pleaded not guilty and claimed to be tried.

During trial, P.Ws.1 to 3 were examined on behalf of the prosecution and marked Exs.P-1 to P-13. None were examined on behalf of the accused and no exhibits were marked.

The accused was examined under Section 313 Cr.P.C with reference to the incriminating circumstances that appeared against him in the evidence of prosecution witness.

Upon hearing argument of both the counsel, the Trial Court found the accused guilty for the offence punishable under Section 409 IPC and sentenced to suffer rigorous imprisonment for two years and to pay fine of Rs.5,000/- with default sentence. Aggrieved by the conviction and sentence awarded by the Trial Court, the accused preferred Crl.A.No.26 of 2003, wherein, the Appellate Court modified the substantive sentence of imprisonment awarded by the Trial Court to that of Rigorous Imprisonment of one year with fine of Rs.5,000/-. Both the Courts below was of the opinion the accused being an government employee misappropriated the amount, the facts on hands would attract an offence punishable under Section 409 I.P.C. Challenging the order in Crl.A.No.26 of 2003, the present criminal revision case is preferred on various grounds.

During hearing, learned counsel for the petitioner/accused had neither appeared nor got the matter represented by any counsel and advance arguments, but this Court cannot dismiss the revision for default, however this Court can decide the revision on merits in view of the law declared in **Nisha Sharma and others v. Vinod Kumar Sharma**[1] wherein it is made clear that the revision cannot be dismissed for default and even the petitioner or his advocate did not appear before the Court, the Court shall examine the record and decide the revision on merits.

Persuaded by the law declared by the Delhi High Court, I would like to decide this revision, perusing the record.

Learned Public Prosecutor for the State of Telangana supported the judgment of the Appellate Court in all respects while contending that there are absolutely no grounds to interfere with the findings of both the Courts below, in view of the limited jurisdiction of this Court under Sections 397 & 401 Cr.P.C.

The petitioner is admittedly a government servant working as Extra Departmental Branch Post master at Janwada Branch Post Office attached to Chaitanya Bharathi Sub-Post Office, Gandipet,

[1] 1990 Cri.L.J. NOC 57 (Delhi)

Hyderabad, allegedly misappropriated Rs.4,200/- and Rs.1,000/- while crediting Rs.20/- and Rs.60/- to the addresses referred supra and misappropriated the balance amount. The said fact was spoken by P.W.1-Superintendent of Posts, West Sub Division, Hyderabad and P.Ws. 2 & 3 who remitted the amount by money order specifically, Rs.4200/- and Rs.1000/-, the addresses mentioned in the money order form and the receipts of money order are marked as Exs.P-6,7,8 & 9. The evidence of P.Ws.2 & 3 coupled with Exs.P-6 to 9 would establish that, when the petitioner received Rs.4200/- and Rs.1000/- and issue of receipts to the remitters. P.W.3 also disclosed about receipts issued to him. Therefore, the Trial Court based on both documentary and oral evidence, concluded that the petitioner committed an offence punishable under Section 409 I.P.C. The Appellate Court confirmed the fact finding recorded by the Trial Court and modified the substantive sentence of imprisonment awarded by the Trial Court to that of Rigorous Imprisonment of one year with fine of Rs.5,000/-.

The only contention before this Court in the grounds of revision is that the contents of the charge sheet and evidence on record are not sufficient to record conviction of the accused for the offence punishable under Section 409 IPC. Section 409 I.P.C deals with criminal breach by trust of public servant, or by banker, merchant or agent Section 408 I.P.C deals with criminal breach of trust by clerk or servant. Here, the petitioner is a public servant as defined under Section 21 of I.P.C. Section 405 I.P.C deals with criminal breach of trust and according to it, whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express, or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do, commits "criminal breach of trust." So, there must be dishonest use or dispossession of the property. Section 24 of I.P.C defines the world 'dishonestly' as whoever does anything with the intention of causing wrongfull gain to one person or wrongful loss to another person, is said to do that thing "dishonestly". Similarly under Section 23 of I.P.C, the word "Wrongful gain" is defined as the gain by unlawful means of property to which the person gaining is not legally entitled and "Wrongful loss" is defined as is the loss by unlawful means of property to which the person losing it is legally entitled.

In the present case, the persons at the addresses mentioned in the money order are the persons to whom the said amount was to be sent, but misappropriated by the petitioner himself. Such act would fall under dishonest use of the property of P.Ws.2 & 3 which should be sent to the addresses mentioned in the money order forms. Therefore, to constitute an offence punishable under Section 409 I.P.C, the prosecution has to prove that the accused is a public servant and was entrusted with the property which he is the duty bound to account for and that he committed an offence in misappropriating the amount. In the present case as stated above, the petitioner is a public servant entrusted with the money to remit the same to the addresses mentioned in the money order form. But, he failed to account for the amount and appropriated for himself to have wrongful gain and caused wrongful loss to the remitters, mentioned in the money order form. Such act would amount to constitute an offence punishable under Section 409 I.P.C.

In **Sadhupati Nageswara Rao vs State of A.P[2],** the Supreme Court held that, in order to prove the offence of criminal breach of trust which attracts the provision of Section 409 IPC, the prosecution must prove that one who is, in any manner, entrusted with the property, in this case as a dealer of fair price shop, dishonestly misappropriates the property, commits criminal breach of trust in respect of that property. In other words, in order to sustain conviction under Section 409 IPC, two ingredients are to be proved: namely, i) the accused, a public servant or a banker or agent was entrusted with the property of which he is duty bound to account for; and ii) the accused has committed criminal breach of trust. What amounts to criminal breach of trust is provided under Section 405 IPC. The basic requirement to bring home the accusations under Section 405 are the requirements to prove conjointly i) entrustment and ii) whether the accused was actuated by dishonest intention or not, misappropriated it or converted it to his own use to the detriment of the persons who entrusted it.

Therefore, applying the principle laid down in the above judgment and keeping in mind the jurisdiction of this Court under Sections 397 & 401 Cr.P.C, I find that the evidence on record

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[2] AIR 2012 SC 3242

established that the petitioner is punishable for the offence under Section 409 I.P.C. Therefore, the contention that the evidence on record is not sufficient to establish the offence punishable under Section 409 I.P.C is without any substance. Consequently, I find no ground to interfere with the order of Courts below and the criminal revision case is liable to be dismissed.

In the result, criminal revision case is dismissed.

Consequently, miscellaneous applications pending if any, shall stand dismissed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:31.08.2017

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