

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

CRIMINAL APPEAL NO.140 OF 2002

The State of Maharashtra
through Police Station,
Pathardi

... APPELLANT

VERSUS

1. Meenabai w/o Popat Bhosale,
Age 30 years, Occu. Household work,
R/o Kasarwadi, Tq. Pathardi,
District Ahmednagar

2. Chandrakala Baban Bhosle,
Age 35 years, Occu. Household work,
R/o Kasarwadi, Tq. Pathardi,
District Ahmednagar

... RESPONDENTS
(Original Accused)

.....
Mrs. D.S. Jape Ansingkar, A.P.P. for appellant/ State
Shri R.S. Kasar, Advocate for respondents
.....

CORAM: SUNIL K. KOTWAL, J.

DATED : 16th MARCH, 2018.

JUDGMENT :

1. This appeal is directed by State of Maharashtra against the judgment and order of conviction dated 8/11/2001, passed by learned Judicial Magistrate, First Class, Pathardi in R.C.C. No.20/2000, sentencing the accused No.1 and 2 to suffer simple imprisonment till rising of the Court and to pay fine of Rs.300/- each,

in default, simple imprisonment for one month for the offence punishable under Sections 406 read with Section 34 of the Indian Penal Code. This appeal is for enhancement of sentence imposed by the trial Court. Respondent No.1 and 2 are original accused No.1 and 2 respectively.

2. Facts leading to institution of this appeal in brief are that, accused No.1 and 2 are President of Jijamata Mahila Mandal and Gramin Mahila Mandal of village Kasarwadi. Panchayat Samiti, Pathardi sanctioned and disbursed grants of Rs.25,000/- for the business of Jijamata Mahila Mandal and grants of Rs.10,000/- for the business of Gramin Mahila Mandal, during the period 8.11.1997 to 4.12.1998. However, both accused misappropriated those grants by withdrawing it from the Bank Account of Mahila Mandal. After receiving complaints from the members of Mahila Mandal, enquiry was held through Panchayat Samiti, Pathardi and ultimately, Extension Officer, Panchayat Samiti, Pathardi lodged F.I.R. to Police Station, Pathardi on 11.8.1998. In the result, Crime No.129/1998 was registered against both the accused persons for the offence punishable under Section 406 read with Section 34 of the Indian Penal Code. After due investigation, charge sheet was filed against both the accused in the Court of Judicial Magistrate, First Class, Pathardi.

3. Charge Exh.11 was framed against both the accused persons for the offence punishable under Section 406 read with Section 34 of the Indian Penal Code. Accused pleaded not guilty and claimed trial.

4. After considering oral and documentary evidence placed on record, learned trial Court pleased to convict the accused No.1 and 2 for the offence punishable under Section 406 read with Section 34 of the Indian Penal Code and above said sentence was imposed against them.

5. Against the order of conviction, no appeal is preferred by the respondents. However, State of Maharashtra has challenged the quantum of sentence imposed by trial Court by filing the present appeal.

6. Heard Smt. Jape, learned A.P.P. for the appellant / State and Shri R.S. Kasar, learned counsel for the respondents No.1 and 2.

7. Learned A.P.P. for the appellant/State submitted that, considering the nature of the offence committed by both the accused, simple imprisonment till rising of the Court and fine of Rs.300/- is highly inadequate punishment and the same needs to be enhanced by allowing this appeal. In reply, learned counsel for the respondents

submitted that, accused were convicted on 8.11.2001 and they have already deposited the fine amount and undergone the sentence imposed by the trial Court. According to learned counsel for respondents, after passage of more than 15 to 16 years from the date of conviction, it will not be proper to enhance the sentence imposed against the respondents. He submitted that, both the respondents are village women and they are illiterate persons. Considering their village background and overall circumstances of the case, it will not be proper to enhance the punishment and to send the respondents in jail.

8. To examine nature of the evidence available against the accused persons, with the help of learned A.P.P. and learned counsel for the respondents, I have gone through the evidence placed on record by prosecution. Vilas Salve (P.W.6) is the informant, who lodged F.I.R. (Exh. 38) against the accused persons. This witness is Development Officer, who is responsible person from Panchayat Samiti. Though in examination-in-chief this witness deposed regarding misappropriation of Government grants by both accused persons, from his cross-examination, it emerges that, whatever amount was sanctioned by the Panchayat Samiti in favour of Mahila Mandal, the said amount was utilised for purchasing raw material. This witness has clearly admitted that, the Presidents of Mahila Mandals neither misutilised the amount nor committed breach of

trust. No doubt, respondents did not challenge the order of conviction passed by learned trial Court. However, considering the nature of the above referred evidence available against the respondents as well as passage of more than 15 years from the date of judgment passed by the trial Court, I do not find it proper to enhance the sentence imposed by trial Court and to send the respondents in jail after 15 years. I hold that, no case is made out by appellant/ State to enhance the sentence at this belated stage. This appeal being devoid of merits, deserves to be dismissed. Hence I pass the following order:

ORDER

- (i) Criminal Appeal No.140/2002 is dismissed.
- (ii) Bail bonds of respondents/ accused shall stand cancelled.

(SUNIL K. KOTWAL)
JUDGE

fmp/