

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL REVISION APPLICATION No. 38 OF 2002
WITH
CRIMINAL REVISION APPLICATION NO. 39 OF 2002**

Shri Bhanudas Baban Pawar
Age 63 Years, Occupation Agriculturist,
Residing at Vadgaon Nimbalkar,
Taluka Baramati, District- Pune.

...Applicant

Versus

State of Maharashtra

...Respondent

Mr.S.G.Deshmukh for the Applicant.
Mrs.Veera Shinde, APP for the Respondent-State.

**CORAM : MRS. MRIDULA BHATKAR, J.
DATE OF RESERVED : 24 JANUARY 2019
DATE OF PRONOUNCEMENT : 22 FEBRUARY 2019**

ORDER

1. The applicant/accused was convicted for the offence punishable under section 408 of the Indian Penal Code and was sentenced to suffer R.I. for three months and to pay a fine of Rs. 5000/- in each case, in default to suffer R.I. for six months. These orders were passed by the learned Additional Chief Judicial Magistrate, Pune on 12th March, 1997 in

C.C. Nos. 80 of 1990 and 81 of 1990, which were confirmed by the learned Sessions Judge, Pune by the judgments and orders dated 11th January, 2002 by dismissing Criminal Appeal Nos. 49 and 50 of 1997 respectively.

2. In the year 1985-86, the applicant/accused was working as a Secretary in Vadgaon Nimbalkar Vividh Karyakari Sahakari Society Limited, Vadgaon Nimbalkar and he was in charge of all account books record. He was also looked after the audit of the society. During the audit of the accounts for the period from 1st July, 1984 to 30th June, 1985, misappropriation of Rs. 81592.43 was found. Hence, Mr. M.S.Kshirsagar, Auditor of Co-operative Societies, Baramati lodged a complaint against the applicant/accused and the offence was registered against him on 7th February, 1987.

3. As per the case of the prosecution, there was misappropriation. The applicant/accused has committed offence of misappropriation of the amount of Rs. 81,592.43. The applicant/accused was tried for the offence simplicitor under section 409 of the Indian Penal Code. After trial, the applicant/accused was convicted for the offence punishable under section 408 of the Indian Penal Code.

4. The learned counsel for the applicant/accused has submitted that the applicant/accused was working as a Secretary in the said Co-operative Society and one Sunil Govindrao Shinde, Chairman of the said Co-operative Society compelled him to withdraw certain amounts without keeping record of the said amount. He has further submitted that the Chairman of the society has misappropriated the whole amount and he is protected by the auditor being under political influence of the Chairman. The suggestions were given to that effect. He has further submitted that the auditor is having a hand-in-gloves with the Chairman of the said society and the applicant/accused is made a scapegoat. He has relied on the judgment of this Court in the case of ***The State of Maharashtra Vs. Hanumant Keshav Pisal*** reported in ***1999 ALL MR (Cri.) 55***.

5. The learned APP submits to the order of this Court on the point of quantum.

6. Perused the evidence of PW 1 -M.S.Kshirsagar, PW 2 – Sunil G. Shinde and DW 1- Sopan Bhiku Pansare. None of the entries made in the account books are denied. The applicant/accused had filed affidavit below exhibit 65, which was taken on record. The submission of the learned

counsel for the applicant/accused that the applicant/accused was having an unblemished character and he was Secretary for 25 years may be true, however, it cannot negate the facts and circumstances proved by the prosecution against him that there is misappropriation of the amount of Rs. 81,592.43.

7. In the case of ***Hanumant Keshav Pisal*** (*supra*), the State of Maharashtra filed an appeal against the order of acquittal. The respondent/original accused has taken defence that the amount which he had received from time to time while acting as a Secretary of the society was entrusted to the Chairman, who failed to credit the amount in the bank. These are not the facts in the present case. Thus, I am of the view that the judgments and orders of conviction dated 11th January, 2002 passed by the learned Sessions Judge, Pune, holding that the applicant/accused convicted under section 408 of the Indian Penal Code is justified and cannot be faulted with. However, the submission of the learned counsel for the applicant/accused that the offence had taken place in the year 1985-86 for which the applicant/accused is not to be given substantive sentence.

8. In view of above submissions, the following order is passed:

ORDER

(i) The impugned judgments of conviction under section 408 of the Indian Penal Code stand confirmed. However, the orders of sentence of R.I. for three months are hereby set aside because he has already undergone the said period of sentence;

(ii) The amount of fine of Rs. 5,000/- has already been paid and, therefore, the orders of fine are maintained.

9. With this, both the Criminal Revision Applications are disposed of.

(MRIDULA BHATKAR, J.)