

Vidya Amin.

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

CRIMINAL REVISION APPLICATION No. 51 OF 2001

Mahesh Bhiku Rathod ... Applicant

VS.

1. The State of Maharashtra

2. The Daman & Diu

Union Territory, Daman

... Respondents

Mr. S.P. Kadam a/w. Mr. R.K. Hake Patil, Advocate for the applicant.

Mr. Vinod Chate, APP for the respondent No. 1/State.

CORAM: Mrs.MRIDULA BHATKAR, J.

DATED: 10th January, 2019

ORAL JUDGMENT :

In this Revision Application, the applicant/accused is convicted for the offence punishable under section 408 r/w. 34 of Indian Penal Code and is sentenced to suffer R.I. for 4 years and to pay fine of Rs.20,000/- i/d. to undergo further R.I. for 6 months by the judgment and order dated 11th November, 1994 passed by the learned Chief Judicial Magistrate, Daman. The said judgment was challenged in Criminal Appeal No. 10 of 1994 by the applicant/accused, however, the said Appeal was dismissed by the judgment and order dated 13th November, 2000 passed by the learned Sessions Judge, Daman. Hence, this Criminal Revision

Application.

2. The applicant/accused was employed at the petrol pump owned by M/s. C.P. Shah & Sons at Nani Daman. The applicant along with other two boys, who were employed at the petrol pump, were looking after the general and financial work of the petrol pump. Each day the remittance was required to be deposited in the State Bank of India, Nani Daman of the sale proceeds after the sale of fuel at the petrol pump. The applicant/accused used to do that work. On 18th March, 1993, an amount of Rs.1,75,000/- was entrusted to the accused as remittance which was required to be deposited in the account of petrol pump in the State Bank of India. Instead of depositing the amount, the applicant told lies that the money was robbed. However, the complaint was given against the accused and other two employees of petrol pump on releasing that it was a false case and so the offence was registered at C.R. No. 46 of 1993 with Bhilad Police Station mainly for breach of trust. The investigation was carried out by the police and the applicant/accused along with the co-accused were charge-sheeted for the offence punishable under section 408 r/w. 34 of Indian Penal Code. After conclusion of the trial before Judicial Magistrate

First Class, co-accused were acquitted, however, the applicant/accused was convicted. The Appeal filed by the applicant against the judgment and order of learned Magistrate was also dismissed.

3. The learned counsel for the applicant/accused has submitted that there is discrepancy in the evidence of PW-4 whose evidence was discarded while acquitting accused nos. 2 and 3, then how this evidence can be considered while convicting the applicant/accused. He submitted that illegality in defence cannot be a ground for conviction. He submitted that considering the gap of 18 years from the date of dismissal of the Appeal and the decision of Revision Application, if the conviction is maintained, then leniency be shown to the applicant/accused by reducing the sentence. He pointed out that out of stolen amount of Rs.1,75,000/-, Rs.1,18,000/- was seized by the police. The applicant/accused was arrested on 19th March, 1993. He was granted bail on 23rd March, 1993. After dismissal of the Appeal on 13th November, 2000, the applicant was taken on custody on the same day and granted bail on 19th March, 2001. The applicant/accused is inside the prison nearly for four months. This

may be considered while deciding the quantum of sentence.

4. None present for the prosecution from Nani Daman.

5. Perused the record and evidence placed before this Court. The judgment passed by the learned Judicial Magistrate First Class and the judgment of the Appellate Court are well reasoned and no illegality is found. There is sufficient evidence against the applicant/accused which is unfolded through the evidence of PW-2, PW-4 and other witnesses. I do not find any reason to interfere with the order of conviction, however, as submitted by the learned counsel for the applicant, the sentence of four years awarded by the learned Magistrate can be reduced. Hence, following order is passed:

- (i) Criminal Revision Application is partly allowed;
- (ii) The judgment and order of conviction of the applicant/accused under section 408 of Indian Penal Code is hereby confirmed;
- (iii) The order of substantive sentence of four years is reduced to the extent of period undergone by the applicant/accused in the prison.

(iv) The sentence of fine is confirmed.

6. With this, Criminal Revision Application is disposed of.

(MRIDULA BHATKAR, J.)