

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL REVISION APPLICATION NO.56 OF 2022

Vishwanath Fakira Khade

...Versus...

The State of Maharashtra

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Mr. R.J.Shinde, Advocate for the applicant
Mr. S.S.Doifode, APP for Respondent/State

CORAM : AVINASH G. GHAROTE, J.

DATE : 19/04/2022

1] Heard Mr. Shinde, learned counsel for the applicant and Mr. Doifode, learned APP for respondent/State.

2] The present application challenges the judgment dated 1.2.2010 passed by the learned JMFC Court No. 2, Mangrulpir in Regular Criminal Case No. 42/2005, whereby the present applicant has been convicted for the offence punishable under Section 408 of the IPC and sentenced to simple imprisonment of six months and a fine of Rs. 1000/-, in default, simple imprisonment of one month (pg. 23). This judgment has been confirmed in appeal by the learned Sessions Court by the judgment dated 22.2.2022 in Criminal Appeal No. 103/2013, by dismissing the appeal.

3] Mr. Shinde, learned counsel for the applicant submits that the prosecution arises out of the same set of facts on which a domestic enquiry was conducted by the Department against the applicant, in which the finding of the Enquiry Officer dated 4.10.2005 regarding the alleged guilt of the applicant was quashed and set aside by the learned Labour Court in Complaint ULP No. 46/1996 by the judgment dated 12.1.2007 (pg. 2 of the pursis dated. 21.3.2022), in which enquiry the same witnesses namely PW-1 Kashiram, the Branch Manager; Vasant PW-2 and Bhimrao PW-3, Senior Inspector were examined and their evidence has been disbelieved (para 23, page 14 of the pursis) and the order of dismissal of the applicant was set aside and the applicant was directed to be reinstated with full back-wages. A revision carried to the learned Industrial Court by the complainant - the Akola District Central Co-operative Bank Ltd., vide Revision ULP No. 9/2007 came to be dismissed by the learned Industrial Court by the judgment 15.1.2015, in which, it has been categorically held that the evidence of the witnesses as examined by the bank was insufficient to prove the charge of misappropriation against the present applicant.

4] It is therefore submitted by the learned counsel for the applicant that the findings rendered by the learned Labour Court, as confirmed by the learned Industrial Court regarding there being no misappropriation by the present

applicant ought to have been considered by the learned Courts below and had it been so considered, the impugned orders would not have been passed. He further submits that even presuming otherwise, since a Court of competent jurisdiction has rendered a finding based upon the evidence of the same witnesses, regarding failure of proving the charge of misappropriation, even if the same was not placed before the Courts below, it was permissible for this Court to take the same into consideration in the present revision and decide the same on its basis.

5] Mr. Doifode, learned APP does not dispute the proposition that the findings as rendered by the learned Labour Court, as confirmed by the learned Industrial Court based upon the same set of facts and the same witnesses, would be binding upon the Criminal Court. He however submits that the record does not indicate that this was ever brought to the notice of the Courts below, which has resulted in the passing of the impugned judgments, convicting the applicant. He also does not dispute that it would be permissible for this Court to take into consideration the findings rendered by the learned Labour Court, as confirmed by the learned Industrial Court in the present revision and to pass appropriate orders by considering them.

6] The basic allegation against the present applicant,

who was serving as a cashier with the Akola District Central Co-operative Bank, Mangrulpir Branch, is that on 25.7.1995 after completion of the transaction of the bank, on verification of the cash, there was a shortage of the amount of Rs. 73,500/-, for which it was claimed that the applicant who was the cashier was responsible, resulting in an allegation of misappropriation. In the domestic enquiry conducted in this regard, three witnesses were examined namely Kashiram, the Branch Manager as PW-1; Vasant PW-2; Bhimrao, the Senior Inspector as PW-3 and the finding was rendered by the Enquiry Officer that there was misappropriation. By an order dated 4.10.2005, the issue regarding fairness and proper conduct of the enquiry and the issue whether the findings of the Enquiry Officer was perverse, were decided as preliminary issues and it was held that the enquiry was not fair and proper and the finding of the Enquiry Officer was perverse.

7] Subsequently, while considering the other issues, the learned Labour Court in its judgment dated 12.1.2007 after considering the evidence of the aforesaid three witnesses, has rendered a categorical finding that the evidence of the aforesaid three witnesses was difficult to be believed and therefore the allegation regarding misappropriation was not proved and consequently the termination of the applicant on this ground was quashed and set aside. In revision, the learned

Industrial Court has confirmed the findings of the learned Labour Court in the following manner :

“16. The respondent Bank has complained about the misappropriation of the amount of Rs.73,500/- containing total 5,100/- currency note of denomination of Rs.10/- and total 4,500 currency note of denomination of Rs.5/-. The respondent Bank has claimed about the misappropriation of the amount by the complainant on 25.7.1995 itself and further failed to produce the positive evidence on record about the removal of such large number of currency note by the complainant. On the other hand, the witness as examined by the respondent has specifically admitted the cash as tallied prior to the dated 25.7.1995. Considering the above circumstances as come on record, the evidence of both these witnesses as examined by the respondent can not be said to be sufficient to hold the misappropriation of the amount by the complainant. It is pertinent to note that the respondent Bank though has claimed the misappropriation of such amount of Rs.73,500/-, yet has failed to produce the evidence about the total transaction of the dated 25.7.1995.

17. The record shows that the Ld. Labour Court has thoroughly considered the evidence as produced on record and rightly concluded that the evidence as produced on record is not sufficient to prove the misappropriation of the amount by the complainant and thus the misconduct on the part of complainant”.

It would thus be apparent, that the contention, that there was a misappropriation committed by the applicant, has been negated by the learned Labour Court as well as by the learned Industrial Court. It is a settled position of law that the findings and judgments rendered by a Civil Court is binding upon a Criminal Court and in case of conflicting findings of Civil and Criminal Courts, the findings recorded by a Civil Court prevails [See **V.M.Shah vrs. State of Maharashtra, (1995) 5 SCC 767**]. This proposition would be equally applicable to the finding rendered by the learned Labour Court as confirmed by the learned Industrial Court, for the reason that the nature of proceedings in both the forums is the same i.e. of an adversarial nature of determining the rights/entitlement of the parties to the lis, though in the Labour Court, the determination is within the four corners of the rights conferred upon the employees and would be limited in that sense.

8] In the instant matter, it is not in dispute that the same witnesses who are examined in the domestic enquiry and whose evidence has been disbelieved by the learned Labour Court have also been examined before the learned Magistrate. Though as contended by Mr. Doifode, learned APP, that the judgment of the learned Labour Court as well as that of the learned Industrial Court were not brought to the notice of the Courts below, that however, would not preclude this Court

from taking into consideration the findings recorded therein, based upon the evidence of the same witnesses and the same set of facts, for the purpose of determination of the present revision. The issue is no longer *res integra*, but is covered by the judgment of the Hon'ble Apex court in the case of **PS.Rajya vrs. State of Bihar, (1996) 9 SCC 1** and **V.M.Shah vrs. State of Maharashtra and another, (1995) 5 SCC 767**, in which the criminal trial based upon the same set of facts upon which the Departmental Enquiry had exonerated the employee, was not permitted to be continued. Since based upon the same set of facts and the same witnesses, as has been considered by the learned Labour Court as well as the Industrial Court, a finding has been rendered that there was no misappropriation, in my considered opinion, the impugned judgments which are based upon same set of facts and same witnesses, which hold otherwise, in ignorance of the findings and judgments rendered by the learned Labour Court as well as the Industrial Court, cannot be sustained and for this reason alone, they are quashed and set aside.

9] In the result, the application is allowed. The judgment dated 1/2/2010 passed by the learned J.M.F.C. Court No.2 Mangrulpur in Regular Criminal Case No.42/2005 convicting the applicant for the offence under section 408 of IPC as well as the judgment in Criminal Appeal No.103/2013 dated 22/2/2022 rendered by the learned Sessions Court,

Mangrulpir are hereby quashed and set aside and the applicant stands acquitted of the offence under Section 408 of IPC. No costs.

JUDGE

Rvjalit