2024:BHC-AUG:22276

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO. 21 OF 2006

Municipal Council, Beed,
Through its Chief Officer. ..Petitioner

VERSUS

1. The State of Maharashtra
Through Police Inspector
Police Station, Beed,
Tq. & Dist. Beed.

2. Shankar S/o Shivling Swami,
Age – 61 years, Occ – Nil,
R/o Burudgalli, Khandare's House,
Beed, Dist. Beed. ..Respondents

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Advocate for Petitioner : Ms. Divya P. Khandelwal h/f Mr. S.S. Thombre
Advocat for Respondent No.2 : Mrs. Meenal Siddhesh Deshmukh (Khapre)
APP for Respondent/State : Ms. M.N. Ghanekar

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CORAM : S.G. MEHARE, J.

RESERVED ON : AUGUST 13, 2024

PRONOUNCED ON : SEPTEMBER 23, 2024

JUDGMENT :-

1. The petitioner/Municipal Council has impugned the order of acquittal passed by the learned Chief Judicial Magistrate, Beed in Regular Criminal Case No.170 of 1994 dated 12.05.2005.

2. The facts of the case in brief were that the respondent was the employee of the complainant. He was a cashier since 1982. His duty was to receive cash from octroi, legal taxes and from other

sections of the Municipal Council and maintain the accounts properly. However, in a audit of the Municipal Council from 01.04.1998 to 31.03.1999, it was transpired that the respondent/accused withdrew the money by cheque but did not enter in the cash book and shown the expenditures. He misappropriated Rs. 5,00,566.33 paisa. A notice was issued to the respondent/accused. One month time was granted to settle the accounts, but he could not. Therefore, a report was lodged against him. He faced the trial for the offence punishable under Sections 409, 420 and 477-A of the Indian Penal Code. After full fledged trial and appreciating the evidence, the learned Trial Court held that the prosecution has failed to prove either of the charges against him.

3. Learned counsel for the petitioner has vehemently argued that the documentary evidence was before the learned Magistrate. It was a case mostly rest on the documentary evidence. All account books produced before the learned Magistrate were proved. The respondent/accused never denied that he was not responsible to maintain the accounts, cash book. It has been further argued that on a solitary admission of the accountant, the learned Magistrate disbelieved the prosecution case. The learned Magistrate ought to have appreciated the evidence as a whole and not pick and choose. A huge cash was found in the cupboard of the accused for which he had no explanation. He has played a fraud with the local body and

misappropriated the huge amount. The complainant suffered the loss to the local body. Therefore, revision application is liable to be allowed.

4. Per contra, learned counsel for the accused has vehemently argued that the petitioner failed to establish that the acts of the accused were criminal acts and he had misappropriated the amount. The learned Magistrate has correctly appreciated the evidence. Since the prosecution failed to prove the charges, the Trial Court has correctly held that the respondent/accused is not liable to be convicted. At the most, it may be inferred that it was improper accounting. She relied on the case of *Jaikrishnadas Manohardas Desai and another Vs. State of Bombay, AIR 1960 SC 889*. She further argued that if retrial is directed in exercise of the revisional power of the High Court, the evidence already recorded at the initial trial cannot throw another light. If the evidence available on record is examined, there would be no change in the evidence produced to establish the crime against the accused. Therefore, no purpose would be served directing the retrial. To bolster her arguments, she also relied on the case of *Satyajit Baneerjee and others Vs. State of West Bengal and others, AIR 2005 SC 4161(1)*. She also filed the notes of written arguments.

5. The Hon'ble Supreme Court in the case of Jaikrishnadas (cited supra) has held that to establish a charge of criminal breach of

trust, the prosecution is not obliged to prove the precise mode of conversion, misappropriation or misapplication by the accused of the property entrusted to him or over which he has dominion. The principal ingredient of the offence being dishonest misappropriation or conversion which may not ordinarily be a matter of direct proof, entrustment of property and failure in breach of an obligation to account for the property entrusted, if proved, may in the light of other circumstances, justifiably lead to an inference of dishonest misappropriation or conversion. Conviction of a person for the offence of criminal breach of trust may not, in all cases, be founded merely on his failure to account for the property entrusted to him, or over which he has dominion, even when a duty to account is imposed upon him, but where he is unable to account or renders an explanation for his failure to account which is untrue, an inference of misappropriation with dishonest intent may readily be made.

6. The learned Chief Judicial Magistrate recorded the reasoning after appreciating the evidence of PW-2, Auditor of the Municipal Council that no documentary evidence has been brought on record to establish that the accused encashed the cheques and received the amount. He disbelieved the Auditor/PW-2 because he did not personally audited the accounts of any month of that year and his sub-ordinate had audited the accounts as per his directions. His evidence does not reflect that his report reflects the cheques were

encashed and entered in the account book. On the subsequent dates nor his sub-ordinate auditors have audited the accounts on that line. It was evident that due to oversight entry of the receipt of the cash amount was not taken in the credit column. There was cogent and reliable evidence that the applicant did not misappropriated the amount and entries were not taken in the cash book due to mistake.

7. Misappropriation of money and mistake in maintaining the accounts are distinct subjects. Section 409 of the Indian Penal Code speaks about criminal breach of trust by a public servant, or by banker, merchant or agent. It provides that whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with [imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

8. In order to prove the offence of criminal breach of trust which attracts Section 409 of the Indian Penal Code, the prosecution must prove that the accused in any manner, entrusted with the property, dishonestly misappropriated the property, commits criminal breach of trust in respect of that property. The ingredients of the offence of criminal breach of trust are : (1) Entrusting any person

with property, or with any dominion over property. (2) The person entrusted (a) dishonestly misappropriating or converting to his own use that property; or (b) dishonestly using or disposing of that property or willfully suffering any other person so as to do in violation (i) of any direction of law prescribing the mode in which such trust is to be discharged; or (ii) of any legal contract made touching the discharge of trust. The basic requirement to bring home the accusations under S. 405 is also needs to prove whether the accused was actuated by the dishonest intention or misappropriated it or converted it to his own use to the detriment of the persons who entrusted such property.

9. The learned Chief Judicial Magistrate assigned the reasons that the accused did not maintain correct account for the reasons admitted by the prosecution witnesses i.e. heavy workload, incompetency of accused and work pressure. So many times the accused shown the excess amount in the account than the cash in hand. Rs.3,44,654/- were found in his cupboard for which the prosecution did not explain. Under these circumstances, he raised a reasonable doubt about proof of dishonest misappropriation by the accused.

10. It appears from the reasons of the learned Chief Judicial Magistrate that the accused did not misappropriated the amount with dishonest intention and converted it to his own use to the detriment

of his employer who had entrusted him the duty of receiving the cash. The papers produced before the Court provided by the prosecution witnesses with relevant explanation by the accused and admissions of the material evidence, the Court is of the view that the learned Chief Judicial Magistrate did not commit error of law in passing the impugned judgment of acquittal. There appears no sufficient material to establish the dishonest intention of the accused and misappropriation of the funds. There is no substance in the revision application. Hence, the following order :

ORDER

(i) The criminal revision application stands dismissed.

(ii) No order as to costs.

(iii) Record and proceeding be returned to the learned Chief Judicial Magistrate, Beed.

(iv) Rule stands discharged.

(S.G. MEHARE, J.)

Mujaheed//