



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

**CRIMINAL REVISION APPLICATION NO.203 OF 2007**

Ravindra s/o Dnyanoba Salunke,  
Age 33 years, Occu. Nil,  
R/o Jawahar Colony, Tuljapur,  
Tq. Tuljapur, Dist. Osmanabad.

... **Applicant.**

Versus

The State of Maharashtra.

... **Respondent.**

...  
Advocate for Applicant : Ms. Sheetal V. Salunke.  
APP for Respondent-State : Mr. G. O. Wattamwar.  
...

**CORAM : S. G. MEHARE, J.**

**RESERVED ON : 30.09.2024**

**PRONOUNCED ON : 22.10.2024**

**JUDGMENT :-**

1. Heard the learned counsel for the applicant and learned APP for the respondent-State.

2. The applicant has preferred the revision against the judgments and orders of the learned Chief Judicial Magistrate, Osmanabad passed in RCC.No.450 of 1996, dated 18.02.2002 and the judgment and order of the learned Additional Sessions Judge, Osmanabad passed in Appeal No.5 of 2002, dated 21.08.2007.

3. The applicant was convicted for the offence punishable under Section 409 of the IPC. The Trial Court sentencing to suffer R.I. for seven (7) years and the fine of Rs.15,000/- and in default to undergo R.I. for one year. However, the learned First Appellate Court allowed the appeal partly and reduced the sentence to three years. Against those orders, the applicant is before this Court.

4. The learned counsel for the applicant has vehemently argued that the prosecution did not prove the bank entry of payment of Rs.75,000/- (Rupees Seventy five Thousand) and did not produce the deposit receipt Rs.16,685/- (Rupees Sixteen Thousand Six Hundred Eighty five) with the Bank deliberately.

5. The prosecution case in brief was that the applicant was undisputedly the Postman. He has the duty to withdraw and deposit the money from the post office on the directions of the Post Master. On 13.09.1996, the complainant directed him to withdraw Rs.75,000/- (Rupees Seventy Five Thousand) from the State Bank of Hyderabad. For withdrawal, the voucher was given to him. The cash of Rs.16,685/- (Rupees Sixteen Thousand Six Hundred Eighty five) was entrusted to him for depositing in the bank. Rs.800/- (Rupees Eight hundred) were

handed over to him for paying the money orders to the recipients. Twenty five (25) letters were also handed over to him for distribution to the addressee. Since he did not return with the cash of Rs.75,000/- (Rupees Seventy five Thousand) and vouchers for depositing the money and paying the money orders, the inquiry was made and lastly, the report was lodged. He had siphoned the Government money. The prosecution has collected the evidence related to the alleged offence and proved it. The applicant/accused had a defence that on the day of the incident, he was kidnapped by some unknown persons. He did not use money for his own. He was not responsible for the alleged offence. However, his defence was discarded.

6. Learned counsel for the applicant has vehemently argued that both the Courts did not consider the facts that the vouchers on the basis of which Rs.75,000/- (Rupees Seventy Five Thousand) were already paid to him by the witness Sudhir Deshpande were not produced on record. Both Courts unnecessarily shifted the burden on the applicant to explain the recovery of Rs.54,000/- (Rupees Fifty Four Thousand) from his house. Both Courts erred in law relying on the estimates of the goldsmith as proof of gold purchase. The vouchers of the Bank of Hyderabad and bank entries of payment of the

amounts were also not produced. He had applied to produce the bank vouchers and called the witnesses from the Accountant General Office. It was allowed but witnesses did not appear. Therefore, his right to prove the defence has been affected. She would argue that the offence alleged offence against the applicant was not proved beyond reasonable doubt. Hence, criminal revision may be allowed.

7. Per contra, learned APP for the respondent/State supporting the impugned judgments and orders vehemently argued that immediately after the incident, the applicant had purchased the golden ornaments, undergarments, shoes etc. A huge amount of Rs.54,080/- (Rupees Fifty Four Thousand eighty) was also seized from his home which he did not explain. It corroborates the allegations levelled against him. He also argued that both Courts discarded the imaginary and concocted defence that on the day of the incident, he was kidnapped. The prosecution has proved the case beyond reasonable doubt by producing irrelevant documents. The post incident conduct of the applicant was correctly appreciated. He had no defence that he never withdrew the amount from the bank.

8. Perused both judgments and orders. It appears that both Courts have elaborately discussed the material placed on record. The opportunity was granted to the accused to rebut the evidence. He also examined bank authorities. The prosecution has established beyond reasonable doubt that the applicant was a public servant. He was in a capacity to entrust with the money and he dishonestly misappropriated the money of the Government. The prosecution had proved the facts that he was entrusted with the withdrawal voucher and the cash as mentioned in the complaint. The post incident conduct of the applicant was also established. The estimate for purchasing the gold and hard cash of Rs.54,080/- (Rupees Fifty Four Thousand eighty) was also recovered from his house. Both Courts have appreciated the evidence correctly. There appear no *prima facie* illegalities in appreciating the evidence and holding the accused guilty.

9. The arguments as regards non-granting opportunity to call the witness from A. G. appear to have no weightage for the reason that the applicant had proceeded with the matter. The Court assisted him in securing the presence of the witnesses, but he did not act upon and produce the witnesses. Besides, the documents placed on record and not impeaching the

prosecution evidence were sufficient to hold him guilty. The documents produced on record were sufficient to establish the nexus of the applicant with the crime. It is a general practice in India to purchase the gold on the receipt having nomenclature as “estimate”. Since the huge amount of Rs.75,000/- (Rupees Seventy-five Thousand) was withdrawn and another amount of Rs.16,685/- (Rupees Sixteen Thousand and Six Hundred Eighty-five) and Rs.800/- (Rupees Eight Hundred) was handed over to the applicant, he did not discharge his duties and misappropriated it for his own. The subsequent conduct of the applicant purchasing gold, clothes and shoes was correctly appreciated as the circumstance to prove the charges against the applicant. It was established against the applicant that the voucher for Rs.75,000/- (Rupees Seventy -five Thousand) and cash of Rs.16,685/- (Rupees Sixteen Thousand Six Hundred Eighty -five) and Rs.800/- (Rupees Eight Hundred) was entrusted to him for depositing it in the bank and paying the money orders to the recipients have been established beyond a reasonable doubt. Not only this, his handwriting was also proven. In the circumstances, there appears no substance in the argument of the learned counsel for the applicant that the bank vouchers and bank entries of the payment were not proved, is unfounded. At the cost of

repetition, it is held that after having gone through the impugned judgments and orders, there appears no error on the face of the record. Therefore, the revision application is devoid of merit. Since the offence under Section 409 is a moral turpitude, the accused cannot be granted the benefit of the Probation of Offenders Act. However, the applicant has been facing trial since 1996, so he may be at an advanced age. So, again a liberal view will be taken to reduce his sentence, which may be proportionate to the crime. Hence, the following order:

### **ORDER**

- (i) Criminal Revision Application is partly allowed.
- (ii) Both judgments and orders impugned before the Court sentencing the applicant to suffer R.I. and the fine of Rs.15,000/- are maintained. However, the sentence to suffer R.I. for three years is reduced to eighteen months.
- (iii) Set off under Section 428 of the Cr.P.C. be granted to the applicant.
- (iv) The applicant should surrender to the learned Trial Court on 12.11.2024 to undergo the sentence.

- (v) The surety and bail bonds stand cancelled.
- (vi) The surety stands discharged.
- (vii) R and P be returned to the learned Trial Court.
- (viii) Rule made partly absolute.

**(S. G. MEHARE, J.)**

...

vmk/-