

(1993) 09 SC CK 0068

In the Supreme Court Of India

Case No : Criminal Appeal No. 508 of 1983

Inder Sain Jain

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 07-09-1993

Acts Referred:

Penal Code, 1860 (IPC) — Section 409, 477

Citation : AIR 1994 SC 1065 : (1994) CriLJ 1224

Hon'ble Judges : K. Jayachandra Reddy, J;G. N. Ray, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This appeal is directed against the judgment of the Punjab and Haryana High Court in an appeal filed by the State of Punjab questioning the acquittal of the appellant passed by the Additional Sessions Judge, Jullundur. The appellant before us was working as an Assistant Accountant with the Company, namely, M/s. Crompton Greaves Limited (for short "the company") in its Branch Office at Jullundur during the relevant period. The said Company deals in the supply and sale of foreign products such as transformers, switch gears etc. The appellant, being Assistant Accountant, was in overall in-charge of the Accounts Department and was responsible for credit control. He also used to maintain all the account books required under the Companies Act. The procedure for supply of goods was that when customers and dealers placed orders, challans of which were to be prepared by the Sales Department and they were sent to the Assistant Accountant for the purpose of credit control. He was to ensure that in case the challans were against payment, the payment had been received and recorded in the books of account. Otherwise, he was to ensure that documents were sent through bank as per the credit policy of the Company. Admittedly, the challans were initialled by the appellant. The same were then sent to the godown for despatch of the goods to the transport company. The record of the goods which were received from the Head Office or from other suppliers was maintained by

the godown people while the record of sales was maintained by the Assistant Accountant. He was to decide finally for effecting despatches of the supply of the goods to the customers and dealers. The payments were received through bank in cash from the customers and dealers. Some time cash also used to be collected personally from the customers by some representatives of the Company or the Assistant Accountant.

2. M/s. S. B. Saini Brothers, Ludhiana (for short 'the Firm') was one of the dealers of the Company. They used to make regular purchases of all kinds of products of the Company and some times on credit. The Company had been sending an account to the Firm. During the process of reconciliation of the Company's account with the Firm, it was revealed that a number of recoveries had been made by the appellant on behalf of the Company and the amounts so collected by him were not credited in the account of the said Firm maintained with the Company. P.W. 3 conducted an enquiry and sent a complaint to the Superintendent of Police for registration of a case against the appellant. ' On its basis a F.I.R. was registered and the investigation commenced. P.W. 17, the investigating officer, collected some admitted signatures of the appellant from certain Banks and he also obtained his specimen signatures and also collected the disputed receipts from the Firm and they were all sent to the Handwriting Expert. The expert came to the conclusion that the person who had written the admitted and specimen signatures also wrote the disputed signatures on the various receipts. As a result of this investigation, a charge-sheet was laid that the appellant committed a criminal breach of trust to the tune of Rs. 1,41,910.50 during the period between 19-8-1970 and 10-4-1971 and also fabricated false accounts. The necessary charges were framed and several witnesses were examined on behalf of the prosecution. The appellant denied the allegation and pleaded that the Excise and Taxation Department raided the premises of the Company at Jullundur on 10-6-1971 and seized goods and that the appellant was made responsible as relation between him and the Company became strained. In his defence, he examined nine witnesses. Most of them were of formal nature. After considering the evidence adduced by the prosecution, the learned First Class Magistrate, Jullundur, convicted the appellant under Sections 409 and 477-A, I.P.C. and sentenced him to undergo 1 1/2 years' R.I. u/s 409, I.P.C. and to pay a fine of Rs. 4,000/- in default of payment of fine to undergo 9 months' R.I. and 1 1/2 years' R.I. u/s 477-A, I.P.C. The sentences were directed to run concurrently. These convictions were challenged by the appellant before the Additional Sessions Judge, Jullundur by way of filing an appeal. The learned Sessions Judge relying on the contents of the plaint and the written statement in a suit that was filed by the Company against the Firm reached the conclusion that a reasonable doubt had arisen regarding the culpability of the appellant and accordingly acquitted him. The said order of acquittal was challenged before the High Court and by the impugned order, the High Court held that the learned Additional Sessions Judge committed an error in relying on the contents of the pleadings for discarding the evidence of prosecution witnesses and accordingly,

allowed the appeal and restored the order of conviction passed by the learned First Class Magistrate. Questioning the same, the present appeal is filed.

3. The learned Counsel for the appellant submits that for fixing the liability of the appellant, the Company has to firmly establish that the appellant has committed the breach of trust and fabricated the accounts and in view of the averments in the pleadings in the suit between the Company and the Firm, genuine doubt has arisen about the involvement of the appellant about which the learned Sessions Judge gave the benefit of doubt and the High Court erred in reversing the same particularly when two views are possible.

4. It is not in dispute that the appellant was working as an Assistant Accountant during the relevant period. The case mainly rested on the documentary evidence consisting of the receipts and the entries. Most of them were not questioned. Ex. P-1 to P-31 are the disputed receipts as per the Firm and Ex. P-1 and P-23 are receipts in other case. The Handwriting Expert's opinion establishes that the appellant signed on some of them and also made entries.

5. One of the contentions raised on behalf of the appellant is that neither the Company has produced the copies of bills and vouchers etc. to show that the goods were supplied to the said Firm nor the Firm has produced any thing about the receipt of the goods on credit. The High Court has considered this aspect and has rightly held that non-production of these documents is not at all relevant for the purpose of the criminal case. However, it is noticed that the Firm as well as the Company have produced the copies of the relevant accounts which are important. The evidence of P.W. 4 is important in this context.

6. In any event, there is voluminous evidence that the appellant was responsible for the accounts and for the amounts received which were entrusted to him.

7. The learned Sessions Judge while setting aside the order of conviction, mainly relying on the averments in the pleadings in the civil suit has observed categorically that the prosecution laid the good evidence to prove the signatures on the receipts made by the appellant in token of the payments received by him. Having said so, the learned Sessions Judge proceeded to examine the contents of the pleadings, namely, the plaint filed by the Company and the written statement filed by the Firm. Then he relied on the evidence of two of the defence witnesses who spoke about the contents of the pleadings. It must be noted that the learned Sessions Judge tried to take these averments as admissions and the same would throw a doubt about the amounts having been received by the appellant. An observation was made that the Firm might have dishonestly managed to take these receipts from the appellant. We are at a loss to know that even if that is true the appellant cannot escape his responsibility when once it is admitted that he was responsible for maintaining the accounts and also accountable to the amounts received. As a matter of fact, averments in the plaint as spoken by D.W. 8 who was examined and who was an office bearer of the Company is to the effect that the plaintiff, namely, the Company in all the circumstances contends

that the possibility cannot be ruled out i.e. that defendant No. 1 did not make payment to defendant No. 2 and the said receipts had been procured by defendant No. 1 in unlawful manner. Defendant No. 2 is no other than the appellant. This averment by itself does not conclude that the appellant who was also one of the defendants in the suit, was not at all responsible.

8. For the purpose of the criminal case, what the facts establish is that the appellant was entrusted with the receipts and that the amounts received from the dealers had to be credited and if they are not properly accounted for, then responsibility squarely was on him. To that extent, the prosecution, in the instant case, has established the entrustment as well as making false accounts. As to what happened between him and the Firm would not absolve him from the liability. For all the above reasons, we are of the view that the High Court has rightly held that the learned Sessions Judge was wrong in acquitting the appellant by reversing the order of conviction passed by the trial Court. There are no two possible views in this case.

9. The occurrence is said to have taken place in the year 1970 and there is no information as to what happened to the said civil suit. At any rate, we are satisfied that the prosecution has established the guilt of the appellant. However, taking the time factor and the age of the appellant into consideration, we reduce the sentence to six months' R.I. under each count. The sentence of fine with default clause is, however, confirmed. The sentences shall run concurrently. Subject to the above modification of the sentence, the appeal is dismissed.