
(2014) 08 BOM CK 0190

In the Bombay High Court

Case No : Criminal Revision Application No. 20 of 1997

Parashram Shankar Khalkar

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 21-08-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 408, 477-A

Citation : (2015) ALLMR(Cri) 733

Hon'ble Judges : M.L. Tahaliyani, J

Bench : Single Bench

Advocate : V.B. Konde-Deshmukh, A.P.P, Advocates for the Respondent

Judgement

M.L. Tahaliyani, J.—This Criminal Revision Application is filed against the judgment and order passed by the Additional Sessions Judge, Nasik, on 9 January 1997 in Criminal Appeal No. 75 of 1993, dismissing the Appeal of the Applicant. The Appeal had arisen out of the judgment of the learned Chief Judicial Magistrate, Nasik passed on 3 November, 1993. The learned Chief Judicial Magistrate convicted the Applicant for the offences punishable under sections 408 and 477-A of the Indian Penal Code.

2. The learned Additional Sessions Judge has dismissed the Appeal and had maintained the conviction and sentence of the Applicant.

3. The prosecution case was mainly based upon the evidence of an auditor.

4. The Applicant was working as a Secretary of Bhendali Vividh Karyakari Seva Sahakari Society. It is alleged that he did not maintain the accounts of the society properly and misappropriated the amount collected by him. Some of the amounts were shown spent but vouchers were not found during the course of audit. The total sum alleged to be misappropriated by the Applicant was Rs. 15,565.21/-. The period during which misappropriation had occurred was from 1 July 1984 to 17 April, 1986.

5. I have gone through both the judgments and the evidence of the auditor. The auditor in his evidence has stated that false entries had been made in the books of accounts and that some of the entries were not supported by the requisite vouchers. The auditor stated that all these entries were in hand writing of the Applicant. The case of the Applicant before the trial court was that one Jorvekar was working as a Clerk in the said society and he was maintaining the entire accounts books. It was his case that the entries in question were made by said Jorvekar.

6. The issue before the trial court was, in fact, as to whether the prosecution has proved that the entries in question were made by the Applicant. The learned trial court and the appellate court, both have relied upon the evidence of PW-1-Auditor. It is to be noted that the auditor was a government servant, stationed at Niphad. He was not a regular employee of the said society. There is no evidence on record to show that he had an occasion to see the Applicant signing certain documents. There is no evidence that he had seen the Applicant, signing on so many occasions on various documents, which can make him competent to identify the signature of the Applicant. The investigating officer, in fact, could have sent specimen signatures of the applicant as also the hand writings of the Applicant with documents in question to the document examiner or hand writing expert so to ascertain role of the Applicant. As such in the absence of an opinion of a hand writing expert and in the absence of a reliable evidence to come to the conclusion that the entries in question were made by the Applicant, it was unsafe to convict Applicant for the offence of misappropriation and falsification of the accounts.

7. In the result, the Revision Application is allowed. The judgment and order passed by the learned Chief Judicial Magistrate and the learned Additional Sessions Judge are set aside.

8. The Applicant is acquitted of the offence punishable under sections 408 and 477-A of the I.P.C. His bail bond stands cancelled. The Revision Application stands disposed of accordingly.