
(2013) 04 MP CK 0099

In the Madhya Pradesh High Court

Case No : Criminal Revision No. 2093/2010

Shriram Shanker Toley

APPELLANT

Vs

The State of Madhya Pradesh

RESPONDENT

Date of Decision : 15-04-2013

Acts Referred:

Citation : (2013) 04 MP CK 0099

Hon'ble Judges : N.K. Gupta, J

Bench : Single Bench

Judgement

N.K. Gupta, J.—Heard on the question of admission. This Criminal Revision u/s 397/401 of Cr.P.C. has been filed by the applicant being aggrieved by the order dated 22.9.2010 passed by the learned First Additional Sessions Judge, Jabalpur in Special Case No. 325/2010, whereby the charges of offence u/s 409 read with Section 120-B of IPC were framed against the applicant.

2. The prosecution's case, in short, is that the applicant was the Chief Manager of the State Bank of India, Adhartal Branch, Jabalpur in the relevant time. In his tenure there were 80 cases were found in which improper loans were given with the knowledge that such amount will not be recovered. On complaint the police investigated the matter and filed a charge sheet.

3. The learned counsel for the applicant has submitted that the applicant was the Chief Manager whereas it was for the Branch Manager to sanction the loan, and therefore the applicant was not at all concerned with the transaction done by the Branch Manager Vinod Garg and others. He was the controller to look the matters formally, and therefore he could not be held liable for the overt-acts done by the Branch Manager and other employees of the bank. It is also submitted that no sanction u/s 197 of Cr.P.C. is taken against the applicant. The learned Senior Counsel for the applicant has placed his reliance upon the judgment of Hon'ble the Apex Court in the case of State of Madhya Pradesh Vs. Sheetla Sahai and Others, , and therefore it is prayed that the impugned order be set aside.

4. On the other hand, the learned counsel for the State has submitted that to give a loan of a particular candidate, so many illegalities were done by the staff of the bank, for example amount of pay slip was increased to show that the concerned consumer was competent to repay the loan. Similarly, the age of superannuation was changed to show that he had sufficient time to repay the loan. There were 80 cases of similar nature were found in which loan was granted to incompetent person, and therefore lose of more than Rs. 85 lakhs was caused to the bank. Loan is to be passed by the Chief Manager of the bank and the papers are to be prepared by the sub-ordinates. The Chief Manager is not expected to work as a post office, but it was for time to verify the genuineness of the document and thereafter to sanction the loan. Without the connivance of the applicant, no such loan could be given to incompetent consumer, and therefore it is apparent that due to conspiracy done by the applicant and other co-accused persons, the amount entrusted to the applicant was disbursed in such a manner that it cannot be recovered. It is also submitted that in the present case, the judgment of Hon''ble the Apex Court in the case of "Raghunath Anant Gowilkar Vs. State of Maharashtra", [(2008) 1 SCC 307] shall be applicable, and therefore there was no need to take any prosecution sanction u/s 197 of Cr.P.C.

5. After considering the submissions made by the learned counsel for the parties and looking to the facts and circumstances of the case, prima facie it is apparent that the applicant was the Chief Manager and without his connivance no loan could be sanctioned to the incompetent person. It was for him to point out the irregularities and illegalities made by his subordinates and to disallow such application, and therefore prima facie connivance of the applicant is visible with co-accused persons, and therefore the trial Court has rightly framed the charges u/s 409 read with Section 120B of IPC.

6. So far as the sanction u/s 197 of Cr.P.C. is concerned, an official can get such a right if he does duty as a public servant. In the case of Sheetla Sahai (supra) Hon''ble the Apex Court has emphasized the word "official duty" and gave some tests to ascertain of such duty. If such tests are applied, then it would be apparent that the applicant was not doing any official duty in making some overt-acts of criminal breach of trust with his own institution. Under such circumstances, in the present case, the dictum of Hon''ble the Apex Court in the case of Raghunath Anant Gowilkar (supra) shall be applicable. Therefore, looking to the crime committed by the applicant, he cannot get any advantage of provisions of Section 197 of Cr.P.C. The present case could be prosecuted without getting any sanction u/s 197 of Cr.P.C.

7. On the basis of aforesaid discussion, no illegality or perversity is visible in the impugned order. Therefore the present revision cannot be accepted. Consequently, it is hereby dismissed at motion stage. A copy of this order be sent to the trial Court for information.