

(2020) 03 MP CK 0196

In the Madhya Pradesh High Court

Case No : Miscellaneous Criminal Case No. 40971 Of 2018

State of Madhya Pradesh

APPELLANT

Vs

Nirbhay Singh & Another

RESPONDENT

Date of Decision : 06-03-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 378(3)

Indian Penal Code, 1860 — Section 409

Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 — Section 92

Citation : (2020) 03 MP CK 0196

Hon'ble Judges : Vandana Kasrekar, J; Shailendra Shukla, J

Bench : Division Bench

Advocate : L.S. Chandiramani, Deepak Rawal

Final Decision : Dismissed

Judgement

1 This order Section 378(3) seeks to dispose of application filed under Cr.P.C. and application for condonation of delay.

2 Submissions were made on IA No. 7633/2018 which is an application for condonation of delay. There is a delay of 28 days in preferring this application for leave to appeal filed under Section 378(3) of Cr.P.C. .

3/ Considering the reasons assigned and after hearing the learned counsel for parties the application stands allowed and delay in preferring this M.Cr.c. is condoned.

4/ The respondents were acquitted from charge framed under Section 409 of IPC and the particulars of charge under Section 409 of IPC was that both of them holding position of Sarpanch (accused Nirbhay Singh) and Panchayat Secretary (accused Ramesh) and thus the public servants committed breach of trust in the year 2012-13 and in the years 2013-14 by not getting the work done in various schemes equivalent to the amount allocated and withdrawn for the same purpose. Specific particulars were as follows:

1/ From April 2012 to March 2014, in two financial years total Rs. 16,80,956/- was received from bank account of Panchayat in respect of MANREGA and Panch Parmeshwar Scheme and out of this amount the respondents withdrew the amount of Rs. 15,13,137/- and out of this amount following breach was committed by them-

i) In Panch Parmeshwar Scheme of 2012-13 they showed expenses incurred of Rs. 2.13 lakhs for constructing the road near Hanuman Mandir Nullah but no such work was carried out by them.

ii) In the year 2012-13 road work from house of Kashiram to Manohar was shown to have done for a sum of Rs. 3.67 lakhs but it was found that the work which was executed was for value of Rs. 76,391/- only;

iii) In the year 2013-14 in village Dhanora expenses of road work from Ram Mandir square to the house of Shobharam was shown to have been done at the cost of Rs. 3.67 lakhs whereas on valuation it was found that the work done was only for Rs. 2,042,72/-.

iv) At Janpad level Rs. 1,10,000/- were withdrawn but no work in the village Panchayat Mahudia and village Emali was shown to have been done. Thus in all there was a defalcation of Rs. 13,53,110/- and breach of trust of all three counts was committed by them.

5/ Trial court i.e. Ist ASJ Dewas in ST No. 408/2015 vide judgment dated 31/5/2018 after recording evidence has acquitted the accused on following grounds:

I) That the committee which was constituted for looking into irregularities has given its report but the Panchanama which was prepared by the committee was not produced before the Court;

ii) Statements of local villagers could not recorded;

iii) The accused were not given notice under Section 92 of Panchayat Raj Adhiniyam.

iv) Allegedly it was not proved that material used in road work was substandard material because the same was not subjected to laboratory test.

v) The payment was made in respect of work at village Mahudia after recording satisfaction as per Ex. P-48 and Ex. P-50.

vi) The witness Geeta Vijaywargiya PW-4 who was responsible for inspecting and giving completion certificate has admitted that she had given certificate after recording her satisfaction and had there being any non performance on the part of accused she would have recorded the factum of non performance.

Vii) That the applicants had offered that the work which were carried out during their tenure be looked into by any other Engineer for affirming as to whether the work was substandard or not but such offer was not accepted by the authorities.

Viii) The relevant and material witnesses were not found to be examined. Thus, the prosecution could not prove its case against the respondents beyond reasonable doubt.

6/ In the application filed under Section 378(3) Cr.P.C. it has been mentioned that a cheque bearing No. 130444 amounting to Rs. 1,53,000/- was given to Chand Bhai by the respondents in respect of purchase of buffalo and that buffalo was purchased in personal capacity but the cheque which was given pertained to village panchayat account. The rest of the conclusions arrived at by the trial court have also been controverted in the application under Section 378(3) Cr.P.c.

7 Submissions were considered. The cheque No. 130444 amounting to Rs. 1,53,000/- and the alleged breach committed in this respect is not one of the incidences of criminal breach of trust committed by respondents as this incidence of breach of trust has not been depicted in the charge framed under Section 409 IPC by the trial court. Hence the defalcation in respect of Rs. 1,53,000/- having not found to be within the scope of charge framed under Section 409 of IPC, no interference is called for by this Court.

8 As far as the finding in respect of other aspects of defalcation are concerned, the prosecution has not shown as to how such conclusions drawn by trial court are not proper.

9 Consequently no case is made out for interference under Section 378(3) Cr.P.C. and leave to appeal against acquittal can not be granted in this matter.

Consequently, the application filed under Section 378(3) Cr.P.C. stands rejected.