(2015) 08 BOM CK 0011

In the Bombay High Court

Case No : Criminal Appeal Nos. 660, 666, 667, 668, 669 of 1994 and Criminal Revision Application No. 26 of 1995

State of Maharashtra and Others APPELLANT

Vs

Surendrakumar Mohanlal Malhotra and Others RESPONDENT

Date of Decision : 06-08-2015

Acts Referred:
Penal Code, 1860 (IPC) — Section 409, 467, 471, 477-A

Citation : (2015) 08 BOM CK 0011

Hon'ble Judges : V.K. Tahilramani, J;Shalini Phansalkar Joshi, J

Bench : Division Bench

Advocate : Rajesh More, A.P.P., for the Appellant; Nitin P. Deshpande, Advocates for the Respondent

Judgement

Dr. Shalini Phansalkar Joshi, J—All these five Appeals and Criminal Revision Application are directed against the Judgment of acquittal recorded on 7th September, 1994 by the Chief Judicial Magistrate, Pune. By the impugned Judgment, the Respondent is acquitted in five Criminal Cases bearing Nos. 49/86 to 53/86 for the offences punishable under Sections 409, 477-A, 471 and 467 of the IPC. Being aggrieved thereby, along with State, original First Informant has also filed Criminal Revision Application challenging acquittal of the Respondent.

2. The brief facts leading to the prosecution case are as follows :-

Respondent/Accused, at the relevant time, was in the service of Central Government and employed as ''Draftsman'' in R & DR (E) at Dighi in a Military Concern. The said Military Concern was running its canteen. Some time in the year 1976, the Accused was assigned additional duty by appointing him as ''Canteen Manager'' to look after the affairs of the canteen. Besides discharging his duty as a ''Draftsman'' from 9 am to 1 pm, Accused used to look after the canteen as its ''Manager'' from 1:30 pm to 5 pm. As per prosecution case, in his capacity as a ''Canteen Manager'', Accused was entrusted with the stock of articles kept in the canteen for retail sale. He was also supposed to look after all the cash transactions and the work of writing Cash Book, updating accounts of sale proceeds etc. While discharging this additional duty during the period commencing from 1976 to 1981, it is alleged that, the Accused has committed misappropriation of funds, which were entrusted to him. From the period starting from 25/08/1980 to 22/12/1981, the Accused is alleged to have misappropriated total sum of Rs. 1,23,848/-. In addition to this, Accused is also alleged to have falsified accounts in respect of Sale Receipt bearing No. 27792. The original Sale Receipt suggested the sale of two sewing machines, whereas, the carbon copy of the same Receipt showed sale of biscuit packets worth Rs. 4.10 paise. The prosecution also implicates the Accused to have committed, thus, the criminal breach of trust and thereby Accused wrongfully caused loss to the Government and wrongfully gain to himself.

3. When it was noticed by the superior officers during the check, the matter was placed before higher authority, who, in turn, appointed Commissioner Court of Enquiry, which indicted the Accused. Hence, ultimately the matter was handed over to the Police Agency. PW-11 ACP Yashwant Pathak, after carrying out necessary investigation, filed five Charge-Sheets against the Accused as per the period of defalcation and of misappropriation, which was running for more than twelve months.

4. Criminal Case No. 49/86 was filed for one transaction, which was of 23/12/1981, relating to the sale of two sewing machines; in respect of which Sale Receipt No. 27792, the Accused is alleged to have falsified the account by showing the sale of biscuit packets. The case, thus, also pertains to forgery of valuable security.

5. Criminal Case No. 50/86 pertains to misappropriation of funds for the period starting from 25/08/1980 to 05/01/1981, whereas Criminal Case No. 51/86 is for the period from 28/09/1981 to 26/11/1981. Criminal Case No. 52/86 is with respect to period running from 10/06/1981 to 25/08/1981 and the last Criminal Case No. 53/86 was in respect of the period from 01/11/1981 to 22/12/1981.

6. In all these Criminal Cases, the Trial Court framed charge against the Accused, to which he pleaded not guilty and claimed trial.

7. The common evidence of 11 witnesses was led by the prosecution in all five cases and on appreciation of their evidence, the Trial Court was pleased to acquit the Respondent/Accused in all the five cases.

8. This Judgment of the Trial Court is subject matter of these Criminal Appeals and Criminal Revision Application. With able assistance of learned A.P.P. and learned Counsel for the Accused, we have carefully perused, considered and analyzed the entire oral and documentary evidence on record and on careful consideration of the same, we are of the opinion that prosecution has failed to prove the charges levelled against the Accused and the Judgment of the Trial Court, therefore, does not call for any interference, as the view taken by the Trial Court is a possible and reasonable view of the matter.

9. Our findings are based on the following reasons :-

As per admitted facts on record, at the relevant time, from 1976 onwards till December, 1981, Accused was holding the additional charge of the post of ''Canteen Manager'', besides discharging his job as a ''Draftsman''. As per the Standing Orders issued for the ''Unit Canteen'' (Exhibit-21) of the establishment, where Accused was working, the overall control of the Canteen was vested in the Director directly. Officer-in-Charge of the Canteen was to be nominated by the Director. In addition thereto, the strength of the Canteen consisted of one Manager, one Clerk and one Canteen Attendant.

10. At the relevant time, Accused was ''Manager'' of the canteen, whereas, PW-1 Rampura Gangadhara was the Officer-in-Charge of the canteen. According to his evidence, for their canteen, they used to purchase the goods from C.S.D. Canteen at Khadki. Manager of the canteen, Accused in this case, used to prepare the Indent for placing order for the goods. Being the Officer-in-Charge, he used to sign on it and these Indents, on submission to the C.S.D. Canteen, were treated as Invoices. The C.S.D. Canteen was then supplying the goods as per these Invoices. The Manager of the canteen, the Accused in the case, used to collect these goods from C.S.D. Canteen and store them in their canteen for sale.

11. This witness has given detailed procedure of the purchase and sale of goods and also of the stock checking. According to his evidence, the Duty Officer used to check the goods and prepare the list of the articles damaged during transit. Thereafter, the Manager of the Store used to write the retail price of each article on the invoices. The Manager also used to prepare detailed statement mentioning therein the wholesale price, retail price etc. This retail price amount used to be mentioned in the Cash Register. The goods were, thus, being sold on the counter as per this retail price list.

12. According to the evidence of this witness, the Manager was the person, who was entrusted with the goods and he was collecting the price money from the customer. Therefore, it was his duty to maintain the Cash Book and write daily accounts. It was also his duty to maintain Daily Sale Register and deposit daily sale proceeds of the articles with the Cashier of Regimental Account. Stock Checking Board used to physically verify the stock in the canteen once in a month. Thus, by the end of the month, the closing balance of the stock was to be prepared. There was also the Audit Board for checking the accounts of the canteen. One Duty Officer was appointed by the Director for checking the whole establishment and conducting surprise check.

13. PW-1 Gangadhara has further deposed that he was in-charge of the canteen from March, 1981 to December,1981. PW-2 Satishkumar Chaturvedi was his predecessor from January, 1976 to February, 1981. During the relevant period, Accused was the Manager. PW-3 Ooman P.A. was appointed as ''Manager'', after PW-1 Gangadhara took over the charge as ''In-Charge'' of canteen''. When PW-3 Ooman took over the charge as ''Manager'' of the canteen from the Accused, a

charge-list was prepared by both of them and at that time, when the stock was verified, it was reported by PW-3 Ooman to this witness that one additional invoice was found in the handing over list, which was not accounted for. On enquiry with the Accused, he told that because of the typing mistake, the said invoice was added in the list. Thereafter, a fresh list was prepared deleting the item of the said invoice.

14. According to evidence of this witness, out of curiosity, he checked the previous record, but could not find out that invoice. During the inspection of the canteen, he found that there was a bunch of invoices, which was not accounted for and not entered in the Register. There were in all five invoices covering the amount of Rs. 79,000/- and not accounted by the Accused. He, therefore, reported the matter to the Director.

15. As per evidence of PW-7 Rajguru Kadambi, the Director of the Canteen, when PW-1 Gangadhara reported to him that the sale proceeds of the canteen were not accounted properly, he called the Accused in his office and asked him to explain the missing items and the entries. Accused, however, could not give satisfactory explanation and assured to make good the loss by giving in writing vide Exhibit-22. Thereafter, Accused paid totally the amount of Rs. 66,000/- towards the loss of the canteen.

16. Then PW-7 Kadambi appointed the Board of Directors for checking the Store and vouchers of the Canteen in the tenure of the Accused. PW-6 Vijaysingh Ghorpade was appointed as ''Presiding Officer'' of the said Board and in his enquiry, the total loss of Rs. 1,29,985/- was detected. The Court of Enquiry was presided over by PW-5 Yash Verma and he submitted his report vide Exhibit-13, according to which, the amount of Rs. 1,23,848/- was not accounted for.

17. On the receipt of the Enquiry Report, PW-7 Kadambi, in his capacity as a ''Director'' of the Canteen, gave his independent opinion vide Exhibit-102, suggesting disciplinary action against the Accused and also against PW-2 Satishkumar Chaturvedi, who, at the relevant time, was In-Charge Officer of the canteen. He further issued a warning letter to PW-1 Gangadhara, who was holding additional charge of the canteen for the lack of vigilance. He further suggested to recover the money of the loss from the Accused and PW-2 Satishkumar Chaturvedi. The Departmental Enquiry was held against the Accused, in which he was suspended. Thereafter, the police case was filed.

18. The prosecution has also led evidence of PW-6 Vijaysingh Ghorpade, who was working as ''Joint Director'' of R. & D.E., Dighi and who has, in his capacity as ''Presiding Officer'' of the Board of Directors, conducted enquiry, as aforesaid, and submitted the report.

19. The prosecution has further placed reliance on the evidence of PW-4 Laxman Jadhav, the Chartered Accountant, who was requested to check the canteen accounts and who found that the material, which was purchased from the C.S.D. Depot, worth Rs. 1,28,247/- was not accounted in the Books of Accounts of the

canteen. On the sale of the said articles, according to him, the profit of Rs. 3,846/- would have been accrued to the canteen and thus, according to him, the total amount of Rs. 1,32,894/- was found misappropriated by the In-Charge of the Canteen. He has submitted his report accordingly.

20. The prosecution has then led the evidence of PW-8 Maruti Shingare, who has purchased two sewing machines from the said canteen for Rs. 1,572/- vide Sale Receipt (Exhibit-37). According to him, he has not purchased the biscuits of Rs. 4.10 paise vide the said Sale Receipt No. 27792.

21. On the basis of the evidence of these witnesses, the submission of learned A.P.P. is to the effect that, on conduct of detailed enquiry by more than one Officer and Court of Commission, as it was found that the accounts were not maintained properly and there were discrepancies on account of some items found missing, the prosecution has succeeded in proving its case against the Accused.

22. However, in our considered opinion, for arriving at such conclusion, the Court has to read the evidence of these witnesses as a whole in their entirety and not only that part of evidence, as deposed by them, in their examination-in-chief. We are saying so, because there are some fatal admissions given by these witnesses in their cross-examination, which are more than sufficient to demolish the entire case of prosecution as such.

23. For e.g. PW-1 Gangadhara has admitted in his cross-examination that custody of the stock in the canteen was not exclusively entrusted to the Accused, but several persons, as can be seen from the Standing Order, also were responsible for the same. In our opinion, In order to prove essentially the charge under Section 409 of the IPC for criminal breach of trust, the entrustment of exclusive custody of the stock is necessary to be proved, which, as can be seen from the Standing Order and also from the evidence of these witnesses, is not at all proved in the case.

24. As per Standing Order, the overall control over the canteen was to be exercised by the Director directly. Then there was the post of Officer-in-Charge of the Canteen to be nominated by the Director. In the instant case, during the relevant period, PW-2 Satishkumar Chaturvedi was the Officer-in-Charge of the Canteen. Unit Staff of the Canteen consisted of the Manager, namely, the Accused, the Clerk and the Canteen Attendant. An additional Clerk was also to be provided for maintaining Cash Book and other entries. If we see the duties of the Clerk, who was to work directly under the Officer-in-Charge, namely, PW-2 Chaturvedi, he was responsible for maintenance of all the files and registers, including demands and invoices. He was also responsible for payment of bills, monthly stock checking board proceedings, the quarterly audit board proceedings, maintaining the Cash-Book, producing canteen accounts etc.

25. PW-1 Gangadhara, in his cross-examination, has admitted that there is an elaborate procedure for placing the order for the goods in C.S.D. Canteen and

collecting the same for their sale in the present canteen. There used to be checks at several places. The goods were also brought in the assigned vehicle and, therefore, there was no possibility of any goods being taken out without the knowledge of the security. He has deposed that Cash Memo is must with the customer as it used to be checked at the main gate. According to him, there used to be monthly checking of the stock and quarterly checking of the accounts of the canteen by the Board of Directors and during this entire period of five years, at no time, any loss of goods was noticed at the time on checking of the stocks, though, as admitted by him, while checking the goods, each article was physically verified and tallied with the balance as per the Register. In paragraph No. 11 of his evidence, he has further admitted that there were no discrepancies noticed in the sale and Cash Register; even the daily sale proceeds were also found correctly deposited by the Accused. The Accused was never found indulging in taking away the articles outside the premises. Further, he has admitted that checking of the stocks was done by the end of December, 1981 and the report of the said checking was submitted to the Director. This report was sent by the Director on 19th January, 1982. This report (Exhibit-35) was accompanied with the list of articles found in the canteen and as per the said report, all the items displayed in the canteen and reflected in the Register were found tallying. There was no discrepancy of any nature. Even in the monthly stock checking, not a single discrepancy has been noticed while Accused was serving as a ''Canteen Manager''. Similarly, there was no discrepancy found against the Accused while checking the accounts quarterly. The "OK Certificates" were issued by the Board of Directors in respect of all these accounts.

26. PW-2 Chaturvedi, who, at the relevant time, was Officer-in-Charge of the Canteen, has also admitted in his cross-examination that Departmental Enquiry was initiated against him on the charges that he signed the incorrect Retail Price Statement leading to loss and he was held guilty; his annual increment was withheld for the period of three months. PW-3 Ooman, who has taken over the charge of ''Canteen Manager'' from the Accused, has admitted in his cross-examination that Officer-in-Charge of the Canteen, namely, PW-2 Chaturvedi was required to verify the correctness of the entries in the Statement of Accounts. Every month Statement of Accounts used to go to the Officer-in-Charge of the Canteen, who has to go through it personally for checking the balance in the stock regarding the invoices and also the cash. Therefore, if at all there was any discrepancy, it was for the Officer-in-Charge to come to know about it immediately. The very fact that despite such checking and verification, the Officer-in-Charge never came to know about it, negates the prosecution case.

27. Even as regards Receipt No. 27792 in respect of the sale of the biscuits, PW-3 Ooman has admitted that this transaction of purchase of biscuits for Rs. 4.10 paise dated 23/12/1981 was for adjustment of the excess amount. Therefore, the case of prosecution that Accused has falsified the accounts clearly goes away.

28. Evidence of PW-8 Maruti Shingare, who has purchased these sewing machines, reveals that he has made the payment by cheque and he has received the sewing machines accordingly. Therefore, there is absolutely no substance in the contention that Accused has misappropriated the amount.

29. The evidence of PW-3 Ooman also goes to reveal that there were two sets of canteen keys; one was with Officer-in-Charge, in the present case with PW-2 Chaturvedi, and other set with the security gate. Therefore, if there is missing of any goods, Accused alone cannot be held responsible for the same as the exclusive entrustment of the goods was not given to him.

30. As regards the charge of misappropriation and falsification of the accounts, the evidence of PW-4 Laxman Jadhav, the Chartered Accountant, goes to prove that he had merely noticed some irregularities in the Books of Accounts and has suggested the methods for correct writing of the Accounts. In his report, he did not fix the responsibility on any one, but simply found out the irregularities in the Accounts. In his cross-examination, he has further admitted that as regards his inference that there was misappropriation of money, it was based merely on the basis of irregularity of Accounts. He has admitted that in the Cash Memo, Cash Book and Sale Register produced before him, transactions of sales were reflected. He has further admitted that entry of sale proceeds was taken in the Regimental Fund Account, in addition to Cash Deposit Register. As per his evidence, as the Stock Register was not maintained, it was difficult to find out what sort of articles were misappropriated. His evidence further proves that in the span of six years period, from 1976 to 1981, Monthly Stock Checking Board of Directors had verified the stocks for 216 times and the quarterly verification of the stock was on 24 occasions by 72 Board of Directors. According to him, the Regimental Fund Account of the office, wherein the cash is deposited, issues certificate on the receipt of cash from Canteen Manager. For the relevant period, Cash Certificates were issued every month regularly. He has further certified that it was his general impression that accounting system was not proper and hence he has made suggestions only to that aspect.

31. It is pertinent to note that on the date of recording evidence, during recess hour, he has re-verified all the Registers and the documents produced before the Court and has deposed that several items, which were earlier shown as ''missing'', are covered under these invoices. The cash memos of all these items in the invoices were traced out by him. These cash memos were reflected in the sale proceeds, registers and cash registers. He has admitted that these documents, however, were not made available to him when he submitted his report. He is seeing those documents for the first time in the Court. Therefore, his evidence gives a final blow to the prosecution case.

32. PW-5 Yash Verma, who has conducted the enquiry for looking into the alleged misappropriation of the canteen accounts, has also admitted in his cross-examination that he did not feel it necessary to check duplicate cash memos of the entries in respect of which he has given the report of misappropriation. He

also did not know whether the sale proceeds of those items were deposited in the Regimental Fund Account. Further, he has admitted that he has not made any query to that effect.

33. Lastly, the evidence of PW-7 Kadambi, the Director, goes to prove that PW-2 Chaturvedi also shares the responsibility for the irregularities and misuse of sale proceeds. At the same time, he admits that he did not verify the exact amount of misappropriation. He even did not see whether Balance Confirmation Certificate was tallying with the sale proceeds and cash in the Cash Book.

34. In our considered opinion, the fatal admissions, as given by these various witnesses in their cross-examination, are more than sufficient to disbelieve the entire case of the prosecution. The prosecution has neither succeeded in proving the charge under Section 409 of the IPC, nor for the offences punishable under Sections 477-A, 471 or 467 of the IPC. The Trial Court has, hence, rightly acquitted the Accused in all the five Criminal Cases lodged against him. The Appeals are devoid of merits and, accordingly, stand dismissed.

35. Consequently, the Criminal Revision Application No. 26 of 1995 also holds no merit and hence dismissed.