

(1996) 03 BOM CK 0025
In the Bombay High Court
Case No : Criminal Appeal No. 325 of 1986

State of Maharashtra

APPELLANT

Vs

Bhuvanendra Mallapa Akiwate

RESPONDENT

Date of Decision : 11-03-1996

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 408

Citation : (1996) 3 BomCR 590 : (1997) CriLJ 177

Hon'ble Judges : Vishnu Sahai, J; R.G. Vaidyanatha, J

Bench : Division Bench

Advocate : D.A. Nalavade, app, for the Appellant; N. Janardhanan, for the Respondent

Judgement

Sahai, J.—The State of Maharashtra aggrieved by the judgment and order dated 24-1-1986 passed by the JMFC, Vadgaon, District Kolhapur, in Regular Criminal Case No. 58/1984 acquitting the respondent u/s 408, I.P.C. has come up in appeal before us.

2. Briefly stated the prosecution case is as under : the informant Manikchand Bhishikar P.W. 1 was the Director and Secretary of the Bahubali Vidyapeeth and Bahubali Bharamcharayashram Kumbhoj. Taluka Hatkanangale.

The respondent at the time of incident, in fact since 8 years prior to it was working as clerk in the aforesaid institution. It is also said that the respondent was working as clerk in Bharat Varashiya Digambar Jain Thirth Kshetra Committee, Head Office at Bombay with branch office at Kumbhoj from two years prior to the incident. It is further said that the respondent used to collect amount from the donors of the institution. The case for the prosecution is that in between the period 27-7-1982 to 7-2-1983, the respondent collected in all a sum of Rs. 9,341/- but did not deposit the same. Hence, the informant filed a complaint Exh. 19 at police station Chavadi.

3. On the basis of the complaint, a case u/s 408, I.P.C. was registered against the respondent. The respondent was arrested by the PSI Hatkanangale. The investigation in the case was done in the usual manner and thereafter, a charge sheet was submitted against the respondent u/s 408, I.P.C.

4. In the trial Court a charge u/s 408, IPC was framed against the respondent to which he pleaded not guilty and claimed to be tried. The respondent stated that he had been falsely implicated in the instant case.

5. In the trial Court, apart from tendering documentary evidence, the prosecution examined as many as 6 witnesses. In defence, no witness was examined by the respondent.

6. The prime witness in the instant case appears to be the informant PW 1 Manikchand Bhishikar. It is on the basis of the averments contained in his statement as recorded in the trial court, that we have set out the facts as mentioned in para 2 of this judgment. No useful purpose would be served by repeating those facts. Some other witnesses were also examined by the prosecution but, we do not think it necessary to refer to their evidence. After going through the statement of the informant, we find that his evidence has a ring of truth in it. In our view, the learned Magistrate erred in rejecting his testimony and in acquitting the respondent.

A perusal of the judgment of the learned Magistrate shows that he was oblivious to the statement of the respondent recorded u/s 313, Cr.P.C. In reply to the last question namely Question No. 19, which was "Do you want to say anything more" ? The respondent admitted having collected the aforesaid amount. In his judgment, the learned Magistrate himself has conceded that the respondent did not deposit her aforesaid amount. However, the learned Magistrate curiously enough took a view that the prosecution had failed to establish any dishonest intention on the part of the respondent for converting the amount to his use, which was an essential ingredient for an offence u/s 408, IPC. In that view of the matter, the learned Magistrate chose to acquit the respondent.

7. We regret that we are not able to subscribe to the reasoning of the learned Magistrate. Once it is established that aforesaid amount was collected by the respondent and he did not deposit the same, it follows as a logical corollary that the respondent had the requisite dishonest intention for bringing his act within the mischief of Section 408, IPC. In our view, the learned Magistrate erred in acquitting the respondent on that count.

8. However, inspite of the fact that we find the judgment of the learned Magistrate to be vitiated by the infirmity mentioned above we cannot lose sight of the following circumstances :- (i) the incident took place nearly 13 years ago; (ii) that the respondent has been in jail for few days; (iii) amount involved namely of Rs. 9,341/- is a petty one; (iv) and the evidence on record is that as a result of his prosecution, the respondent has lost his job.

9. In our view, bearing in mind the larger interests of justice and the considerations referred to in the proceeding paragraph, it would be proper and equitable to interfere with the impugned judgment.

10. Accordingly, we dismiss this appeal.

11. Appeal dismissed.