

(1993) 09 SC CK 0046
In the Supreme Court Of India
Case No : Criminal A.No. 48 of 1992

Suresh T. Kalichand

APPELLANT

Vs

Sampat Shripat Lambate and another

RESPONDENT

Date of Decision : 24-09-1993

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 362, 468, 482
Maharashtra Co-operative Societies Act, 1960 — Section 147
Penal Code, 1860 (IPC) — Section 114, 406, 409

Citation : AIR 1994 SC 583 : (1994) CriLJ 611 : (1993) 3 Crimes 531 : (1993) 3 SCALE 876 : (1994) 1 SCC 543 Supp

Hon'ble Judges : K. Jayachandra Reddy, J;G. N. Ray, J

Bench : Division Bench

Final Decision : Allowed

Judgement

K. Jayachandra Reddy, J.—All these appeals and the connected SLPs arise out of a common judgment of the High Court of Judicature at Bombay. They can be disposed of by a common judgment here.

2 The complainant Sampat Shripat Lambate, the Secretary of the Digvijay Mills Employees Co-operative Credit Society Limited filed a private complaint in the Court of the Metropolitan Magistrate, 6th Court, Mazagaon, Bombay alleging that the eight accused shown in that complaint misappropriated amounts belonging to the Society and thus committed an offence punishable u/s 147(b) of the Maharashtra Cooperative Societies Act, 1960 and Section 409 read with Section 114 of the Indian Penal Code. It was alleged in the complaint that the members of the complainant Society are the employees of the Digvijay Mill Ltd Accused No. 1 was the Chairman and Accused Nos. 2 to 7 were the Directors of the Mills and Accused No. 8 was the Secretary of the Board of Directors. The Society used to advance loans to its members and under an agreement with the Management of the Mill, the Mill used to recover loans advanced to the members from the salaries payable to such members and the amount so collected was to be paid by the Management to the Society. According to the complainant in the month of

June, 1964, the Management collected certain amounts by deducting installments from the salaries and out of that some amounts were paid as loan to the Society and the balance was misappropriated by the accused. The similar allegations are made in respect of the collections made upto the year 1968. In respect of these collections, 12 cases were tiled before the trial court. The complaints themselves were filed in the year 1976 i.e. after eight years. The trial court examined the complainant as P.W. 1 who stated that Accused No. 1 alone was looking after day-to-day affairs of the Mill and the Society has demanded the amounts from Accused No. 1 alone. On the basis of this evidence, the trial court held that Accused No. 1 alone could be charged only u/s 406 I.P.C. and in that view other accused were discharged. Regarding the offence u/s 147(b) of the Maharashtra Co-operative Societies Act, 1960, the trial court held that the offence was clearly barred u/s 468 Cr. P.C. When the charge u/s 406 I.P.C. was read over and explained to the accused, he pleaded not guilty. He, however, stated that there was an oral agreement between the Society and the Management and the Management used to retain part of the salaries payable to the employees but the same was not misappropriated by the Management as alleged. He further suited that the Mill was running at a loss and due to financial difficulties the amount could not be paid to the Society. He also stated that these amounts were not used by him or any other Director for their personal use. Therefore he cannot be held guilty for any offence. The trial court examined the evidence of P.W. 1 in detail In cross-examination, it emerged that the full salaries were not paid to the members and only part of the salaries were paid after deducting the installments payable to the Society. P.W. 1 also admitted that as the Society could not get the amounts either from the Collector or from the Government, it filed the complaints against the Directors and he further admitted that the Society filed the complaints only to recover the amounts and not because the Directors misappropriated the said amounts. Taking these admissions into considerations, the trial court held that the amounts could not be paid to the Society because of the financial difficulties of the Mill and the only remedy open to the Society is to approach the Government and if the Government fails to pay the amounts then the Society can seek the remedy in the civil court. The learned Magistrate also held that as the complaints are filed after eight years, therefore they are barred by the limitation fixed u/s 468 Cr. P.C. In that view of the matter, he acquitted the first accused namely the Managing Director. The Society filed appeals against the order of acquittal before the High Court and Accused No. 1 appeared as the sole respondent with the State in each of the appeals. The learned Single Judge of the High Court delivered the judgment in Criminal Appeal No. 398/90 on his file. The learned Judge mainly relied on the statement made by Accused No.1, the Managing Director and pointed out that the agreement between the Society and the Mill was admitted and that evidence of complainant coupled with the statement would go to show that the funds deducted on behalf of the Society were retained by the accused and it was a continuing offence and therefore the limitation described u/s 468 Cr. P.C. does not apply. According the learned Judge allowed

all the 12 appeals filed by the complainant and in each case, he convicted the respondent-Accused No. 1 therein namely the Managing Director u/s 409 I.P.C. and sentenced him to imprisonment in each case ranging from two years to six months and also directed to pay a fine which roughly represents the amounts due to the Society.

3. It appears that the learned advocate Mr. Shalim Samuel appearing for the respondent-Accused No. 1 died and that nobody represented him before the High Court. Therefore an application in each of the appeals was filed to set aside the judgment u/s 482 Cr. P.C. The learned Single Judge dismissed the applications holding that Section 362 Cr. P.C is a bar for recalling the judgment in a criminal case. As against the said impugned order refusing to recall the judgment in each of the appeals, S.L.P.(Criminal) Nos. 4258-59 & 4349-4358/91 are filed in this Court. Questioning the convictions and sentences awarded by the High Court, Accused No. 1 has filed Criminal Appeal Nos. 48-58/92 and 589/93.

4. It may not be necessary to go into the question raised in S.L.P.(Criminal) Nos. 4258-59 & 4349-58/91 inasmuch as we proceeded to hear the counsel in the appeals themselves challenging the convictions. Therefore in S.L.P.(Criminal) Nos. 4258-59 & 4349-58/91 no orders are necessary and accordingly they are disposed of.

5. Learned counsel appearing for the appellant submits that as held by the trial court the dispute is only of civil nature and there is no misappropriation as such by anybody and that due to financial difficulties the Mill could not pay the amounts due to the Society in time. Therefore in such a situation the view taken by the trial court is quite reasonable and that the High Court erred in reversing the order of acquittal in each of those cases. It is further submitted that the appellant (Accused No. 1, the Managing Director) was only managing the affairs of the Mill and that there is nothing to show that he has personally misappropriated any of the amounts and that the explanation has been given by him namely that the Mill was sick and in financial difficulties and therefore the amounts could not be paid in time.

6. It may also be mentioned at this stage that before the trial court, the charge was only under Sections 406 I.P.C. and the appellant was acquitted of the same. But the learned Single Judge of the High Court while disposing of the appeals preferred by the complainant recorded the conviction u/s 409 I.P.C. without any notice and sentenced him in each case for the said major offence. This Court by its order dated 16.1.92 directed the Officer to issue a notice in each of the cases to the appellant as to why sentence of imprisonment should not be imposed in conformity with the penal provision of Section 409 I.P.C. since it was noticed that the learned Single Judge committed an illegality in imposing sentence u/s 409 I.P.C. while the appellant was tried only for an offence u/s 406 I.P.C. The appellant undertook to deposit the entire fine amount in this Court amounting to Rs. 5,50,000/- find the Registrar was directed to receive the total amount of fine by way of a draft and deposit the same to the credit of the above said appeals

before this Court.

7. Learned counsel appearing for the respondent-Society also submits that as deposed by the complainant before the trial court, the Society is interested only in realising the amounts.

8. The fact remains that the appellant was not duly represented before the High Court. That apart, though the charge was u/s 406 I.P.C. only, the High Court recorded the conviction u/s 409 an aggravated offence. Under these circumstances, the only option left is to again remand the matter to the High Court. The offence itself is said to have taken place from 1964 to 1968. The Mill also appears to have been taken over as a sick unit. Further on behalf of the appellant it is submitted that the amount deposited by him in this Court will not be claimed by him and the same may be given to the Society by passing an appropriate order for disbursement of the said amount. Mr. Mukul Mudgal, learned counsel appearing for the respondent-Society also submits that the Society is interested in realising the amount that was due from the Mill and if the same is realised that would meet the ends of justice.

9. We think that after 24 years it is not a fit case to be remanded. Further the view taken by the trial court that it is of civil nature, is not an unreasonable one as to warrant interference in an appeal against acquittal. For all these reasons, we set aside the impugned orders of the High Court in each of these appeals and we restore the orders of the trial court acquitting the appellant-accused.

10. Now coming to the disbursement of the amount of Rs. 5,50,000/-, an additional affidavit has been filed by the Secretary of the Digvijay Mills Employees Cooperative Credit Society Limited-respondent No. 1 herein, suiting that the Society is very much in existence and is functioning. Alongwith the affidavit, the certificate of registration and also the certificate issued by Digvijay Textile Mills dated 23.7.93, another certificate issued by the Assistant Registrar of Cooperative Societies, Bombay and yet another certificate dated 22.7.93 issued by the Maharashtra State Cooperative Bank Limited, Lalbaug Branch, Bombay are filed. The averments in the affidavit as well as in the above certificates establish that the respondent No. 1- Society is functioning regularly. Since the amount belonging to the Society is alleged to have been misappropriated, the amount of Rs. 5,50,000/- deposited in this Court as directed, shall be paid to the respondent No. 1-Society.

11. Accordingly Criminal Appeal Nos. 48-58/92 & 589/93 are allowed subject to the above direction. Consequently no orders are necessary in S.L.P(Criminal) Nos. 4258-59 & 4349-58/91 and they are accordingly disposed of. .