

(2018) 01 BOM CK 0244
In the Bombay High Court
Case No : 319 of 2003

The State of Maharashtra

APPELLANT

Vs

Vijaya Narendra Mohore

RESPONDENT

Date of Decision : 06-01-2018

Acts Referred:

Indian Penal Code, 1860, Section 409,
Section 47A - Criminal breach of trust by public servant, or
by banker, merchant of agent

Citation : (2018) 01 BOM CK 0244

Hon'ble Judges : S.S. Shinde, A.M. Dhavale

Bench : Division Bench

Advocate : A.A. Jagatkar, M.M. Bhokarikar

Final Decision : Dismissed

Judgement

1. This Appeal is filed by the State challenging the Judgment and order dated 17th January, 2003 passed by the Chief Judicial Magistrate, Jalgaon in Regular Criminal Case No.223 of 1994, thereby acquitting the Respondent/original accused Vijaya Narendra Mohore for the offence punishable under Section 409 and 47A of the Indian Penal Code (For short "I.P. Code").

2. The prosecution case, in nutshell, is as under :

(A) Accused Vijaya Narendra Mohore and Complainant Dada Pohare, both are Labour Welfare Officers. Complainant had taken charge of his post on 29th January, 1994. Prior to that, accused was working at Jalgaon as Labour Welfare Officer. Complainant reported the fact to police that it revealed in audit that accused had committed misappropriation of Rs.55,218=75 while working as Labour Welfare Officer at Jalgaon. Accused had taken false entries in cash book. She had also withdrawn Rs.40,000/from Bank of Maharashtra and used the said amount for her own purpose without permission of Bombay Office. Thus, accused made defalcation of Rs.83,892=50/. This report is lodged by the complainant on 2nd June, 1994 at the police station. Police registered offence against the

accused. Police recorded statements of witnesses. They have seized relevant registers from the office of the complainant. After completion of investigation, chargesheet was filed.

(B) Charge at Exhibit 8 was framed against the accused person and the same was explained to her. The accused pleaded not guilty and claimed to be tried, with the defence of total denial.

3. After recording the evidence and conducting full fledged trial, the trial Court acquitted the accused from the offence with which she was charged, as stated herein above in Para 1 of the Judgment. Hence this Appeal.

4. Heard learned A.P.P. appearing for the Appellant State, at length. The counsel appearing for the Respondent accused is not present. With the able assistance of learned A.P.P., we have carefully perused the entire original record including the notes of evidence, so as to find out whether the findings recorded by the trial Court are in consonance with the evidence brought on record or otherwise.

5. The evidence on record shows that only two employees were working in the Labour Welfare Office and those were accused and PW2 Rajesh Bambe. Accused was working as Labour Welfare Officer and PW2 Rajesh Bambe was working as junior clerk in the said office. It is the case of the prosecution that only the accused was responsible for the alleged misappropriation of amount in the said office.

6. We have carefully perused the evidence of all the prosecution witnesses and in particular, evidence of PW1 Dada Pohare, who is the complainant. PW1 Dada Pohare admitted in the cross-examination that only one clerk was provided to their office. He admits that during the period of accused and during his period also one Suresh Bambe (PW2) used to work as clerk. The clerk was also dealing with the work of cashier and that clerk was having right to distribute the amount to the villages under the jurisdiction of said office. It is the duty of the clerk to accept whatever fees received to their office, such as admission fee, monthly and yearly subscription, deposit and utilize the amount. PW1 Dada Pohare admits that during the relevant period PW2 Ramesh Bambe used to deal with the above stated work and if any amount remained with the office, it was the duty of the clerk to deposit the same in the Bank. Depositing amount in Bank, accepting its receipt and maintaining its account was duty of the clerk in the office. It was duty of the clerk to inform his superior officer about the day-to-day transactions took place in the office. Cashier used to write cheques in the name of the customers. It is the duty of the clerk to take entry from whom he received the amount and to whom he had given the amount.

7. Upon careful perusal of the evidence of PW1 Dada Pohare, as already observed, it is crystal clear that only two employees were working in the office i.e. accused herself and PW2 Ramesh Bambe. PW2 Ramesh Bambe was working as junior clerk in the office and he used to carry out all the work in the office including acceptance of amount, deposit of amount, writing of cheques.

Therefore, if misappropriation of any amount takes place in such office where only two employees are working, the complaint should have been lodged against both the employees and not against only one employee. The prosecution has not brought on record that any departmental enquiry was conducted against PW2 Ramesh Bambe in respect of the said misappropriation and that he was exonerated from the said charge. Surprisingly, in this case PW2 Ramesh Bambe is not made accused but he is examined as witness by the prosecution and therefore it appears that the prosecution against the accused is motivated. Upon perusal of oral evidence of PW2 Ramesh Bambe also, it is clear that it was his responsibility to do all the monetary transactions in the office.

8. It is the case of the prosecution that it was shown by the accused that some amount was paid to one Mr. Jogi and Mr. R.L. Jadhav, but actually the amount was not paid to those persons and the same was misappropriated by the accused. However, said Jogi and R.L. Jadhav were not examined by the prosecution who were the vital witnesses. Though it is alleged by the prosecution that accused had withdrawn the amount from the bank account of the office and misappropriated the same, to prove the said fact the concerned employee from the bank was not examined.

9. The trial Court has properly considered all the evidence brought on record by the prosecution and observed that, the act for which accused is involved is the act relating to PW2 Ramesh Bambe and there is no role of the accused. The trial Court further observed that it was the duty of PW2 and not of accused and that PW2 played major role and not the accused. In spite of this there is no blame against PW2 and without any reason and fault, the accused is involved in the matter. The trial Court has further observed that the prosecution absolutely failed to make out nexus of the accused with the alleged crime. Considering all the evidence on record, the trial Court has acquitted the Respondent from all the charges with which she was charged.

10. In the light of discussion herein above, on independent and indepth scrutiny of entire evidence, we are of the opinion that the trial Court has considered all the evidence brought on record in its proper perspective and recorded the findings which are in consonance with the evidence on record. The conclusions reached by the trial Court are in consonance with the evidence brought on record by the prosecution. There is no perversity as such.

11. In the light of discussion in foregoing paragraphs, we are not inclined to cause interference in the impugned Judgment and order of the acquittal. Hence the Appeal stands dismissed.