

Anand Kumar Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Apr-22-2013

Appellant : Anand Kumar

Respondent : State of M.P.

Advocate for Pet/Ap. : Shri. A.Usmani

Judgement :

IN THE HIGH COURT OF MADHYA PRADESH, JABALPUR SINGLE BENCH :
HONBLE MR. JUSTICE N.K.GUPTA, J.Criminal Revision No.652/1999 Anand
Kumar VERSUS The State of Madhya Pradesh
----- Shri A.Usmani, counsel
for the applicant. Shri Ajay Tamrakar, Panel Lawyer for the State/respondent.

ORDER

(Passed on the 25th day of April, 2013) The applicant was convicted for the offence punishable under section 409 of IPC vide judgment dated 1.5.1998 passed by the JMFC, Jabalpur (Shri Rakesh Shrotiya) in criminal case No.453/1993, whereby he was sentenced for 3 years' rigorous imprisonment with fine of Rs.5,000/-. In criminal appeal No.32/1998, the learned Second Additional Sessions Judge, Jabalpur partly allowed the appeal. The conviction was maintained but, the sentence was reduced from a period of 3 years to a period of

one year but, there was no change in the fine amount. Being aggrieved with the judgments passed by both the Courts below, the applicant has preferred the present revision. - 2 - Criminal Revision No.652 o

2. The prosecutions case in short, is that, in the year 1976 and around that period, the applicant was posted as Naib Nazir in the office of District Collector. According to his public duty, he was expected to collect the revenue from various Patwaris and to provide receipts to them and thereafter, he had to deposit the collected sum in the treasury by a treasury challan. It was found that he received a sum of Rs.15,150.25/- from Patwaris Raghuveer Prasad, Khushal Chand, Acchelal, Ramvilas and Suraj Prasad in that year but, he did not deposit that amount in the treasury. Thereafter, he claimed that he deposited a sum of Rs.11,808.37/- in the treasury but, he could not give the description of that deposit. Therefore, SDO Ranjana Choudhary has directed to lodge an FIR against the applicant and therefore, an FIR was lodged at Police Station Belbagh, Jabalpur. After due investigation, a charge-sheet was filed on 17.10.1977.

3. The applicant has accepted that he received the amount from various Patwaris though he abjured his guilt and he has stated that he gave the copy of challans to the concerned Patwaris. He took sometime to submit the defence evidence but, ultimately, he did not adduce any defence evidence. - 3 - Criminal Revision No.652 o

4. The learned Judicial Magistrate First Class, Jabalpur, after considering the prosecution's evidence, convicted and sentenced the applicant as mentioned above, whereas, the appellate Court reduced the sentence from a period of 3 years to a period of 1 year.

5. Before considering the arguments of the learned counsel for the parties, it was found that the case of the trial Court was old and no intimation was given to the trial Court that a revision was pending, therefore, record of the trial Court was eliminated, whereas record of the appellate Court is available. However, the learned counsel for the applicant has given the copy of statements given by Khushal Chand (P.W.1), Raghuveer Prasad Choubey (P.W.2), Lalji Shrivastava (P.W.3) and Kamal Prasad (P.W.4) as well as the statement of the applicant under

section 313 of the Cr.P.C. After taking such documents on record, I have heard the learned counsel for the parties.

6. After getting the file of the trial Court to be partly constructed, I am of the view that the present revision can be decided on merits. In the statement under section 313 of the Cr.P.C., the applicant has accepted that he had received various sums from all the 5 Patwaris and therefore, he received a sum of Rs.15,150/- from various Patwaris and therefore, that sum was entrusted to the applicant being a - 4 - Criminal Revision No.652 of 1999 Naib Nazir in the collectorate. Therefore, the burden shifts upon the applicant to prove that he deposited the entire amount in the treasury but, the applicant could not prove his burden. He has stated that copy of challans by which the amount was deposited in the treasury were given to the various Patwaris but, his such defence cannot be accepted. If a Patwari deposits a sum of revenue to the Nazir and Nazir gives a receipt then, that receipt is sufficient for the Patwari to show that he deposited the collected revenue with the Naib Nazir and it is for the account of Naib Nazir, he has to keep the document by which he deposited the amount in the treasury and hence it was for the applicant to keep the copy of the each challan received from the treasury, by which he deposited the amount in the treasury but, he could not show the single copy of challan before the trial Court, whereas he was expected to deposit the amount received from various Patwaris in the treasury on the next day of such receipt. Under such circumstances, the trial Court has rightly held the applicant to be guilty for the offence punishable under section 409 of IPC and therefore, there is no basis by which any interference can be done in the conviction directed by the trial Court.

7. So far as the sentence is concerned, the learned counsel for the applicant has submitted that the applicant - 5 - Criminal Revision No.652 of 1999 was 37 years old at the time of the initiation of the prosecution, which was initiated in the year 1976. He was 57 years old when he filed the appeal in the year 1998. At present, the applicant is a 72 years old person, who is suffering from various illness of old age. He has lost his job and at present, it would be very difficult for him to go into the jail. He remained in the custody for a week approximately during the trial, appeal and revision. Under such circumstances, it is prayed that the applicant may not be sent to the jail again. Looking to the overt-act of the applicant, it is a case,

in which the jail sentence should not be reduced. However, the applicant has faced the trial, appeal and the present revision for more than 35 years and not he is infirm who cannot be sent to the jail. Under such circumstances, it would be proper that the jail sentence of the applicant may be reduced to the period for which he remained in the custody during the trial, appeal and revision but, the State may be granted some compensation, due to the defalcation done by him and therefore, a compensation of Rs.10,000/- be imposed upon the applicant, by way of a punishment, whereas a fine of Rs.5,000/- has already been imposed upon him.

8. On the basis of the aforesaid discussion, the revision filed by the applicant is hereby partly allowed. The - 6 - Criminal Revision No.652 of 1999 conviction directed for the offence punishable under section 409 of IPC is hereby maintained but, his jail sentence is reduced to the period, which he has already undergone in the custody. There is no change in the fine amount but, as a part of sentence, a compensation of Rs.10,000/- is imposed upon the applicant, which could be given to the Government after its recovery.

9. The applicant is on bail. His presence is no more required before this Court. However, his bail bonds shall stand discharged, if he deposits the compensation before the trial Court.

10. A copy of the order be sent to the trial Court as well as to the appellate Court alongwith the record of the appellate Court for information and compliance.

11. Photocopy of the documents, which are collected from the learned counsel for the applicant be sent to the trial Court, so that a partial reconstruction of record may be done and amount of compensation be recovered from the applicant.
(N.K.GUPTA) JUDGE 25 4/2013 Pushpendra

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