

Omprakash Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Feb-18-2002

Reported in : 2002(5)MPHT445

Judge : Narain Singh "Azad", J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 409; Code of Criminal Procedure (CrPC) , 1974 - Sections 391

Appeal No. : Criminal Revision No. 102/2002

Appellant : Omprakash

Respondent : State of M.P.

Advocate for Def. : Yogesh Dhande, Panel Lawyer

Advocate for Pet/Ap. : B.P. Sharma, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

Narain Singh 'Azad', J.

1. Allowing the petitioners Criminal Appeal No. 15/2001, wherein the judgment of conviction and sentence pronounced against this petitioner in Criminal Case No.

517/99, on 8-1-2001 by J.M.F.C., Itarsi, was in challenge, the First ASJ, Hoshangabad, remanded the Criminal Case No. 517/99 with this direction that an opportunity be granted to the prosecution for proving the pass- book and other documents by adducing the oral evidence.

2. On perusal of certified copy of judgment dated 10-12-2001 pronounced by First ASJ, Hoshangabad in Criminal Appeal No. 15/2001, it is noted that the charge for offence punishable under Section 409 of the IPC was framed against this petitioner on the ground that while working on the post of Post-Master at Village Sontalai, this petitioner committed criminal breach of trust in respect of a total amount of Rs. 7,745/- between 1st August, 1983 to 25th January, 1989, by not showing the receipt of the aforesaid amount in the pass-books of account holder, so also in cash registers maintained in post office.

3. It is submitted by Shri B.P. Sharma, appearing for the petitioner, that retrial cannot be ordered to fulfill lacuna in prosecution evidence and that too, after a lapse of 12 years from the date of incident. In support of this argument, Shri B.P. Sharma has drawn my attention to Samaliya Kishanlal v. State of Madhya Pradesh, reported in 1993 MPLJ 476, and Ukha Kolhe v. State of Maharashtra, reported in AIR 1963 SC 1531.

4. But, the present case is not a case of retrial and it is found explained by Hon'ble the Supreme Court in Ukha Kolhe v. State of Maharashtra (supra) that in a case where in the interest of justice, and for just and proper decision of the case, the recording of additional evidence is found to be necessary, then instead of retrial, the procedure prescribed for permitting recording of additional evidence, should be resorted to. Then, it is found explained by P.C. Sarkar, in 7th Edition of his Commentry on Code of Criminal Procedure at page 1158 under Section 391 of the Code of Criminal Procedure, which relates to a direction by Appellate Court for taking an additional evidence that the Court can act under this section of the documents admitted, had not been legally proved. In judgment dated 10-12-2001, pronounced by First AST, Hoshangabad in Criminal Appeal No. 15/2001, it is explained in Para Nos. 14, 15, 16, 18, 19 and 21 of the judgment as to how the admitted documents are not legally proved on behalf of the prosecution.

5. Thus, on the basis of facts and reasons dictated by the Appellate Court in Para Nos. 14 to 16, 18, 19 and 21, the impugned order of remand for recording the additional evidence is neither found to be illegal nor improper. Hence, this petition does not merit which is, accordingly, disallowed and rejected in motion stage.

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