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Court : Rajasthan

Decided On : Jan-09-1985

Reported in : 1985(2)WLN47

Judge : Gopal Kishan Sharma, J.

Appeal No. : S.B. Criminal Revision No. 278 of 1978

Appellant : Brij Mohan

Respondent : State of Rajasthan

Judgement :

Gopal Kishan Sharma, J.

1. This revision has been preferred against the judgment dated 5th Oct. 1978, passed by the Addl. Sessions Judge, Baran, confirming the conviction and the sentence of the petitioner for the offence under Section 408 IPC.

2. The petitioner was prosecuted for the offence Under Section 408, IPC, on the written report dated 11th Aug. 1968. lodged by the Manager, Nagrik Sehkari Bank, Baran. It was alleged therein that the petitioner was posted as Manager in that bank and that, during the period from 1st Nov., 1965 to 27th June, 1966, the petitioner misappropriated some amount of the bank, and misused it. It was also alleged that one Mst. Sharbati Devi opened a fixed-deposit account of Rs. 2000/-

on 1st Nov. 1965. The petitioner did not prepare the voucher and no entry was made in the cash-book and the day-book. Then, on 27th June, 1966 one Babulal deposited a sum of Rs. 5000/- in his Fixed-Deposit a/c No. 68, though Receipt No. 100 dated 27th June, 1966. But, the petitioner deposited Rs. 3000/- only in the said account of Babulal and the rest amount was deposited in the account of Mst. Sharbati Devi. On 15th July, 1977, Babulal re-deposited Rs. 5,000/- in his fixed-deposit account vide receipt No. 109 dated 15th July, 1967. In the voucher, cash-book and the pay-book, instead of Rs. 5000/- after overwriting, Rs. 3,000/- was made. Although interest on Rs. 5,000/- was paid to Babulal, the petitioner misused Rs. 2000/-. Thus, he put the bank in a loss of interest. It was also alleged that Smt. Nirmala Kumari, wife of the accused also opened an account in the said bank where the accused was Manager. On 19th Sept. 1957, there was only a balance of Rs. 55.41 in the said account of Smt. Nirmala Kumari. On that date, the accused through his own signatures, vide voucher No. 423, debited a sum of Rs. 510/-. But, no entry of this debit was made in the account of Smt. Nirmala Kumari. Thus, a sum of Rs. 492.62 was embezzled in that entry. After investigation, the accused was prosecuted. The learned Magistrate found him guilty Under Section 408, IPC and sentenced him to 2 years RI and a fine of Rs. 500/- and in default of payment of fine to further undergo 3 month's SI. The petitioner then preferred an appeal against this judgment. The learned Addl. Sessions Judge dismissed his appeal and maintained his conviction awarded to him by the learned Magistrate.

3. In this revision petition, Mr. Bhandari, the learned counsel for the petitioner, did not argue on the merits of this case. His only argument was about taking a lenient view in this matter. He argued that the incident relates to the year 1965-66, and since then, the petitioner has been facing the trial. From the record of this case, it is clear that Mst. Sharbati Devi who deposited the sum of Rs. 2,000/- in the fixed deposit, has been paid the said amount along with the interest accrued thereon. Similarly, Babulal, who had also deposited his amount, has been paid back his amount fully with interest. So, now, there is nothing to be recovered from the accused-petitioner. No doubt, he has committed this offence, but, in the circumstances that the incident relates to the year 1965-66, and the fact that the petitioner is having a large family and his daughter is to be married in the next month, if he is sent back to jail, it would cause a great hardship to him and his

family as well.

4. I have considered the argument of the learned counsel. The petitioner has already been in jail for 24 days. Specially because of the fact that the incident relates to the year 1965-66, and that the petitioner has been facing the trial in this case since then when the challan was submitted and after a lapse of nine years, it would be harsh and most unreasonable if the petitioner is sent back to jail to undergo the sentence of imprisonment awarded to him by the lower court.

5. In the circumstance that he has already been in jail for 24 days, in my opinion the period of sentence of imprisonment already undergone by him would meet the ends of justice.

6. The revision petition is, therefore, partly accepted. The conviction of the petitioner Under Section 408, IPC, as held by the lower court, is maintained. But, he is sentenced to the period of imprisonment already undergone by him. The sentence of fine is also maintained. Mr. Bhandari prays for time to deposit the fine of Rs. 500/-. One month's time is granted for the purpose of depositing the said fine, if it has not been so deposited so far. The petitioner is on bail. He need not surrender to his bail-bonds which are hereby discharged.