

Pushpa Devi Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Jan-28-1986

Reported in : 1986(1)WLN543

Judge : Farooq Hasan, J.

Appeal No. : S.B. Cr. Rev. No. 2 of 1980

Appellant : Pushpa Devi

Respondent : State of Rajasthan

Disposition : Petition dismissed

Judgement :

Farooq Hasan, J.

1. This revision petition is directed against the judgment dated 22-12-1979 passed by the Sessions Judge, Bundi, whereby he partly accepted the appeal of the petitioner's husband.

2. The petitioner's husband was found guilty Under Section 409 and 466, IPC by the CJM., Bundi, and he was sentenced to one year's RI and a fine of Rs. 500/-. On appeal the petitioner's husband was acquitted from the charge Under Section 466, IPC, but his conviction Under Section 409, IPC was maintained.

3. The case against the petitioner's husband was registered on the basis of a report lodged at P.S., Bundi on 15-11-74 by one Smt. Saroj Nag, the then Head Mistress of Government School, Bundi, wherein it was alleged that the petitioner's husband Ramkishan was an LDC in the said school and he committed an embezzlement of Rs. 500/- and also fabricated the record of the school which was detected by an audit report. After completing the investigation, a charge sheet was submitted Under Section 409, IPC and 466, IPC against the petitioner's husband, who was convicted and sentenced as stated above.

4. In the instant case, the allegation against the petitioner's husband was that a cheque of Rs. 1,000/- was obtained by the petitioner's husband which was encashed by him from the bank. He after receiving the amount only deposited Rs. 500/- in the cash book and Rs. 500/- were kept by him, which are said to have been deposited after the audit report and at the time when the petitioner's husband was transferred from the Govt. Teachers Training School to some other place. It was admitted by the petitioner's husband that due to mistake Rs. 500/- were not entered in the cash book, although the same amount was there in the cash chest. This statement of the petitioner's husband was disbelieved by both the courts below on the basis of statement given by Smt. Saroj Nag, who stated that at the time of her stay in the school as Head Mistress she not only checked the cash book but also the cash chest and she found that the amount in cash chest was the same as was shown in the cash book. I am also of the opinion that the aforesaid findings of the courts below are not incorrect. The statement of Smt. Saroj Nag cannot be disbelieved, because neither the courts below nor I have found any infirmity in that statement.

5. Because of the clinching evidence against the petitioner's husband, the learned Counsel for the petitioner did not argue the case on merits. He simply submitted that the petitioner's husband should be given the benefit of the Probation of Offenders Act, so that the petitioner and her children may get pensionary benefits from the Government. A query was made to the learned Counsel for the petitioner that whether the benefit of Probation of Offenders Act can be given to a dead person who has been convicted during his life time. The learned Counsel sought time to give authority on the said query, but even after allowing time to the learned

Counsel neither he appeared nor gave any authority on the said query. I am personally of the opinion that the benefit of probation under the Probation of Offenders Act cannot be given to a dead person, because when this benefit is given to an accused person, he has to comply with certain directions to be given by the Court. In these circumstances, this is not a case where the court can exercise the powers under the Probation of Offenders Act. I have got full sympathy with the petitioner as well as her children. As per the submission of the learned Counsel for the petitioner, if the State Government is competent to give the benefit of pension to the accused (now dead), in case the benefit is given to him, then I am of the opinion that the State Government may also give the benefit of pension even after dismissal of this revision petition, because in a case where the benefit of probation is given, the conviction of the person concerned is to be maintained and he is let off after complying with the directions of the court which are to be given under the Probation of Offenders Act. Therefore, under both the circumstances, i.e., in case the revision petition is dismissed or in case if the petitioner's husband would have been given the benefit of probation, the conviction always remains there.

6. This is a settled principle of law that a concurrent finding of fact can be interfered with by a court sitting in revision only when the findings of the courts below are perverse, erroneous or improper. In the instant case, I do not find any illegality in the findings of the courts below.

7. The revision petition has no force and it is hereby dismissed.

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