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Court : Chennai

Decided On : Aug-11-2010

Judge : T.Sudanthiram, J.

Acts : Code Of Criminal Procedure (CRPC) - Sections 397, 401

Appeal No. : Crl.R.C.No.345 of 2009

Appellant : R.Murugesan.

Respondent : State, Represented by Inspector of Police Cciw, Ooty,

Advocate for Def. : Mr.V.R.Balasubramaniam, Adv.

Advocate for Pet/Ap. : Mr.R.Sankarasubbu, Adv.

Judgement :

1. The revision petitioner herein is the accused in C.C.No.33 of 2004 on the file of the learned Judicial Magistrate IV, Coimbatore and he was convicted for the offences under Section 409 and 477-A IPC, but he was not sentenced instead he was released under Section 4 of the Probation of Offenders Act. Aggrieved by the conviction, the petitioner has preferred this criminal revision petition.

2. The case of the prosecution in brief is as follows:

Totally there are two accused in this case. The first accused was the Manager of the "Salisbury Industrial Co-operative Tea Factory Limited" at Gudalur and the

second accused/petitioner was the cashier. P.W.1, the Special Officer went to the factory on 14.12.2001 and checked the accounts. At that time, in the cash chitta, the balance was shown as Rs.5,69,364.57, but the actual cash available with the cashier of the second accused was only Rs.5,26,143/-. There was a shortage of Rs.43,221.57. The said amount was misappropriated by the second accused. Further, the first accused having withdrawn a sum of Rs.5 lakhs from the Gudalur Bank through cheque had deposited a sum of Rs.2,50,000/- and made entry in the chitta book only for a sum of Rs.2,50,000/- and had misappropriated the remaining sum of Rs.2,50,000/-. The trial Court after analysing the evidence convicted both the accused. While convicting the second accused, the trial court observed out of shortage of Rs.43,221.57, a sum of Rs.20,000/- had been given to one Sheik as advance for the purchase of tea and the remaining amount of Rs.23,221.57 was misappropriated by the second accused.

3. Mr.R.Sankarasubbu, learned counsel appearing for the petitioner submitted that there was a delay of two and half years in giving complaint to the police by P.W.1. The complaint was given only after the departmental enquiry was over and the petitioner was ordered to be reinstated. The learned counsel for the petitioner further submitted that the entire amount misappropriated was repaid with interest by the first accused who was dismissed from service. The amount of Rs.23,221.57 was handed over by the petitioner to the first accused for miscellaneous expenses and the same was repaid by the accused. The explanation given by the petitioner was accepted by the departmental enquiry and he was not dismissed from service, but the trial court did not accept the explanation of the accused and erred in convicting the accused.

4. Per contra, the learned Additional Public Prosecutor submitted that as there was some positive evidence for giving a sum of Rs.20,000/- to the Sheik as advance for purchase of tea, the trial court accepted the said explanation given by the accused. But there was no material or any documentary proof to show that a sum of Rs.23,221.57 was given as miscellaneous expenses to the first accused. The learned counsel further submitted that in the voucher for repaying the misappropriated amount, the petitioner also signed in the said voucher.

5. This court considered the submissions and perused the records. The trial Court held that a sum of Rs.2,50,000/- was misappropriated by the first accused and the second accused has got nothing to do with that amount, but as far as the shortage of cash of Rs.43,000/- was found in the second accused. It is the evidence of P.W.1, Special Officer, that while he made a surprise check on 14.12.2001 on verifying Ex.P.1 cash chitta, the actual cash balance shown on 13.12.2001 was only Rs.5,69,364.57, but only Rs.5,26,143/- was available with the cashier/petitioner herein. While the petitioner was questioned under Section 313 Cr.P.C, he had not given any explanation for the shortage of the amount. But in the cross examination of P.W.1, it has been stated that a sum of Rs.20,000/- was given to one Sheik Mohamed as advance for the purchase of tea and P.W.1 also had admitted that in the advance register, it was mentioned. Further it was suggested to P.W.1 that a sum of Rs.23,000/- was given as miscellaneous expenses, but it was not stated that it was given to the first accused. As per the rough cash chitta book, the closing balance on 13.12.2001 was shown as Rs.5,69,364.57, wherein the opening balance on 14.12.2001 was shown as Rs.5,26,143. There should not be any difference between the closing balance of the previous day and the opening balance of the next day. Of course, the said amount of Rs.43,221/- has been repaid on 21.12.2001 vide Ex.P.6. In Ex.P.6, both A.1 and A.2 have affixed their signatures as remitters. The petitioner had failed to establish that the amount of Rs.23,221.57 was given for miscellaneous expenses. The petitioner having kept quiet while he was questioned under Section 313 Cr.P.C, it is not possible for him to raise such a plea without any material.

6. In the result, the criminal revision petition is dismissed.

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