

Latif Bhachu SamejA. Vs. State of Gujarat.

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Court : Gujarat

Decided On : Mar-03-2011

Judge : Mr.Justice Z.K.Saiyed,J.

Acts : Indian Penal Code (IPC) - Sections 409, 420, 468, 471, 415; Code of Criminal Procedure (CrPC) - Sections 313, 197; Evidence Act- Section 8.

Appeal No. : CRIMINAL APPEAL No. 284 of 2001; CRIMINAL APPEAL No. 772 of 2000; CRIMINAL APPEAL No. 777 of 2000.

Appellant : Latif Bhachu SamejA.

Respondent : State of Gujarat.

Advocate for Def. : MR KP RAVAL,Adv.

Advocate for Pet/Ap. : MR PRATIK BAROT, Adv.

Judgement :

1. As the present appeals are arising out of judgment and order of conviction and sentence dated 14th June 2000 passed by the learned Judicial Magistrate First Class, Mandvi-Kutch, in Criminal Case No.2191 of 1992, all the three appeals are heard and decided by the present common judgment.

2. The appellant has preferred the present appeal against the judgment and order of conviction and sentence dated 14th June 2000 passed by the learned Judicial Magistrate First Class, Mandvi-Kutch, in Criminal Case No.2191 of 1992, whereby

the learned Judge was pleased to convict the appellant-accused under Section 409 of the Indian Penal Code. However, the appellant-accused was acquitted from the offences punishable under Sections 420, 468 and 471 of the Indian Penal Code.

3. It is the case of the prosecution that the appellant-accused was serving as Branch Post Master in Dhunai Post Office, Mandvi during the period 02nd August 1986 to 08th August 1992. It is the case of the prosecution that during the said period, Rajibai Gopalji and Gopalji Shivji, in their joint account No.872323, deposited an amount of Rs.13,000/- and thereafter deposited an amount of Rs.557/-. It is also the case of the prosecution that Sherubha Hamid Chauhan and Keshubha Sherubha Chauhan, in their joint account No.872963, deposited an amount of Rs.01,000/-. It is further the case of the prosecution that one Hajam Ibrahim Husain, in his account No.871675, deposited an amount of Rs.01,040/-. It is also the case of the prosecution that one Kasturben Mohanlal Patel, in her account No.872680, deposited an amount of Rs.01,000/-. As per the case of the prosecution, the appellant-accused had shown the said amounts in the pass-book and made stamp on the pass-book, but did not shown the said amount in the Register and not credited the said amounts with the State Government. Thus, the appellant-accused used the said amounts for his personal use and committed misappropriation of the said amounts. It is also the case of the prosecution that the appellant-accused made alteration in the Register. Therefore, a complaint to the said effect was registered with Mandvi Police Station.

4. Thereafter, statements of witnesses were recorded and on completion of the investigation, charge-sheet came to be filed against the appellant-accused in the Court of Judicial Magistrate First Class, Mandvi-Kutch, which was numbered as Criminal Case No.2191 of 1992.

5. Thereafter, charge was framed below Exhibit 11 against the appellant-accused and as the appellant-accused has denied the case of the prosecution, trial was conducted against the appellant-accused. To prove the case of the prosecution, prosecution has examined witnesses and also produced oral as well as documentary evidence in support of the prosecution case.

6. Thereafter, after filing of closing pursis by the prosecution, under Section 313 of the Code of Criminal Procedure, 1973 further statement of appellant-accused was recorded.

7. After hearing both the sides, the learned Judicial Magistrate First Class, Mandvi-Kutch, vide his order dated 14th June 2000 passed in Criminal Case No.2191 of 1992 convicted the appellant-accused for the offence punishable under Section 409 of the Indian Penal Code and ordered to undergo rigorous imprisonment for a period of one year and also imposed fine of Rs.02,000/-, and in default of payment of fine, ordered to undergo rigorous imprisonment for a further period of two months. However, the learned Judge acquitted the appellant-accused from the offences punishable under Sections 420, 468 and 471 of the Indian Penal Code.

8. Heard Mr.Pratik Barot, learned counsel for the appellant, appointed through Legal Aid and Mr.K.P. Raval, learned Additional Public Prosecutor for the respondent-State.

9. Mr.Barot has contended that the judgment and order of conviction passed by the learned Judge is not proper in eye of law. He has read the charge framed below Exhibit 11 and argued that looking to the allegations leveled against the appellant-accused shows that he was a public servant during the alleged period and it was also argued before the learned trial Judge that provision of Section 197 of the Code of Criminal Procedure is applicable in the present case and without any sanction, Court has no power to take cognizance. Mr.Barot has read the oral evidence of the witnesses and argued that role of the present appellant is crystal clear and that act was committed by him during his job. He, therefore, contended that without any sanction, present appellant cannot be prosecuted. He also argued that from the oral evidence of the witnesses, prosecution has failed to prove that the said duty of the appellant is established beyond reasonable doubt to say that the present appellant was entrusted and dominion over the property. Mr.Barot has also argued that when the witnesses have failed to establish the case against the appellant, judgment and order of the learned trial Judge is required to be quashed and set aside. He has also contended that in support of prosecution case that the disputed entries were made by the appellant or that the appellant had signed the

pass-book, prosecution has not examined hand-writing expert. Even complainant has no power or authority to file complaint. Mr.Barot has relied upon the judgment in case of Abdul Wahab Ansari Vs State of Bihar and another reported in AIR 2000 SC 3187 and argued that previous sanction of the competent authority being a pre-condition for the Court in taking cognizance of the offence if the offence alleged to have been committed by the accused can be said to be an act in discharge of his official duty, the question of applicability of Section 197 touches the jurisdiction of the Magistrate in the matter of taking cognizance and, therefore, there is no requirement that an accused should wait for taking plea that cognizance was taken without prior sanction of competent authority till the charges are framed. Mr.Barot has also relied upon judgment in case of Suresh Kumar Bikamchand Jain Vs Pandey Ajay Bhushan reported in AIR 1998 SC 1524. He has also contended that the judgment and order passed by the learned Judge is against the provisions of law. The learned trial Judge has committed grave error in convicting the appellant and, therefore, the judgment and order passed by the learned trial Judge is required to be quashed and set aside.

10. Mr.Barot, learned counsel for the appellant, has contended that so far as appeal against acquittal filed by the State, i.e. Criminal Appeal No.772 of 2000, is concerned, is required to be dismissed. He has contended that prosecution has failed to prove ingredient of Section 415 of the Indian Penal Code. He has also contended that prosecution has failed to prove by leading evidence of hand-writing expert that in the pass-book, signature is of the appellant. Even prosecution has failed to prove that documents were forged by the appellant and that forged documents were used by the appellant for his personal gain. Thus, when prosecution has failed to prove beyond reasonable doubt the offence under Sections 420, 468 and 471 of the Indian Penal Code, present appeal is required to be dismissed.

11. Mr.Barot, learned counsel for the appellant, has contended that so far as appeal for enhancement of sentence filed by the State, i.e. Criminal Appeal No.777 of 2000, is concerned, is required to be dismissed mainly on the ground of passage of time. He has contended that the judgment and order of conviction and sentence is of the year 2000 and now after 10 years, the appeal is listed before

this Court for final hearing and therefore, mainly on the ground of passage of time, present appeal is required to be dismissed. He has also contended that the appellant is old aged person. He has to look after his family and he has to maintain his family. He, therefore, contended that looking to overall facts and circumstances of the case, circumstantial evidence, situation of his family and passage of time, some lenient view is required to be taken.

12. Mr.K.P. Raval, learned Additional Public Prosecutor, has vehemently contended that prosecution has already proved its case beyond reasonable doubt. He has read the charge framed against the appellant-accused, oral as well as documentary evidence and contended that in the present case, previous sanction to lodge complaint against the appellant is not necessary. When the present appellant was serving in the Post and during his duty, it was the duty of the appellant to maintain the entries of deposition made by the account holders of post in their accounts as well as in the Register and the said amount has to be deposited with the Government, but due to malice intention, present appellant has not done so. Mr.Raval has further argued that the appellant has made entries in the pass-book but neither the appellant made entries to the said effect in the Register nor deposited the said amount with the Government. Thus, with an intention and knowledge, just to cheat the poor account holders the appellant has committed the said offence. He has also contended that money of poor people is involved in the present case. Mr.Raval has also read Section 8 of the Evidence Act and argued that looking to the conduct of the appellant-accused, judgment and order passed by the learned trial Judge is proper in eye of law. He has also contended that the after appreciating each and every aspects of the matter, taken lenient view and has passed absolutely just and proper order. He, therefore, contended that the judgment and order of conviction and sentence passed by the learned trial Judge is required to be confirmed.

13. Mr.Raval, learned Additional Public Prosecutor, has further contended that State has also filed appeal for enhancement of sentence imposed upon the appellant-accused being Criminal Appeal No.777 of 2000. Mr.Raval has contended that as provided in Section 409 of the Indian Penal Code, whoever, being in any manner entrusted with property, or with any dominion over property in

his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with imprisonment for life, or with imprisonment of either description for a term term which may extended to ten years, and shall also be liable to fine. He has contended that the learned trial Judge has not recorded any finding for not awarding sentence which is less than what is provided in the Act. He has further contended that in the present case, no lenient view is required to be taken by the learned trial Judge and ought to have viewed seriously. He, therefore, contended that sentence imposed upon the appellant is required to be enhanced and Criminal Appeal No.777 of 2000 is required to be allowed.

14. Mr.Raval has also contended that State has also filed appeal against the acquittal being Criminal Appeal No.772 of 2000. He has contended that the learned trial Judge has erred in acquitting the appellant-accused from the offence punishable under Sections 420, 468 and 471 of the Indian Penal Code. He has read the provision of Section 415 of the Indian Penal Code and argued that ingredients of Section 415 is also proved by leading oral as well as documentary evidence. Mr.Raval has contended that with an intention and knowledge, the appellant has cheated the poor account holders and used the said amounts for his personal use. Thus, the appellant has mis-appropriated the amount of poor account holders by using fraudulent documents and thus, the appellant has committed offence under Section 471 of the Indian Penal Code. He, therefore, contended that the order of the learned trial Judge acquitting the appellant-accused from the offence punishable under Sections 420, 468 and 471 is required to be quashed and set aside and the appellant-accused is required to be convicted under Sections 420, 468 and 471 of the Indian Penal Code and appeal being Criminal Appeal No.772 of 2000 is required to be allowed.

15. I have gone through papers produced before me and the judgment and order passed by the trial Court. I have also perused the oral as well as documentary evidence led before the trial Court and also considered the submissions advanced by learned counsel for the parties.

16. From the perusal of the papers and oral as well as documentary evidence, it is established beyond reasonable doubt that the present appellant-accused is public servant and in his official capacity, account holders of post office i.e. witnesses, have deposited the amount with the appellant-accused. It also appears from the papers that just for their satisfaction, the appellant-accused has made entries in their respective pass-book for deposition of money, but the appellant-accused had never endorsed the entries for deposition of amount by the account holders, i.e. witnesses, in the Register maintained in the Post Office. The said act of the appellant-accused is established by the prosecution by leading oral as well as documentary evidence. I have also perused the defense taken by the appellant-accused, but the appellant-accused has failed to establish his case. The defense taken by the appellant that previous sanction is necessary before filing a complaint against him as he was a public servant, I am of the opinion that when the appellant-accused has committed the offence in his official capacity, then question of Section 197 of the Code of Criminal Procedure cannot come in way. The question regarding previous sanction is in detail discussed by the learned trial Judge in his judgment and order and has rightly dealt with by the learned trial Judge. It also appears from the papers that the appellant-accused has misappropriated public money for his personal use and ingredient of Section 409 of the Indian Penal Code is established beyond reasonable doubt against the present appellant-accused. Hence, I am of the opinion that the judgment and order passed by the learned trial Judge is absolutely just, proper and correct and no interference is required to be called for by this Court. Hence, present appeal is dismissed.

17. I have also considered the submissions advanced by Mr.Padhya, learned counsel for the appellant-accused and Mr.Raval, learned Additional Public Prosecutor, regarding appeal filed by the State against the acquittal of the appellant-accused from offence punishable under Sections 420, 468 and 471 of the Indian Penal Code. Looking to the papers, I am of the opinion that the prosecution has failed to establish beyond reasonable doubt the ingredient of Section 415 of the Indian Penal Code. As per Section 415 of the Indian Penal Code "whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any

person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".

As per above, prosecution has failed to establish beyond reasonable doubt the ingredient of Section 415 of the Indian Penal Code and therefore, I am of the opinion that the judgment and order of conviction and sentence dated 14th June 2000 is absolutely just, proper and correct and is not required to be interfered. Hence, the judgment and order of conviction and sentence passed by the learned trial Judge is hereby confirmed and the appeal against the acquittal filed by the State being Criminal Appeal No.772 of 2000 is hereby dismissed.

18. I have also considered the submissions advanced by Mr.Padhya, learned counsel for the appellant-accused and Mr.Raval, learned Additional Public Prosecutor, regarding enhancement of sentence. The judgment and order of conviction and sentence is dated 14th June 2000 and now we are in the year 2011. After a passage of 10 years, present appeal for enhancement of sentence is on the board of final hearing before this Court. Now after a passage of 10 years, it is not appropriate to enhance the sentence. I have also considered the submission advanced by Mr.Padhya, learned counsel for the appellant-accused, regarding age of the appellant, his family circumstances and passage of time; I am of the opinion that some lenient view is required to be adopted. Hence, I am of the considered opinion that the judgment and order of conviction and sentence passed by the learned trial Judge is absolutely just, proper and correct and is not required to be enhanced. Hence, the present appeal for enhancement of sentence, i.e. Criminal Appeal No.777 of 2000, is hereby dismissed.

19. Looking to the overall facts and circumstances of the case and oral as well as documentary evidence produced on record, I am of the opinion that the learned trial Judge has not committed any error while passing the judgment and order of conviction and sentence. The learned trial Judge has considered evidence as a whole and thereafter has passed the impugned order.

20. In view of the foregoing reasons, I have not found any substance in the present appeal and hence, present appeal, i.e. Criminal Appeal No.284 of 2001, deserves to be dismissed and is hereby dismissed. The judgment and order of conviction and sentence dated 14th June 2000 passed by the learned Judicial Magistrate First Class, Mandvi-Kutch, in Criminal Case No.2191 of 1992 is hereby confirmed. The appellant-accused is on bail at present. This bail bond shall stand cancelled. The appellant-accused is, therefore, directed to surrender himself before the Jail Authority within a period of four weeks from today, failing which the trial Court concerned is directed to issue Non-bailable warrant against the present appellant-accused to effect his arrest. Record and Proceedings, if any, be sent back to the trial Court concerned, forthwith.

So far as Criminal Appeal No.772 of 2000, i.e. appeal against acquittal, is concerned, the same is hereby dismissed. So far as Criminal Appeal No.777 of 2000, i.e. appeal for enhancement, is concerned, the same is hereby dismissed.

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