

Rasul Mohammed Hanif Gulandaj

Vs

The State of Maharashtra

Criminal Appeal No. 252 of 1968

(A.N. Ray, D.G. Palekar JJ)

25.11.1971

JUDGMENT

PALEKAR, J. -

1. This is an appeal by special leave from an order of the High Court of Bombay summarily dismissing the appeal filed by the appellant from the order of conviction and sentence passed by the learned Additional Sessions Judge, Sholapur. The appellant was found guilty of the offence under sections 409 and 477-A of the Indian Penal Code and was sentenced to rigorous imprisonment for three years and a fine of Rs. 1,000.

2. The appellant was the Head Clerk in the Office of the diagnostic Centre (hereinafter called the Centre) Employees State Insurance Scheme, Sholapur. The in-charge of the Centre was Dr. Gajanan Dattatraya building owned by the Dhanrajgirji Hospital, Sholapur and the Centre had to pay monthly rent to the managing trustee of the Hospital.

3. On September 24, 1964 the appellant prepared Abstract Bill 16 for Rs. 827.42 np. for the payment of rent due to the Hospital from January 16, 1964 to June 30, 1964. The Abstract Bill was sent to Treasury and On November 7, 1964. Which was a Saturday the amount was withdrawn from the Treasury by the appellant. On the November 9, 1964 the amount was shown as received from the Treasury and on the same date a debit entry was made to the effect that it was paid to the Hospital by way of rent. The Cash Book was checked and signed by Dr. Joglekar and Dr. Joglekar has admitted that he had seen and verified on November 9, 1964 that a receipt for the amount had been received from the Hospital for the amount paid to it.

4. On May 31, 1965 the appellant prepared detailed Contingency Bills 6 to 10 for being sent to the Accountant General, Bombay. The rules required that these Contingency Bills should contain all the withdrawals and disbursements made by the Office and must be supported by the Abstract Bills and the receipt and vouchers in the original. Accordingly, the original receipt received from the Hospital in connection with the payment of the above rent had also to be sent along with the detailed Contingency Bill. Detailed Contingency Bill 6 made reference to this Abstract Bill 16 and it is the case of the appellant that in due course of official business this original receipt for rent accompanied that particular Contingency Bill. At the time when these bills were sent to the Accountant General, Bombay i.e., on the May 31, 1965 Dr. Joglekar was on leave but one Dr. Miss Shirshikar was holding the charge of the Centre. Dr. Shirshikar admits that at the time when these Contingency Bills were sent, a true copy with original rent receipt which had to be sent to the Accountant General's Office requires that if any objection is raised with regard to the detailed Contingency Bills which had been received by the Accountant General's Office, the same is to be immediately noted in

what is known as the "Objection Book." If vouchers which should accompany the detailed Contingency Bills are not sent along with bills, objections would be raised forthwith and the concerned office intimated about the same.

5. It appears that some five months later, an internal audit party came to audit the accounts in the Office of the Centre. It is not clear from the evidence how Dr. Joglekar came to know that this particular rent had not been paid. He says that somebody in the audit party told him about it. But that does not appear to be correct because the audit party could have no reason to suspect anything because the Cash Book showed the amount of the payment on November 9, 1964 and there was the true copy of the receipt from the Hospital. But it is a fact that on November 1, 1965 Dr. Joglekar wrote to the managing Trustee of the Hospital, Dr. Mulay, and asked him whether he had received the amount of rent for the period already referred to. Dr. Mulay replied that the amount had not been received. So Dr. Joglekar wrote to the Office of the Accountant General on November 4, 1965 if they had the original receipt of rent with them. The Accountant General's Office informed him on November 7, 1965 that they had not received any stamped receipt.

6. Dr. Joglekar, on these facts filed his complaint with the Police and the appellant was in due course committed to the Sessions Court to stand his trial. The appellant pleaded not guilty. He insisted that he had made the payment to Joshi, the Head Clerk of the Hospital on November 9, 1964 and that Joshi had given a receipt for the amount and that this receipt was sent to the Accountant General in due course of official business on May 31, 1965 along with detailed Contingency Bill 6. The learned Additional Sessions Judge did not accept the statement of the appellant. He held that Joshi, the Head Clerk of the Hospital must not have received any payment and, therefore, there was no question of any receipt being given by him. He also held that no original receipt must have been sent to the Accountant General as alleged by the appellant, the fact being that the appellant himself must have misappropriated the amount. Since he had also made a false entry showing a debit for the amount of rent on November 9, 1964, the learned Additional Sessions Judge convicted the appellant under Sections 409 and 477-A.

7. Head Clerk Joshi of the Hospital has been examined in this case for the prosecution and he stated that the appellant had not paid him rent for the period January 16, 1964 to June 30, 1964 and, therefore, there was no question of issuing any receipt therefor. He produced his Books of Accounts and the Receipt Book to show that no such payment had been made. It was, however, admitted that rent for subsequent months had been duly received from the appellant and the same was entered in due course in the books of account. It is rather strange that when subsequently payment was made to him by way of rent, he should not have appropriated the rent against the months for which arrears were due but should have appropriated it against subsequent months keeping a gap for the period January 16, 1964 to June 30, 1964. It may be that the appellant told him that the rent was for the subsequent period. But that would not bind the landlord. Joshi, the Head Clerk of the landlord would be expected normally to appropriate the amount received by him against the rent due for the previous months. Apart from this it is an admitted fact that there was a receipt for the amount paid on November 9, 1964. Dr. Joglekar has clearly admitted that when he checked the Cash Book for the day, he had noticed that a debit entry for the rent had been made and that entry had been supported by a duly executed receipt. Then again Dr. Shirshikar has admitted that when the detailed contingency bills were sent by the appellant on May 31, 1965, the appellant had produced the original receipt along with a true copy thereof and that in token of the correctness of the same, she had signed the true copy and the same was kept in the office record. It is hence seen that there was an original receipt for the amount of the rent paid to the Hospital. On the one hand, therefore, there is the evidence of Head Clerk Joshi of the Hospital that no payment had been received by him and

he had not issued any receipt for the rent and, on the other hand, there is the evidence of Dr. Joglekar and Shirshikar which clearly shows that there was a document in the Office which purported to be a rent receipt issued by the Hospital. The simplest way, therefore, of establishing the truth of the matter would be to obtain the original receipt from the Accountant General's Office. If it was a genuine receipt issued by the Hospital, it would only show that Head Clerk Joshi must have misappropriated the amount after issuing the receipt. On the other hand, if it was not genuine receipt given by Joshi on behalf of the Hospital, the case against the appellant would automatically stand proved.

8. Unfortunately that original receipt which purports to have been sent along with the Contingency Bills on May 31, 1965 is not forthcoming. Mr. Patil from the Accountant General's Office states that the receipt is not available in the office. After Dr. Joglekar wrote to the Accountant General's Office on November 4, 1965 to send the original receipt, a search was made there. At that time they did not find the receipt. Therefore, it appears, an objection was raised and that was entered in the "Objection Book." From the mere fact that the document is missing from the office of the Accountant General, it will not be possible to reach the conclusion that the original must not have been sent to that Office at all. The document had been sent, according to the appellant, along with the detailed Contingency Bill 6 on May 31, 1965 and if such an important voucher was missing, objection would have been noted immediately and intimation sent to the Office of the Centre. The Objection Book itself was not produced before the Court and there is nothing to show that within a reasonable time after the receipt of the Contingency Bills, the non receipt of the voucher as per the Abstract Bill 16 had been intimated to the Centre. We are informed that such objections are to be noted in the Objection Book within a week of the receipt of the Contingency Bills. In any event, it is clear from the evidence that till Dr. Joglekar wrote to the Accountant General's Office five months later, the Accountant General's Office had not informed the Centre that the original voucher for the Abstract Bill 16 had not been received in the Office. It is quite likely that the original document might not have been sent at all by the appellant. But it is equally probable that it might have been sent and the same is missing. In the absence of a very important document which alone could tell us whether Head Clerk Joshi of the Hospital is telling the truth or the appellant is telling the truth, it will be impossible to hold that the appellant committed criminal breach of trust. And if there is no criminal breach of trust, then the charge for falsification of accounts also fails.

9. The result, therefore, is that the benefit of doubt must go to the appellant in this case. The appeal is allowed, the order of conviction and sentence is set aside and the appellant is acquitted. Fine, if paid, shall be refunded.

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