

Vishnu Datta Mishra

Vs

State of Madhya Pradesh

Criminal Appeal No. 49 of 1972

(Jaswant Singh, O. Chinnappa Reddy JJ)

28.11.1978

JUDGMENT

JASWANT SINGH, J. -

1. This appeal by special leave is directed against the judgment and order of the High Court of Madhya Pradesh dated August 3, 1971 affirming the conviction of the appellant under Section 409 of the Indian Penal Code and sentence of two years' RI and fine of Rs. 1000 passed thereunder.

2. The short point urged by Mr. Talukdar appearing in support of the appeal, is that it is proved from the material on the record that the appellant made all the payments which were due to the labour and the courts below have erred in holding him guilty of criminal breach of trust. He has in this connection drawn our attention to the deposition of Jai Ram, contractor (PW 3) to the effect that he got the work done on Maladhungi and Malapondo roads by engaging about 40 to 50 labourers on contract and got from the appellant payments of labour charges for the work got done by him. This statement is not at all helpful to the appellant in respect of Exs. 4, 6 and 8 in view of the further statement made by the witness that whenever the appellant made payments to him, he obtained his thumb impression on the muster-rolls Exs. P-4, P-6 and P-8 nor did he put his signatures or thumb impression on them. The statement of this witness is also not helpful to the appellant as according to the witness whenever is appellant made any payment to headmen, they alone used to put thumb impression or signatures on muster-rolls and used to receive the payments themselves, and Exs. 4, 6 & 8 show that the amounts mentioned therein were to be made to headmen Nane Singh, Kunji Singh and Prem Singh respectively. Now Kunji Singh, PW 2 who is a headmen has stated that the appellant never gave him the amount of Rs. 541.40 (mentioned in Ex. 6) and never obtained his thumb impression on any paper and that he did know persons by names Faggu, Govindi, Halku, Sukhi and Ram Singh etc. and though he got his own wages for the period he worked as labourers, he did not get any payment on account of wages due to other labourers. The statement of the other headman Prem Singh (PW 5) is also categorical. He has unequivocally stated that the appellant never gave him the amount of Rs. 529.42 paise (mentioned in Ex. P-8). Nane Singh (PW 1) has also stated that no payment was made to him by the appellant. If the appellant had really made the payments to the aforesaid headmen, there is no reason why he should not have obtained their receipts on Exs. P-6, P-8 and P-4 respectively and in case of their denial confronted them with these receipts. The absence of the receipts by Nane Singh, Kunji Singh and Prem Singh on these muster-rolls is an eloquent proof of the fact that the amounts mentioned in the said muster-rolls were not paid to these persons. Even the recitals in Exs. P-4 to P-8 do not show that the payments were made to Nane Singh, Kunji Singh and Prem Singh. All that they show is that the payments of the amounts mentioned therein were to be made to these persons. In this state of evidence, we are unable to accede to the contention of the learned counsel for the appellant that the appellant duly disbursed the

amounts to the mates or to the contractor.

3. For the foregoing, we are unable to interfere with the judgment and order of the High Court so far as the conviction of the appellant is concerned. However, taking into account the fact that the appellant is likely to lose his service and has already undergone imprisonment for a period of 6 1/2 months, we think that the sentence already undergone by him together with the fine as reduced by the High Court, will meet the ends of justice. Accordingly, we reduce the appellant's substantive sentence of imprisonment to the period already undergone by him. With this modification in sentence, we dismiss the appeal.

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