

# SUPREME COURT OF INDIA

State of Karnataka

Vs.

Marigowda

Crl.A.No.221 of 1975

(O. Chinnappa Reddy, A. P. Sen and Baharul Islam, JJ.)

19.08.1980

## ORDER

1. The respondent, Marigowda, was the Secretary of the Aladahalli Large-scale Co-operative Society, Mallipatna. He was convicted by the learned First Class Magistrate, Holenarasipura of an offence under S. 408, I. P. C. on a finding that he had committed criminal breach of trust in respect of three sums of money, namely, Rupees 1,500/-, Rs. 175/- and Rs. 100/-, belonging to the Society, In respect of these amounts, he had made entries in the cash book, Ex.P-9(a)P-9(c) and P-9(d) as if the amounts had been drawn from the society and credited into the District Co-operative Central Bank, Hassan. The defence of the respondent was that these amounts had been paid to PW 2, Executive Officer of the Bank, to be deposited with the Central Co-operative Bank. Advantage was sought to be taken of the circumstance that PW 2 had, in fact, deposited three identical sums of money with the Central Co-operative Bank, but, according to the evidence of PW 2, those amounts had been received by him not from the accused but from other persons. A sum of Rs. 1,500 had been received from Mallinathapura Co-operative Society, Mallinathapura and that society had also been given a receipt for that amount. The amount of Rs. 100 had been received by PW 2 from Koti Basave Gowda and not from the accused. The amount of Rs. 175/- was part of an amount of Rupees 600/- which had been received by PW 2 for being credited in the District Co-operative Central Bank, but the misappropriated amount was not part of this amount of Rs. 600/-. The evidence of PW 2 was not challenged in cross-examination. His evidence was also fully substantiated by the entries in the accounts of the District Co-operative Central Bank.

2. The trial court accepted the evidence of PW 2 and convicted the respondent as stated above. The conviction and sentence were confirmed by the learned Sessions Judge.

3. In revision the High court interfering with concurrent findings of fact, acquitted the accused. A perusal of the judgment of the High Court makes it obvious that the High Court had misdirected itself into thinking that the three amounts paid by PW 2 into the District Co-operative Central Bank pertained to the amounts which the accused was alleged to have misappropriated. PW 2 expressly stated that the amounts had been received by him from Mallinathapura Co-operative Society, etc., and his evidence was not challenged in cross-examination. No suggestion was made to him and there was no justification whatsoever for the High Court to reach the conclusion that these amounts were the very amounts which the accused was alleged to have misappropriated.

4. We are afraid that the judgment of the High Court cannot be sustained. It is, therefore, set aside and the conviction is restored. But having regard to the time that has elapsed, we do not think that it is necessary to send the respondent back to jail. In the circumstances of the case we reduce the sentence of imprisonment to the period already suffered by him but increase the fine imposed upon him by the trial court from Rs. 500/- to Rs. 1,750/-. If the amount of fine is realised, it will be paid to the Aladahalli Large Scale Co-operative Society. In default of payment of fine, the accused will undergo rigorous imprisonment for a period of three months.

Order accordingly.