

State of Orissa

Vs

Gangadhar Pande

Criminal Appeal No. 509 of 1978

(S. Natarajan, K. Jagannatha Shetty, Kuldip Singh JJ)

28.03.1989

ORDER

1. Heard learned counsel for the appellant and the respondent. On perusing the evidence and the judgment of the High Court, we are of opinion that the High Court has manifestly misread the evidence of the prosecution witnesses and this has vitiated the entire reasoning of the High Court.
2. The respondent was a Marketing Inspector of Sambalpur Municipality during the period from February 16, 1968 to January 10, 1971. He was said to have realised Rs. 46,545.50 under 60 cash receipts issued by him towards rent from stall-holders and misappropriated a sum of Rs. 22,763.40 and fabricated false records to conceal the embezzlement. While the receipts issued to the licenses contained the full amounts remitted by them, in the counterfoils given to the office, lesser amounts were entered. Out of the 60 instances that were cited the prosecution was able to prove 36 instances where the counterfoils differed from the original receipts.
3. The trial court noticed that in Exs. 4 to 36 the respondent had issued receipts for higher amounts but in the corresponding counterfoils he had entered only lesser amounts.
4. The respondent did not dispute his writings in the receipts and counterfoils and about the receipts and counterfoils containing different figures, but however, pleaded that he had entered lesser amounts in the counterfoils at the behest of the Executive Officer as the said officer was his superior and he could not therefore disobey him. The Executive Officer who was examined in the case denied that he had directed the respondent to prepare counterfoils showing reduced amounts of collections from the licensees and it was on his directions the respondent had manipulated the counterfoils.
5. In such circumstances, the trial court found the respondent guilty under Sections 409 and 467, IPC and sentenced him to undergo RI for 5 years and pay a fine of Rs. 10,000, and to undergo RI for 3 years and to pay a fine of Rs. 5,000 the sentences to run concurrently.
6. In the appeal preferred by the accused, the High Court took the view that the prosecution had not adduced adequate and reliable evidence to prove entrustment of moneys to the respondent or that he had collected rent from the stall-holders and had issued receipts for higher amounts but prepared counterfoils for lesser amounts for the corresponding receipts. In that view of the matter the High Court held that the charges have not been duly proved against the respondent and acquitted him of both the charges and set aside his convictions. Aggrieved with the judgment of the High Court, the State has preferred this appeal by special leave.

7. Mr. M. S. Gujral, learned counsel appearing for the State read to us the evidence of several witnesses. We have examined the evidence of PWs 27, 29, 40, 47, 48 etc. and find that they have made categorical statements that they had paid the amounts noted in the receipts to the respondent. As we have already stated the respondent does not dispute that he wrote the entries in the receipts and the counterfoils or that they contain different figures. In such circumstances the finding of the High Court in favour of the respondent is clearly attributable to misreading of the evidence. The findings of the High Court are in total disregard of the evidence in the case.

8. Mr. P. N. Misra, learned counsel for the respondent contended that in the absence of cash books, the prosecution case that the respondent had committed criminal breach of trust cannot be held to have been proved. This argument overlooks the fact that the respondent has himself admitted that he had prepared the original receipts and the counterfoils and that they contain different figures. His only explanation was that he had done so in obedience to the direction given to him by the Executive Officer. The cash book and other records which are said to have been destroyed when a fire broke out in the Municipal Office building are therefore really not material in the case. The daily collection register which has been marked as an exhibit does not show that amounts more than what are entered in the counterfoils have been shown in the daily collections. The very fact that the original receipts have been issued for higher amounts and the counterfoils have been prepared for lesser amounts would go to show that the object and purpose of preparing receipts in that fashion was only to embezzle. The judgment of the High Court is therefore patently wrong and it has led to miscarriage of justice. We feel, therefore, called upon to set aside the judgment of the High Court and restore the convictions awarded to the respondent. However, in the matter of sentences we feel persuaded to accept the pleas of Mr. P. N. Misra, learned counsel for the respondent that the respondent should be shown leniency because of his old age and retirement from service several years ago.

9. In such circumstances, we sentences the respondent to suffer RI for 6 months and to pay fine of Rs. 2500 under each of the two counts and in default of payment of fine to undergo RI for 2 months for each default. The substantive sentences will run concurrently. The appeal is allowed accordingly.

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