

Vijay Digamber Lanjekar

Vs

State of Maharashtra

Criminal Appeal No. 482 of 1979

(A. M. Ahmadi, Smt. M. S. Fathima Beevi, V. Ramaswami – II JJ)

19.02.1991

ORDER

1. The appellant has been convicted under Section 409, IPC for having misappropriated a sum of Rs 8741.40 and has been sentenced to suffer rigorous imprisonment for two years and to pay a fine of Rs 2000, in default to suffer rigorous imprisonment for six months. The facts reveal that the appellant was serving as a clerk in the office of the Mayor of Pune at all material times. The firm of M/s. Hira Lal Mehta & Co. had to recover a sum of Rs 8741.40 from the Municipal Corporation besides another amount of Rs 1446.96. Two cheques bearing numbers 646749 and 646750 dated May 5, 1973 for the said two amounts, were drawn up in favour of the said firm. Out of these two cheques, one cheque bearing number 646750 for Rs 1446.96 was admittedly paid to the representative of the said firm but the other cheque for Rs 8741.40 was not delivered to the said representative. It appears that the said cheque was encashed by the original accused 2, the peon working in the Mayor's office. Since it was not crossed, the cheque could be encashed. After the cheque was so encashed the amount was paid by the original accused 2 to the present appellant. The present appellant as well as the original accused 2 were called by the Mayor in his chamber on May 11, 1973 after he received a complaint from the representative of the concerned firm. In the chamber of the Mayor original accused 2 stated that he had encashed the cheque and had paid the amount to the appellant. The appellant kept quiet on that occasion but later executed Ex. 36 whereby he undertook to make good the amount by Monday, May 14, 1973. It is an admitted fact that the appellant did not pay the amount as promised.

2. On May 11, 1973 after the Mayor learned about the misappropriation, he jointly with PW 1 - Raman Lal A. Mehta, partner of M/s. Hira Lal Mehta & Co., lodged a complaint with the Inspector, Deccan Gymkhana Police Station, Pune. On the basis of the complaint the matter was inquired into and ultimately the appellant and the peon came to be charge-sheeted. The learned JMFC, Pune convicted both the accused under Section 408/34, IPC and sentenced them to suffer rigorous imprisonment for two years and to pay a fine of Rs 2000, in default to suffer rigorous imprisonment for six months. Both the accused appealed against their conviction. The learned Additional Sessions Judge, Pune, dismissed the appeal of the appellant and convicted him under Section 408, IPC, maintaining the sentence. He, however, allowed the appeal of the co-accused and acquitted him. Against the said order of conviction the appellant approached the High Court in revision which summarily rejected it. Against the said order the appellant approached this Court under Article 136 of the Constitution.

3. The conviction is based on the evidence of PW 1 - Raman Lal, PW 2 - Nilkanth Waman Limaye (the Mayor), PW 5 - Raj Shekhar Bidawe and the letter Ex. 36 dated May 11, 1973. The learned counsel for the appellant has taken us through the relevant part of the evidence of the aforesaid

witnesses as well as the first information report Ex. 30 and the appellant's letter Ex. 36. From the evidence tendered on record it becomes clear that the appellant was in charge of the Mayor's Relief Fund and had prepared both the cheques in question dated May 5, 1973. It is also clear that only one cheque of Rs 1446.96 was delivered to the representative of the firm of M/s. Hira Lal Mehta & Co. The evidence of PW 1 makes this position clear. This is also clear from the evidence of PW 5, an employee of the said firm. The cheque for the amount of Rs 8741.40 was not delivered to the representative of the firm. Inquiries in regard to that cheque were made with the Bank of Maharashtra and it was found that the cheque was encashed by the peon who normally went to the bank to make deposits, etc. When this fact became known, PW 2 was informed about the same and it was thereafter that he called the appellant and the peon in his chamber on May 11, 1973 and inquired about the payment of Rs 8741.40. The peon informed the Mayor that he had encashed the cheque and paid the amount to the appellant. The appellant is stated to have kept quiet. If the appellant had not received the amount, he would have stoutly refuted the charge levelled against him by the peon. Not only did he not react but he gave the letter Ex. 36 to the Mayor assuring him that he would make good the payment by Monday, May 14, 1973. In the letter he stated "I am making good this amount in order that I may be able to lead good life in future. Your honour may not misunderstand me". From this document it becomes clear that the appellant undertook to pay the amount by Monday, May 14, 1973. He would not have undertaken to pay such a substantial amount, if he was in no way involved as was tried to be made out before us by the learned counsel for the appellant. On the basis of this evidence all the courts below have come to the conclusion that the appellant was guilty of misappropriation and we see no reason to depart from them.

4. That brings us to the question of sentence. The learned counsel for the appellant submitted that he has undergone a sentence of approximately six months and has already paid the fine. He further submitted that as a result of this conviction he has lost the job also. He was granted bail on September 7, 1979 and must have been released soon thereafter. We think that having regard to all these facts the ends of justice would be met if we reduce the sentence to that already undergone. The appeal is allowed to this limited extent only.

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