

Subash Chandra Bohidar

Vs

Secretary, Burobhadi S.C.S.

Criminal Appeals Nos. 1387 and 1386 of 1995

(J. S. Verma, K. Venkataswami JJ)

16.11.1995

JUDGMENT

K. VENKATASWAMI, J.

1. Leave granted.

2. The parties in both the appeals are the same. The appellant was acting as Secretary of the respondent Cooperative Society from 16-3-1972 to 24-1-1978. It was alleged by the respondent that during this period the appellant has misappropriated a total sum of Rs 2107 and Rs 1250 and on that ground two criminal cases being ICC Cases Nos. 57 of 1981 and 56 of 1981 respectively were filed against the appellant. The trial court rejected the defence put forward by the appellant that the amounts were taken as advances after getting proper sanction by the authorises concerned and therefore, there was no case of misappropriation. Consequently, the trial court found the appellant guilty of misappropriation under Section 408 IPC in both the cases and sentenced him to undergo rigorous imprisonment for six months and to pay a fine of Rs 2000 in default of payment of which to further undergo rigorous imprisonment for six months in ICC Case No. 57 of 1981 and rigorous imprisonment for six months and to pay a fine of Rs 1250 in default of payment of which to further undergo rigorous imprisonment for six months in ICC Case No. 56 of 1981.

3. The appellant preferred two appeals to the Additional Sessions Judge, Balangir in Criminal Nos. 15/9 and 16/19 of 1988-89. The learned Additional Session Judge reduced the sentences to rigorous imprisonment for two months and to pay a fine of Rs 2000 in default to undergo rigorous imprisonment for one month in Criminal Appeal No. 15/9 of 1988-89 and rigorous imprisonment for two months and to pay a fine of Rs 1500 in default to further undergo imprisonment for one month in Criminal Appeal No. 16/19 of 1988-89.

4. Being aggrieved, the appellant preferred two revision petitions being Criminal Revisions Nos. 185 and 186 of 1991 to the High Court, but without success. Hence, these two special leave petitions are preferred by the appellant against the High Court orders.

5. When the special leave petitions came up for hearing before this Court on 18-3-1994, the following order was passed :

"SLP (Crl.) No. 59 of 1994 :

Learned counsel for the petitioner submits that the petitioner's plea in the trial court itself was that the total sum of Rs 1250 was no doubt taken by him but it was taken

as an advance after being sanctioned by the President on the ground of his illness. The learned counsel places reliance on the document Annexure I to the SLP at page 13-A which is a copy of the Resolution dated 15-2-1977 of the Cooperative Society which has been produced in support of this submission. Learned counsel candidly accepted that this document has been produced for the first time in this Court and the same was inadvertently not produced by the petitioner at an earlier stage. In view of this statement and the submission made by the learned counsel on that basis we direct issue of notice on the SLP returnable on 18-4-1994. The notice to state that the matter may be finally disposed of at the notice stage itself.

The petitioner is directed to be released on bail to the satisfaction of the CJM, Balangir, Orissa.

SLP (Crl.) No. 195 of 1994 :

Learned counsel for the petitioner submits that the petitioner's plea in the trial court itself was that the total sum of Rs 2107 (Rs 1287 + Rs 820) was no doubt taken by him but it was taken as an advance after being sanctioned by the President on the ground of his illness. The learned counsel places reliance on the documents Annexures 1 and 2 to the SLP at pages 15 and 17 which are the copies of the Resolutions dated 20-7-1973 and 15-6-1974 of the Cooperative Society Ltd. which have been produced in support of this submission. Learned counsel candidly accepted that these documents have been produced for the first time in this Court and the same were inadvertently not produced by the petitioner at an earlier stage. In view of this statement and the submissions made by the learned counsel on that basis we direct issue of notice on the SLP returnable on 18-4-1994. The notice to state that the matter may be finally disposed of at the notice stage itself.

The petitioner is directed to be released on bail to the satisfaction of the CJM, Balangir, Orissa."

6. In spite of service of notice on the respondent, the counsel for the respondent was not present when the case came up for hearing and no challenge was made to the submission made on behalf of the appellant to dispute the documents relied on by the appellant.

7. In the circumstances, we deem it proper to accept the statement of the appellant based on the document filed in support thereof, namely, the resolutions passed at the Board's meetings dated 20-7-1973, 15-6-1974 and 15-2-1977 respectively. On acceptance of the documents, the charge of misappropriation levelled against the appellant must fail.

8. Consequently, the appeals are allowed, the conviction and sentences passed against the appellant in both the cases are set aside and the appellant is acquitted of the charge levelled against him under Section 408 IPC.