

Bachchu Singh

Vs

State of Haryana

Criminal Appeal No. 145 of 1999

(K. Venkataswami, S.S. Mohammed Quadri JJ)

08.02.1999

JUDGMENT

S.S. Mohammed Quadri, J.

1. Leave is granted.
2. The facts of the case, insofar as they are relevant for the disposal of this appeal, are as follows :
3. The appellant was working as Gram Sachiv for eight Gram Panchayats in the State of Haryana. In the month of June, 1983, he was posted in Block Palwal. He collected a sum of Rs. 648/- from thirty five villagers towards the house tax and executed receipts for the same. On the ground that he did not remit the amount, prosecution was launched against him under Section 409 IPC. The learned Judicial Magistrate, First Class, Palwal, convicted him of the offence under Section 409, IPC and sentenced him to six months' rigorous imprisonment and fine of Rs. 1,000/-. On appeal, the learned Additional Sessions Judge, by his judgment dated July 13, 1989, while confirming the conviction and fine imposed on him, reduced the imprisonment till the rising of the court. The appellant, however, challenged the said order passed in appeal before the High Court by filing revision and contended that his advocate was not authorised to concede the conviction. The High Court allowed the revision and remanded the case to the Appellate Court for fresh disposal. In the Appellate Court, he filed additional evidence Exhibit D/3 and affidavits marked 'X' and 'Y' in support of his plea that he had paid the amount in question to the Sarpanch, Ramkishan. The Appellate Court disbelieved the additional evidence on the ground that Ramkishan was examined as PW3 and he denied having received the said amount and observed that the additional evidence was tailored at the instance of the appellant to bolster up his evidence. On December 10, 1997, the Appellate Court dismissed the appeal confirming the conviction and sentence awarded by the learned Judicial Magistrate and that order was upheld by the High Court on the revision of the appellant on April 28, 1998. It is against that order of the High Court the appellant has come up in appeal by special leave.
4. Dr. Surat Singh, learned counsel for the appellant, endeavoured to argue the case on merits but in view of the limited notice issued, we asked him to confine his submissions to the question of the nature of offence committed by the appellant on the facts found by the High Court.
5. From a perusal of the judgments of courts below, it is evidence that the appellant is admittedly a public servant; in that capacity, he collected Rs. 648/- from the villagers as house tax, his defence that he paid the said amount to the Sarpanch was found to be false; it, therefore, follows that he has dishonestly misappropriated or converted the said amount for his own use and thus committed criminal breach of trust. As such, the ingredients of offence under Section 409 IPC have been

established and he was rightly found guilty of that offence.

6. However, on the question of punishment, the appellant was awarded sentence of six months' rigorous imprisonment and fine of Rs. 1000/- by the learned Magistrate. The imprisonment part was reduced to the rising of the court by the Appellate Court in the first instance. For the reasons best known to him, he challenged that order of the Appellate Court and got the case remanded to the Appellate Court. After remand the sentence awarded by the learned Magistrate was restored. We are told, he had already undergone four and a half months' rigorous imprisonment. Having regard to the facts and circumstances of the case, in our view, interest of justice would be met by reducing the sentence to the period already undergone without disturbing the fine of Rs. 1,000/- and we modify the sentence accordingly. The appeal is thus disposed of.