

SUPREME COURT OF INDIA

Rameshwar Prasad

Vs.

State of Rajasthan

CrI.A.No. 434 of 2009

(Dr. Arijit Pasayat, V.S. Sirpurkar and Asok Kumar Ganguly J.J)

05.03.2009

JUDGMENT

Dr.Arijit Pasayat, J.

1. Leave granted.

2. Challenge in this appeal is to the order passed by a learned Single Judge of the Rajasthan High Court, Jaipur Bench dismissing the application filed for recalling/modifying the order dated 14.3.2007 passed in Criminal Revision Petition No.671 of 2004. 3. Background facts need to be noted in brief. The appellant was appointed as the Branch Manager in Central Co-operative Bank, Branch Bonli in District Sawai Madhopur. On 25.4.1982 the First Information Report was lodged by the S.H.O. of the concerned police station for alleged commission of offence punishable under Sections 408 and 462 of the *Indian Penal Code, 1860* (in short the `IPC'). Subsequently, cognizance was taken for the allegation relating to offence punishable under Section 408 IPC for alleged criminal breach of trust of certain amounts. The trial Court by order dated 11.2.2003 convicted and sentenced the appellant in the aforesaid criminal case. The appellant filed appeal against the judgment and order of the trial Court. The first Appellate Court however remanded the case for fresh trial stating that there were certain lacunae which had to be rectified and the matter was to be re- examined. Against the order dated 16.4.2004 the appellant filed a Criminal Revision before the High Court. The High Court quashed and set aside the order of remand stating that it was against the settled position of law but upheld the judgment of the trial Court. In other words, the direction for remand was set aside but there was no examination on merits of the various stands taken by the appellant. An application was filed for review before the High Court stating that while setting aside the direction for remand the High Court had also dismissed the appeal not examining the appeal on merits and upheld the conviction as recorded by the trial Court. The application as noted above was dismissed.

4. In support of the appeal, learned counsel for the appellant submitted that there is lot of confusion at different stages. Firstly, the Appellate Court set aside the order of the trial Court and remanded the matter under Section 368(B) of the Code of *Criminal Procedure, 1973* (in

short the `Code') after consideration of certain matters which according to the learned Sessions Judge were lost sight of by the trial Court. The High Court accepted that the order of remand was bad yet did not examine the same on merits.

5. Learned counsel for the respondent-State on the other hand supported the judgment.

6. It is to be noted that neither in appeal before the learned Sessions Judge nor in the revision before the High Court there was no examination of appeal on merits. The first Appellate Court as rightly noted by the High Court remanded the matter to the trial Court for consideration of various aspects which in essence were to fill the lacunae in the prosecution version. The High Court noted that this was impermissible in law. Having said that the High Court ought to have examined the case of the appellant on merits because the same was not done by the first Appellate Court. In the circumstances, we set aside the impugned order of the High Court and remit the matter to the High Court for a decision on merits. It is needless to say that we have expressed no opinion on the merits of the case.

7. The appeal is allowed