

SUPREME COURT OF INDIA

Shabbir Ahmed Sherkhan

Vs.

State of Maharashtra

CrI.A.No.1042 of 2005

(Dr. Arijit Pasayat, Lokeshwar Singh Panta and P. Sathasivam JJ)

20.03.2009

JUDGMENT

Dr.Arijit Pasayat, J.

1. Challenge in this appeal is to the order of a learned Single Judge of the Bombay High Court in Criminal Revision Application No. 14 of 2005. The appellant was convicted for offence punishable under Section 409 of the *Indian Penal Code, 1860* (in short the `IPC') and was sentenced to undergo six months' rigorous imprisonment and to pay a fine of Rs.2,000/- with default stipulation.

2. Background facts in a nutshell are as follows:

“The appellant was on leave between 5.6.1998 to 14.6.1998 which was duly sanctioned by the department.

On 14.7.1998 a First Information Report (in short the `FIR') was registered on a written complaint under Section 409 IPC against the appellant wherein it was stated that a Dog Squad Team consisting of the appellant as well as three other police officials of Thane Police Station were required to bring the dogs for training to be started from 5.6.1998 and for the said purpose, the D.S.P., Thane, Rural by his order dated 3.6.98 sanctioned T.A./D.A. to the handlers of dogs and that on 4.6.98 the appellant had taken a cash amount of Rs. 12,000/- towards the Traveling Allowance from the Police Cashier for himself and on behalf of the remaining handlers of dogs and that he did not make the payment to the concerned Police Officials and instead he went to his native place and did not attend the training at Pune and through out the period till 14.7.98 he was absent from his duties. The appellant was arrested on the same day and after investigation a charge sheet was filed and the charges were framed by the Learned Chief Judicial Magistrate, Thane against the appellant under Section 409 IPC.

On 14.1.2004 the Learned Chief Judicial Magistrate, Thane, accepting on the case of the prosecution and depositions of the prosecution witnesses, held the Petitioner guilty for the offence punishable under Section 409 IPC and sentenced him for 6 months rigorous imprisonment and a fine of Rs.2,000/ was also imposed, with default stipulation.

On 8.12.2004 the appellant filed a Criminal Appeal No.9/2004 against the judgment and order of the trial court convicting him. The learned Appellate Court by its judgment and order dated 8.12.2004 dismissed the appeal of the appellant by confirming the order of conviction and sentence passed by the trial court.

On 8.2.2005 the appellant filed a Criminal Revision Application No. 14 of 2005 which by judgment and order dated. 8.2.2005 was dismissed.”

3. Learned counsel for the appellant submitted that there is absolutely no mens rea involved. When the appellant came back, he returned the amount which he had taken. Therefore, there is no scope for any conviction.

4. Learned counsel for the respondent on the other hand submitted that no leave was sanctioned. The appellant unauthorisedly left the head quarters and had taken the money which was to be spent for a particular purpose.

5. It appears that before the order of the High Court the only plea taken was that a lenient approach should be adopted. The High Court rejected the plea holding that the courts have already taken lenient view of the matter. It appears that the appellant has already served out the sentence. Admittedly the appellant had received the money and was absent without any leave being sanctioned. There is no dispute that the appellant had received the money for a particular purpose. The appellant had not disputed that he had received the money for a particular purpose and that he had not made the payment and had remained absent. That being so there is no scope for interference in this appeal which is accordingly dismissed.