

PETITIONER:
SUBASH CHANDRA BOHIDAR

Vs.

RESPONDENT:
SECRETARY, BUROBHADI S.C.S.

DATE OF JUDGMENT 16/11/1995

BENCH:
VENKATASWAMI K. (J)
BENCH:
VENKATASWAMI K. (J)
VERMA, JAGDISH SARAN (J)

CITATION:
1996 SCC (7) 16 1995 SCALE (6)436

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

K.Venkataswani, J.
Leave granted.

The parties in both the appeals are the same. The appellants was acting as Secretary of the respondent Co-operative 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 I.C.C. Case No.57 of 1981 and I.C.C. Case No.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 concerned authorities 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 month and to pay a fine of Rs.2,000/- in default of payment of which to further undergo rigorous imprisonment for six months in I.C.C. Case No.57 of 1981 and rigorous imprisonment for six months and to pay to fine of Rs.1250/- in default of payment of which to further undergo rigorous imprisonment for six months in I.C.C. Case No.56 of 1981.

The appellant preferred two appeals to the Additional Session Judge, Balangir in Criminal Appeal Nos.15/9 of 1988-89 and Criminal Appeal No.16/19 of 1988-89. The learned Additional Sessions Judge reduced the sentences to rigorous imprisonment for two months and to pay a fine of Rs.2,000/- in default to undergo rigorous imprisonment for one month in Criminal Appeal No.15/9 of 1988-89 and ligorcus imprisonment for two months and to pay a fine of Rs.15000/- in default to further undergo rigorous imprisonment for one month in Criminal Appeal No. 16/19 of 1988-89.

Being aggrieved, the appellant preferred two revision petitions being Criminal Revision No.185 of 1991 and

Criminal Revision No.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.

When the special leave petitions came up for hearing before this Court on 18.3.1994, the following order was passed.

"S.L.P. (Crl) No.59/94.

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 S.L.P. 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 S.L.P. 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 C.J.M., Balangir, Orissa.

S.L.P. (Crl) NO.195/94 :

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 Annexure -1 and 2 to the S.L.P. at pages 15 and 17 which are the copies of the Resolutions dated 20.7.73 and 15.6.74 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 S.L.P. returnable on 18.4.94. 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 C.J.M., Balangir, Orissa."

In spite of service of notice on the respondent, 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.

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.

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.