

IN THE HIGH COURT OF SIKKIM

Criminal Revision No.41 of 2000

K.B. Tiwari  
Son of S.B. Tiwari,  
Resident of Temi,  
P.O. & P.S. Temi, South Sikkim. ... Petitioner.

Versus

State of Sikkim. ... Respondent.

Date of Decision: 12-3-2001.

Coram:

The Hon'ble Mr. Justice Ripusudan Dayal, Chief Justice.  
The Hon'ble Mr. Justice Anup Deb, Judge.

Present: Mr. N. Rai, Advocate for the petitioner.

Mr. S.P. Wangdi, Public Prosecutor with Mr. J.B.  
Pradhan, Govt. Advocate for the State.

JUDGMENT


Dayal, CJ.

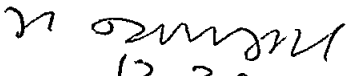
This criminal revision has been filed against the judgment dated 30-6-2000 by the learned Sessions Judge (Special Division), Sikkim at Gangtok dismissing the appeal filed by the petitioner against the judgment and sentence passed by the learned Chief Judicial Magistrate, East and North districts at Gangtok in criminal case No.85 of 1999 convicting the petitioner K.B. Tiwari under Section 409 of the Indian Penal Code and sentencing him to undergo simple imprisonment of twelve months and to pay fine of Rs.2000/- and in default of payment of fine to undergo further simple imprisonment for three months.

2. After hearing Mr. N. Rai, learned counsel for the petitioner and Mr. S.P. Wangdi, learned Public Prosecutor, we find no infirmity in the judgment of conviction. Mr. N. Rai however submits that having regard to the facts of the case, lenient view may be taken with respect to the sentence which the petitioner may undergo. Material facts on this aspect of the matter are that the appellant was at the relevant time working as Lower Division Clerk in Topakhani Sub-Division(Civil) of Power Department. It is in the evidence of Mr. R.D. Bhutia,

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PW-6 who was posted as Assistant Engineer in the Power Department that it is the duty of the Accountant and the Junior Accountant to distribute salaries in the Sub-Division. However, it is on record that the petitioner was given money by the Accountant of Topakhani Sub-Division for distribution to the employees of the Sub-Division and a sum of Rs.44,414.86 was given to him with respect to the salary of Mr. Bishnu Lall Bahun for the period from 1-4-94 to 31-10-95 which could not be paid to him since Bishnu Lall Bahun had retired w.e.f. 31-3-94. The petitioner ought to have refunded the amount to the Department but this was not done, until 29-6-96 when he deposited the amount. It is a disturbing feature of the case that a Lower Division Clerk was asked to do the work of Accountant and Junior Accountant. It is also on record that even one Mason, namely, Dilip Pradhan, PW-2 also used to distribute the salaries of the employees. We are of the view that, in the circumstances, ends of justice will be met if the petitioner is sentenced to imprisonment already undergone by him and also to pay a fine of Rs.2,000/- and in default of payment of fine to undergo simple imprisonment for fifteen days' more and we order accordingly. Thus, the revision is allowed in part. We allow the petitioner one week's time to deposit the fine failing which he shall be arrested to suffer the sentence awarded by us with respect to the imprisonment in default of payment of fine.

  
(Anup Deb)  
Judge  
12-3-2001.

  
12.3.2001  
(R. Dayal)  
Chief Justice  
12-3-2001.