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HIGH COURT OF CHHATTISGARH : AT BILASPUR.

Criminal Revision No.56/1996.

Vyas Narayan, S/o Rameshwar

- Vs. -

State of Madhya Pradesh
(Now Chhattisgarh)

* * * * *

ORDER

Post for 29/08/2001.

Sd/-
R.S. Garg
Judge

Marhans
GA 29/8/2001

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HIGH COURT OF CHHATTISGARH : AT BILASPUR.

Criminal Revision No.56 of 1996.

Applicant : Vyas Narayan, S/o Rameshwar

- Vs. -

Respondent : State of Madhya Pradesh
(Now Chhattisgarh).

O R D E R

Hon.Shri R.S.Garg, J. :

An insured envelope containing Rs.500/- was sent by Leelabai (P.W.12) from Damnagar Post office, Howrah to P.W.1 Ghanshyam. The said envelope was put in another envelope and was sent from Howrah to Dhamani. The covering envelope was opened, seals on original envelope were checked and after verifying the weight of the insured envelope it was given to the applicant/accused for delivery. On 2.7.84. the accused who was posted as Post-man at Post office Kirwai, after receiving the envelope from the Post-Master (P.W.9) Rajendra Kumar Sharma, and delivered the same to (P.W.1) Ghanshyam. Finding that the envelope was mutilated and in torn condition, the complainant (P.W.1) Ghanshyam required the applicant-accused to wait and verify the contents of the said envelope, but the applicant/accused after delivering the said envelope(Ex.P/1) ran away from the spot. The contents of the envelope were taken out and to the surprise of the complainant he found that instead of Rs.500/-, the envelope contained eight notes

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of Rs.2/- each and some waste papers. The complainant immediately lodged his report and protest to the Post-Master and, as nothing was done at the post-office level, the matter was reported to the police. It is note-worthy that the department made an enquiry at its own level and gave clean-chit to the accused. After collecting the material and recording the statements of the witnesses the police filed the challan against the accused. The accused having abjured the guilt was put to trial. The learned Judicial Magistrate, First Class, Raipur, after recording the evidence and hearing the parties, convicted the applicant/accused under Section 409 I.P.C. in Criminal Case No. 487/1989 on 19.1.90. The accused was sentenced to undergo R.I. for three years and pay fine of Rs.1,000/- and in default of payment of fine, the accused was to undergo further R.I. for two months. The Court also directed that on recovery of the fine amount, a sum of Rs.484/- be paid to the original complainant Ghanshyam(P.W.1). The accused/applicant being aggrieved by the said findings and sentence, preferred Criminal Appeal No.29/90. The learned Sessions Judge, Raipur in his judgment dtd.6.1.96. confirmed the findings, but however, reduced the jail sentence to R.I. for one year and converted the default sentence from 2 months R.I. to 2 months S.I. Being aggrieved by the said judgment, the applicant has filed this revision petition.

2). Shri B.N.Pandey, learned counsel for the applicant after taking me through the statements

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of the witnesses submitted that from the statements of P.W.12 Leelabai, it does not appear that the envelope was closed in her presence and as the substantial evidence was missing, the accused/applicant is entitled to acquittal. According to him, P.W.11 D.K.Sharma, who made the departmental enquiry, gave the clean-chit to the applicant, therefore, also the applicant deserves to be acquitted. His further submission was that from the statements of P.W.1 Ghanshyam and the other witnesses it does not appear that the accused did not deliver the sealed envelope to him and ^{as R¹} there are material contradictions in the statements of the witnesses, the prosecution witnesses would not be relied upon. It was also submitted that as the sanction to prosecute the applicant was not proved, the prosecution was bad. It was lastly contended after placing reliance upon the judgment of the Supreme Court in the matter of Ganeshbai Vs. State of Gujarat, reported in AIR 1972 SC-1618, that the applicant during the course of the trial remained in jail for 1 day and after his conviction by the appellate Court remained in jail for almost about 17 days, therefore, the jail sentence deserves to be reduced to the period already undergone.

3). Shri Ranbir Singh, learned counsel for the State on the other hand submitted that the two Courts were justified in relying upon the statements of Leelabai, the person who sent the envelope and,



Ghanshyam (P.W.1) the addressee and the statements of P.W.11 D.K.Sharma. According to him Post-Master P.W.9 Rajendra Kumar Sharma had testified before the Court that the sealed envelope was given to the accused for its delivery and as the accused did not deliver the article in the same condition, there was no scope for holding that the prosecution has failed in proving the case. In relation to the sanction it was argued by him that the question was not raised before the two Courts, therefore, the accused cannot be permitted to raise this question at this stage. In the alternative it is submitted by him that the act of the accused of removing the notes from the sealed envelope cannot be said to have been in discharge of his official duties, therefore, also the question of sanction would not help the accused. Relating to quantum of sentence, it was contended by him that the manner in which the accused committed offence would clearly show that he had no respect to the office held by him and there is no scope for interference in the question of sentence.

4). I have heard the parties at length and have gone through the records.

5). P.W.12 Leelabai, the sister of P.W.1 Ghanshyam had clearly stated that she gave a sum of Rs.500/- to the Post-Master, who in her presence kept the notes in the envelope and after putting his seal on the envelope gave a receipt to the said P.W.12 Leelabai. True it is that in her statements she did not specifically say that the envelope

was closed in her presence, but a fair perusal of her statement would make it clear that not only the envelope was closed, but the receiver of the envelope had affixed his seal on the envelope. From the statements of P.W.9 Rajendra Kumar Sharma-Post-Master, it would again appear that he had received the insured article in an envelope, he had taken out the insured article from the envelope and certified that the seals were intact. According to him, the weight of the envelope did match the weight certified by the sender post-office. He had further stated that the envelope was in a perfect condition and was given to the accused for its delivery. From this statement, it would not appear that the envelope when it was given to the accused was in mutilated^h or torn condition. From the statements of P.W.1 Ghanshyam and other witnesses it would appear that when the envelope was offered to Ghanshyam it was in torn condition; Ghanshyam(P.W.1) after giving its receipt to the accused/applicant, required the accused/applicant to make a verification about the contents of the letter, but the accused did not adhere to the request of the complainant and ran away from the spot. From the statements of the witnesses it would appear that eight notes of Rs.2/-each and some waste papers were found in the said envelope. From the statements of the departmental witnesses, especially P.W.11 D.K. Sharma, it would appear that the complainant lodged his complaint/protest to the department. True it is that P.W.11 D.K.Sharma stated before the Court that he made an enquiry into the said complaint and gave

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clean-chit to the accused. Unfortunately, the said enquiry report or record was not summoned by the accused in support of his defence.

6). Shri Pandey, learned counsel for the applicant submits that he made an application before the appellate Court for requisitioning the records, but as the application was rejected by the appellate Court, no lapses can be attributed on the part of the accused.

7). Learned counsel for the State submits that in relation to the incident dated 2.7.1984, if an application is made before the appellate Court, almost after five years, then the Court would be justified in rejecting the application.

8). In the opinion of this Court, the said application was rightly rejected by the said Court. Before me also a request was made to requisition the said report, but taking into consideration ~~that~~ that there is no likelihood of availability of the said report, almost after 16 years of the incident no useful purpose would be served by granting the application. Even otherwise, present is not a proper stage, where such a request should be allowed.

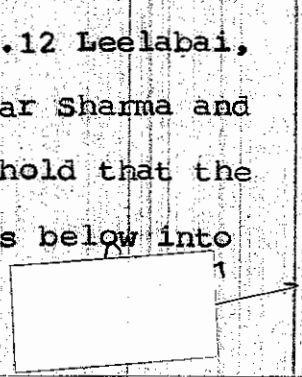
9). In the opinion of this Court, the Courts below were ~~not un-~~justified in placing their

reliance upon the statements of P.W.12 Leelabai,

P.W.1 Ghanshyam, P.W.9 Rajendra Kumar Sharma and

P.W.11 D.K.Shrama. I am unable to hold that the

findings recorded by the two Courts below into



the guilt of the accused are perverse or contrary to the record. Approving the said findings I confirm the same. The question relating to sanction should not detain this Court un-necessarily because the said question was not raised at an appropriate stage. Even otherwise, it cannot be held that removal of currency notes from an insured article was an act of the accused which he committed in discharge of his official duties. When a man commits theft or faces a charge of criminal breach of trust, he is required to answer to the Court that why he committed such an act. When an accused commits theft ^{he} ~~it~~ does not act in discharge of his official duties. The submission of learned counsel for the applicant is mis-conceived. It deserves to and is accordingly rejected.

10). In the matter of Ganesh Bai Vs. State of Gujarat (Supra), the Supreme Court observed that in a very old case where the accused remained in ^{about} jail for almost 19 days after his first conviction by the High Court, if the sentence is reduced to the period already undergone it would meet the ends of justice.

11). In the present matter the alleged incident took-place on 2.7.84. The matter remained pending before the trial Court for about 5½ years, the appeal thereafter remained pending before the appellate Court for almost about 6 years. The present matter is pending in this Court for more than 5½ years. It would appear that the applicant is

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facing trauma of the trial for almost about 17 years and is facing conviction for 11 years; the accused has lost his job.

12). Taking into consideration the totality of circumstances, the period for which all these proceedings remained pending, I consider present to be a fit case where the jail sentence deserves to be reduced to the period already ^{RS}undergone, but looking to the circumstances of the case the fine amount deserves to be enhanced. While granting this revision, on the question of jail sentence, I direct the applicant to pay fine of Rs.4000/-, in default of payment of fine, he shall undergo R.I. for six months. If the fine amount is realised a sum of Rs.3,000/- be paid to the original complainant Ghanshyam after verification because he also stands deprived of his lawful money for 17 years.

13). The revision petition to the extent indicated above is allowed.

14). If within a period of one month from today the applicant does not deposit the fine amount, the learned C.J.M., Raipur, shall issue non-bailable warrants against the accused so that he may suffer the default sentence. A copy of this order along with the records be sent immediately to the C.J.M., Raipur, for taking appropriate action in accordance with law.

Sd/-
R.S. Garg
Judge