

CRIMINAL REVISION APPLICATION NO. 36 OF 2001.

Shri Joseph R. D'Souza,
son of Marcus D'Souza,
major of age, resident of
House No. 14, Velsao,
Cansaulim, Goa.

...

Petitioner.

VERSUS

State of Goa,
represented by the
Public Prosecutor.

...

Respondent.

Mr. Nitin Sardessai, Advocate for the Petitioner.

Ms. W. Coutinho, Additional Public Prosecutor for the
Respondent.

CORAM: D. G. DESHPANDE, J.

DATE: 30TH JANUARY, 2003.

ORAL JUDGMENT:

The accused, who was a Salesman-cum-Cashier was prosecuted for misappropriation of Rs.18,929.78. The misappropriation was allegedly committed by him during the period from 1.8.1978 to 26.7.1979 while he was working as a Salesman-cum-Cashier for Zuari Agro Chemicals Employees Co-operative Society Limited at Zuarinagar.

2. The complaint against the accused was filed in the Court in December, 1979. The Magistrate convicted the accused for the offence under Section 408 of Indian Penal Code and sentenced him to suffer Rigorous Imprisonment for six months and to pay a fine of Rs.1000/-. The Accused preferred an appeal against the said conviction. The same came to be decided by the Addl. Sessions Judge, South Goa, Margao on 18th October, 2001. Hence this Revision.

3. Counsel for the accused made only one submission and that was on the point of sentence. According to the learned counsel the alleged misappropriation has taken place during 1978 to 1979 and it is now more than 23 years that the accused will have to suffer the sentence of imprisonment. He stated that the Zuari Agro Chemicals Employees Co-operative Society Limited was thereafter closed down as they started a new venture. The accused has undergone suffering on account of continued prosecution and conviction. At the time of the incident the accused was 22 years of age and was unmarried. Now he is married and having to struggle to maintain his family and apart from this the accused as a token of his bonafides, has deposited Rs.25,000/- in this Court

for being paid to the original complainant Zuari Agro Chemicals Employees Co-operative Society Limited and therefore considering all these facts, the substantive sentence may be reduced and a lenient view may be taken.

4. The learned Addl. P.P. contended that looking to the fact that the incident of alleged misappropriation is of the year 1978 - 1979 and a period of more than two decades has elapsed, submitted that the Court may pass appropriate orders considering the prayer of the accused in that regard.

5. The offence under Section 408 of I.P.C. is punishable with imprisonment to the extent of seven years and fine. No doubt the Trial Court has imposed a sentence of six months only. But considering the fact that the alleged misappropriation took place about 25 years back and the accused has faced trial and filed the appeal and looking to the fact that the accused is in advanced stage and has to maintain his family and as a gesture of bonafides on his part, he has deposited Rs.25,000/- which includes the alleged amount of misappropriation of Rs.18,929.78 and interest thereon, I pass the following Order :-

6. The Revision is partly allowed. The conviction of the accused under Section 408 of I.P.C. is maintained. He is sentenced to imprisonment till the rising of the Court and to pay a fine of Rs.1000/-. The fine to be paid by tomorrow to the Addl. Registrar. The accused is present in Court. The amount of Rs.25,000/- deposited by the accused shall be paid to the Zuari Agro Chemicals Employees Co-operative Society Limited, Zuarinagar, Vasco.

D. G. DESHPANDE, J.

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