
(1992) 06 CAL CK 0003

Calcutta High Court

Case No: Criminal Revision No. 2 of 1992

M. Navamani

APPELLANT

Vs

State

RESPONDENT

Date of Decision: June 11, 1992

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313, 357, 357(1), 397, 401
- Penal Code, 1860 (IPC) - Section 409, 465

Citation: (1993) 1 ILR (Cal) 509

Hon'ble Judges: Susanta Chatterji, J; Amarabha Sengupta, J

Bench: Division Bench

Advocate: N. Adhikari, for the Appellant; R. Shiv Saroop, for the Respondent

Judgement

Amarabha Sengupta, J.

The present criminal Revisional application Under Sections 401 and 482 of the Code of Criminal Procedure is directed against the judgment and order passed by the learned Sessions Judge of South 24-Parganas is Criminal Appeal No. 24 of 1988 of his file. By the impugned judgment and order the learned Judge upheld the order of conviction and sentence of the Petitioner M. Navamani u/s 409 of the Indian Penal Code passed by Mr. R. Mukhopadhyay, Chief Judicial Magistrate of Andaman at Port Blair on February 29, 1988 in T.R. Case No. 990/1989 arising out of G.R. case No. 610 of 1975.

2. The broad facts upon which the Petitioner was prosecuted in the Court of the learned Chief Judicial Magistrate may be briefly summarised as follows:

The Petitioner was a Cashier in the office of the Director of Medical and Health Services. Andaman and Nicobar Administration at Port Blair, from February 1967 to June 29, 1976. In his capacity as such Cashier he encashed on February 5, 1973, from the State Bank of India, Port Blair Branch, a fully vouched contingent bill (FVC Bill) No. 169 dated January 27, 1973, for Rs. 17, 843-13. The Petitioner also as the Cashier

of the same office encashed from the said Bank on October 22, 1973 another FVC Bill No. 93 dated October 8, 1973 for Rs. 9,273-63. These two Bills (Exs. 5 and 10) had been prepared and drawn on the basis of the bills received by the office of the Director of Medical and Health Services from the Hospital for Mental Diseases at Ranchi. The entire amount of both the FVC bills (Exs. 5 and 10) was required to be remitted to the aforesaid Mental Hospital on account of the maintenance charges for the mental patients who had been sent from G.B. Pant Hospital (under the Andaman and Nicobar Administration) to the Mental Hospital at Ranchi for treatment. After having encashed the two FVC bills and after receiving the amounts referred to therein on February 5, 1973 and October 22, 1973, the accused Petitioner made entries in the cash book showing disbursement of the amounts on the same dates when they were received. He had also made entries in the cash book showing receipt of the money by him. But later it was detected that the amounts due to the Mental Hospital at Ranchi had not been paid to that hospital either by Bank drafts or otherwise. This led the Director of Medical and Health Services of the Andaman and Nicobar Administration at Port Blair to lodge an FIR with the Police on July 27, 1975. It was the prosecution case that the accused Petitioner dishonestly misappropriated the amounts of the two FVC bills and thereby committed criminal breach of trust in respect thereof. It was also the prosecution case that the accused Petitioner also committed forgery by making false entries in the cash book indicating disbursement of the amounts in question.

3. After investigation Police submitted charge-sheet against the accused Petitioner. He was tried on charges under Sections 465 and 409 of the Indian Penal Code by Mr. H. Banerjee, Chief Judicial Magistrate of Andamans. This learned Chief Judicial Magistrate by his judgment and order dated December 16, 1985, found the Petitioner not guilty u/s 465, Indian Penal Code, and acquitted him of that charge. The learned Magistrate, however, found the accused Petitioner guilty u/s 409 of the Indian Penal Code and sentenced him to rigorous imprisonment for four years and to pay a fine of Rs. 30,000, in default to R.I. for one year.

4. Against the said order of conviction and sentence u/s 409, Indian Penal Code, the Petitioner preferred an appeal which was heard and disposed of by Mr. J. Gupta, the then Sessions Judge of Andaman & Nicobar Islands. This learned Sessions Judge set aside the conviction and sentence of the Petitioner u/s 409, Indian Penal Code, and sent down the case on remand to the learned Magistrate for retrial of the accused-Petitioner.

The learned Sessions Judge in his judgment observed that the prosecution should produce before the trial Court certain documents (original FVC bills and TR form No. 72 and also the draft register for the relevant period). The learned Judge also gave prosecution liberty to examine witnesses for the production of the aforesaid documents as well as for furnishing any explanation in regard to such documents. Liberty was also given to the defence to adduce such evidence as may be necessary.

This liberty to examine witnesses was given, as stated by the learned Judge, for the limited points indicated above.

5. After remand presecution produced the documents except the draft register. Prosecution also recalled some of the witnesses examined earlier and also a new witness, viz. P.J. Samual (PW-29), who was the Administrative Officer in the office of the Director of Medical and Health Services and also the Drawing and Disbursing Officer of the same office. No defence witness was examined.

6. After considering the materials placed on record by the prosecution, Mr. R. Mukhopadhyay, the then Chief Judicial Magistrate of Andaman delivered judgment in the case on February 29, 1988. By his judgment he convicted the accused Petitioner u/s 465, Indian Penal Code, and sentenced him to rigorous imprisonment for two years and to pay a fine of Rs. 2,000, in default to further R.I. for six months. He convicted the accused Petitioner also u/s 409, Indian Penal Code, and sentenced him to R.I. for four years and to pay a fine of Rs. 30,000, in default to further R.I. for one year. The learned Magistrate also directed that out of the fine, if realised, a sum of Rs. 28,000 shall be paid to the Mental Hospital at Ranchi towards the maintenance charges payable to the said hospital and he also directed concurrent running of the substantive sentences of imprisonment imposed upon the accused Petitioner.

7. Against this judgment and order the Petitioner preferred an appeal before the learned Sessions Judge, Andaman and Nicobar Islands. That appeal was transferred by a Circuit Bench of this Court to the learned Sessions Judge of South 24-Parganas for disposal. In the Court of the learned Sessions Judge of South 24-Parganas the appeal was registered as Criminal Appeal No. 24 of 1990 and was disposed of on June 15, 1991. By his said judgment dated June 15, 1991 the learned Sessions Judge set aside the conviction and sentence of the Petitioner u/s 465 of the Indian Penal Code. But he upheld the conviction and sentence u/s 409 of the Indian Penal Code. The learned Judge also upheld the direction of the learned Magistrate regarding payment of Rs. 28,000 to the Mental Hospital at Ranchi. It is against the aforesaid judgment of the learned Sessions Judge of South 24- Parganas that the present Revisional application has been directed.

8. Before we proceed further we would like to dispose of one point raised by Mr. Adhikari, the learned Advocate for the Petitioner. In this Revisional application the Superintendent of the Mental Diseases Hospital of Ranchi has been impleaded as opposite party No. 2. Opposite party No. 2 has been brought on the record because of the direction of the Courts below that a sum of Rs. 28,000 from out of the, fine, if realised, should be paid to the Mental Diseases Hospital, Ranchi, towards the maintenance charges of the patients sent there by the Andaman and Nicobar Administration. Notice of the present proceeding has not been served upon the opposite party No. 2 and Mr. Adhikari submitted that notice should be served upon the opposite party No. 2 before hearing of this application. The order dated

February 1, 1992, shows that the Division Bench admitting the Revisional application directed service of notice upon the State/Respondent. We are of the view that opposite party No. 2 is not a necessary party in this Revisional application. Although the order for payment of Rs. 28,000 to opposite party No. 2 was passed, opposite party No. 2 cannot claim any right of hearing in this Revisional application. Opposite party No. 2, obviously, could not have any grievance against the Petitioner. If anybody had any grievance against the Petitioner for the alleged criminal misappropriation of the money in question, it is the Andaman and Nicobar Administration. As the prosecution case is, the patients were sent from G.B. Pant Hospital to the Mental Hospital at Ranchi for treatment of the cost of the Andaman Administration. That Administration and none else, might be under a legal obligation to pay up the maintenance charges of the patients concerned. If the Petitioner misappropriated any money in the manner alleged, he misappropriated the money of the Andaman and Nicobar Administration. This is one aspect of the matter,

9. Another aspect of the matter is that the very order directing payment to the Mental Diseases Hospital of Ranchi, in our opinion, is illegal and without jurisdiction. The order of payment of the amount to the Ranchi Hospital was presumably made u/s 357 of the Code of Criminal Procedure. We do not see any other provision under which such an order could be passed. Now, on reference to the provisions of Section 357 of the Code, it is patently clear that the order for payment of the said sum of Rs. 28,000 passed by the learned Chief Judicial Magistrate and affirmed by the learned Sessions Judge of South 24-Parganas could not be passed under any of the clauses from (a) to (d) of Sub-section (1) of Section 357 of the Code. Therefore, in our opinion, the order for payment of money referred to was passed without jurisdiction and ignoring the provisions of Section 357 of the Code. The learned Public Prosecutor Mr. Saroop also agrees with the view we take in this matter. That order regarding payment of money to O.P. No. 2 must, therefore, be set aside. Since O.P. 2 is not, in our opinion, a necessary party to this proceeding, that party is not required to be served with notice of the present Revisional application.

10. We have perused the entire judgment of the learned Chief Judicial Magistrate, Mr. R. Mukhopadhyay, and also that of the learned Sessions Judge of South 24-Parganas to satisfy us as to whether there is any sufficient ground to interfere with the judgment and the order of conviction and sentence of the Petitioner u/s 409 of the Indian Penal Code. We have also heard the submissions of Mr. Adhikari, the learned Advocate for the Petitioner, and Mr. Saroop, the learned Public Prosecutor.

11. Before we come to their contentions, we may look into and consider the scope of Section 401 of the Code of Criminal Procedure which explains and relates to the High Court's power of Revision. The powers of the High Court in Revision are very wide. u/s 401 of the Code, the High Court has the power of Court of appeal u/s 386 of the Code. Section 401 should, however, be read with Section 397 which

empowers the Court to look into and satisfy itself as to the correctness, legality or propriety of any finding, sentence or order and as to the regularity of any proceeding. But it is the settled law that a Court of Revision will not review the evidence and reassess the same, except when the inference made and the conclusion drawn by the lower Court on such evidence is manifestly perverse or unsustainable. The object of Revisional jurisdiction is to confer upon superior criminal Court a kind of paternal or supervisory jurisdiction. It is accepted by the judicial decisions that the High Court will interfere if-(i) the allegations are patently absurd and inherently improbable, (ii) they make out absolutely no case against the accused, (iii) the Magistrate or the lower Criminal Court exercised discretion arbitrarily by relying on irrelevant or inadmissible evidence, (iv) the Court below has shut out or rejected admissible evidence which goes in favour of any of the parties, and (v) the complaint suffers from some fundamental legal defect. The Court will also interfere if there is any material illegality or irregularity in the proceeding causing prejudice to any party. This list of situations, where the High Court will interfere, is not exhaustive. But the list broadly explains the scope of the Revisional powers of the High Court. We need not dilate further on the extent and scope of the Revisional powers of the High Court.

12. After having heard the Learned Counsels of both the parties and after having carefully examined the judgments of the two Courts below, it appears to us that both the Courts considered the materials on record, and the learned Sessions Judge of South 24-Parganas found the order of conviction u/s 409, Indian Penal Code, passed by the learned Chief Judicial Magistrate justified.

13. The accused Petitioner was admittedly a cashier in the office of the Director of Medical and Health Services of the Andaman & Nicobar Administration from February 1967 to June 29, 1976. He was, as such, a public servant during that period. It appears from the judgments of the two lower Courts that the prosecution adduced evidence to prove that in his capacity as such Cashier the Petitioner encashed from the State Bank of India, Port Blair branch, FVC Bill No. 169 dated January 27, 1973, for Rs. 17,843- 13 on February 5, 1973, and also another FVC Bill No. 93 dated October 8, 1973, for Rs. 9,273-63 on October 22, 1973. Two witnesses, viz. P.W. 7 and P.W. 8 who were, at the relevant time, the paying cashiers in the Government Paying Counter in the State Bank of India, gave evidence to the effect that the amounts of the aforesaid two FVC bills were paid to the Petitioner in cash. It was also shown by the prosecution that the receipts of the two amounts were also shown in the cash book by the accused Petitioner on the said dates when the two FVC bills were encashed. The disbursement of both the amounts in question was also shown in the cash book on the said dates. The accused Petitioner, it appears from the judgments of the two lower Courts, admitted in his examination u/s 313, Code of Criminal Procedure, that he had received the two amounts in question and also made the entries in the cash book about the disbursement of the said two

amounts. The Prosecution also led evidence by examining P.W. 21 and by production of the photostat copy of the maintenance charges register of the Mental Diseases Hospital at Ranchi that no amount referred to in the two FVC bills (Exs, 5 and 10) had been paid to the said Hospital. We next find that the Petitioner had taken the plea that after having received the two amounts from the Bank he had made over the same to the Drawing and Disbursing Officers of the relevant periods. These Drawing, and Disbursing Officers are P.W, 9 and P.W. 29 (P. J. Samual). Both P.W. 9 and P.W 29 denied that the accused Petitioner made over to them any money withdrawn from the Bank under the two FVC bills (Exs. 5 and 10).

14, We (sic)ed not refer in this judgment to the evidence of the large number of witnesses examined and the documents produced by the prosecution. We will only say that the conclusion reached by the learned Sessions Judge of South 24-Parganas as regards the charge u/s 409, Indian Penal Code, cannot be said to be perverse or unwarranted by the evidence on record. In the judgment of the learned Chief Judicial Magistrate there has been an elaborate discussion of the evidence, oral and documentary, produced by the prosecution. We have already referred to some of the materials produced by the prosecution. It appears that both the learned Chief Judicial Magistrate and the learned Sessions Judge of South 24-Parganas considered the aforesaid materials and also other evidence produced by the prosecution. In our considered opinion, the materials produced by the prosecution, which have been referred to in the judgment of the Chief Judicial Magistrate, lend support to the view taken by the learned Sessions Judge in the appeal.

15. Mr. Adhikari appearing for the Petitioner has expressed grievance for examination of the Drawing and Disbursing Officer (P.W. 29) after the remand order was passed by the former Sessions Judge Mr. J. Gupta. Mr. Adhikari wanted to point out that by the remand order the Sessions Judge Mr. Gupta permitted or desired admission of evidence for a limited purpose. Mr. Adhikari pointed out that the learned Sessions Judge Mr. Gupta directed the prosecution, inter alia, to produce certain documents including the draft register of the relevant period and gave the prosecution liberty to examine witnesses for the production of those documents as well as for furnishing any explanation in respect of such documents. Mr. Adhikari contended that the remand was for a limited purpose as indicated above, and examination of P.W. 29 (D.D.O.) by the Chief Judicial Magistrate as a new witness was unwarranted. Mr. Adhikari wanted to emphasize that the learned Chief Judicial Magistrate Mr. R. Mukhopadhyay did not follow the directions contained in the remand order passed by the learned Sessions Judge Mr. J. Gupta. We are unable to agree with the contention of Mr. Adhikari. After the remand the accused Petitioner was to be retired. The learned Chief Judicial Magistrate had jurisdiction to examine any witness on any relevant point, even though such a witness had not been examined before the order of remand was passed. The jurisdiction of the learned Chief Judicial Magistrate to examine any material witness could not be fettered by the remand order of Mr. Gupta. The learned Magistrate disposed of the proceeding

in accordance with law, and we do not think that he violated any direction of the learned Sessions Judge Mr. Gupta. Mr. Gupta had set aside the order of conviction and sentence of the Petitioner u/s 409, Indian Penal Code, and sent down the case for retrial of the Petitioner. He might have made certain observations in the remand order as to for what purpose further witnesses would be examined. Such a direction or observation cannot be treated as excluding the powers of the Magistrate to examine any other witness whom he considered material for the purpose of arriving at the truth. We also think that it was proper and reasonable for the prosecution to examine P.W. 29 (D.D.O.) in the context of the plea taken by the Petitioner that he had made over the entire amount of the concerned FVC bills to the said D.D.O.

16. It appears that the documents which the prosecution was directed to produce by the learned Sessions Judge Mr: Gupta were produced by prosecution, save and except the draft register. Mr. Adhikari made a point on this. He contended that non-production of the draft register in accordance with the remand order passed by Mr. Gupta caused prejudice to the accused Petitioner. It appears from the judgment of the learned Chief Judicial Magistrate that the draft register was missing, according to the prosecution evidence adduced in that behalf. The learned Chief Judicial Magistrate, however, was of the opinion that non-production of the Bank draft register did not affect the merits of the case either way. The learned Magistrate relied upon the evidence of P.W. 26 who produced the file of the office of the D.M.H.S. containing copies of the forwarding letters which accompanied the drafts sent to different parties in the mainland. In that file no forwarding letter indicating despatch of the required Bank drafts to the hospital at Ranchi was found. Relying upon the other materials on record the learned Magistrate found the charges u/s 409, Indian Penal Code, substantiated against the Petitioner. Incidentally, it may be observed that if no Bank draft for any of the amounts in question payable to the hospital at Ranchi had been purchased, there would not possibly be any entry to that effect in the Bank draft register. Be that as it may, prosecution, as stated before, adduced evidence through P.W. 21 to the effect that the dues - of the hospital at Ranchi had not been paid either by Bank draft or otherwise.

17. We shall not reassess or review the evidence adduced in the case. We have looked into the judgments of the Courts below to satisfy us whether on the basis of the materials referred to in those judgments, the order of the learned Sessions Judge of South 24-Parganas upholding the order of conviction of the Petitioner u/s 409, Indian Penal Code, is rational and reasonable or whether the same is perverse and is not warranted at all by the materials on record. We are unable to accept the impugned order of the learned Sessions Judge of South 24-Parganas as perverse or unwarranted by the materials on record.

18. Mr. Saroop, the learned Public Prosecutor, submitted that there was no illegality or irregularity in the proceedings of the Courts below and that the Courts below did

not exceed their jurisdiction in any way as far as the order of conviction of the Petitioner u/s 409, Indian Penal Code, is concerned. We do not find any illegality or irregularity in the judgment and order of the learned Sessions Judge of South 24-Parganas, except in so far as that relates to the order of payment of Rs. 28,000 to the hospital at Ranchi which we have already referred to. It does not appear that the learned Sessions Judge relied upon any inadmissible evidence or left out of his consideration any admissible evidence relevant to the charge u/s 409, Indian Penal Code. The judgment of the learned Sessions Judge of South 24-Parganas affirming the order of conviction of the Petitioner u/s 409, Indian Penal Code, passed by the learned Magistrate cannot be said to be unwarranted or perverse or not supported by legal evidence.

19. Being of the view as stated above, we are not disposed to interfere with the order of the learned Sessions Judge of South 24-Parganas affirming the order of conviction u/s 409, Indian Penal Code, passed against the accused Petitioner by the learned Chief Judicial Magistrate. That order of conviction shall not, therefore, be interfered with.

20. As regards the sentence imposed upon the Petitioner Mr. Adhikari has submitted that in view of the long time that has passed between the time of commission of the offence and the time of the disposal of the case, the sentence may be reduced. It is further submitted by Mr. Adhikari that the Petitioner is now aged about 54 years and has already lost his job and that he has already suffered mental agonies because of this case for the long period during which the case was pending.

21. It has been held by different judicial decisions that in exercise of the power of Revision the High Court can also reduce the sentence. It has been held that a Court of Revision has the power of the Court of appeal to alter the finding, maintaining the sentence, or with or without altering the finding, reduce the sentence. Section 397 of the Code also gives jurisdiction to a Court of Revision to look into the correctness, legality or propriety of any findings, sentence or order. Therefore, if Section 401 and Section 397 of the Code are read together, it will follow that in appropriate cases the High Court in its Revisional jurisdiction can reduce the sentence, having regard to all the relevant facts and circumstances of the case. The powers of the High Court in this regard are not fettered. Even if a sentence passed or affirmed by a subordinate Court is legal, the High Court can still interfere with the order of sentence, if the Court thinks that it is just and proper to do so for the ends of justice. It has also been held in several decisions, as already stated, that the High Court can, in its Revisional jurisdiction reduce the sentence imposed by a subordinate Court.

22. But the powers of the High Court for reducing the sentence must be exercised judicially and by taking a balanced view of the entire matter and all relevant circumstances including the period that has already elapsed before the passing of the sentence.

23. While considering the submission of Mr. Adhikari we just keep in mind the above principles of law.

24. The Petitioner in this case committed criminal breach of trust in respect of Rs. 17,843 and odd and Rs. 9,273 and odd (total = 27,116 and odd) which was payable to the Mental Hospital at Ranchi Although the offence committed by the Petitioner is reprehensible, we cannot and should not ignore the fact that the said offence was committed in 1973, i.e. 18/19 years ago, and the aforesaid further submissions of Mr. Adhikari, in examining the question of sentence upon the accused. The Court should have regard not only to the nature and gravity of the offence committed, but also to all other attending facts and circumstances, including events subsequent to the commission of the offence and including the period of time that has elapsed between the date of the commission of the offence and the date when the punishment was awarded.

25. Having regard to the fact that the offence in this case was committed 18/19 years ago, and the further submissions of Mr. Adhikari that the accused has already lost his job and has suffered mental agonies during all the time the case was pending, we feel that the ends of justice will be met if we reduce the sentence imposed upon the Petitioner u/s 409, Indian Penal Code, passed by the learned Magistrate and upheld by the learned Sessions Judge of South 24-Parganas to rigorous imprisonment for one year and to a fine of Rs. 30,000 (Rupees thirty thousand only), in default of payment of fine to suffer further R.I. for six months. We shall amend and revise the order of sentence accordingly.

26. On the foregoing reasons, we do not interfere with the order of conviction of the Petitioner u/s 409 of the Indian Penal Code. But we reduce the sentence u/s 409, Indian Penal Code, imposed upon him to rigorous imprisonment for one year and to a fine of Rs. 30,000, in default of payment of fine to further R.I. for six months, and we revise the order of sentence accordingly. We set aside the order of the learned Sessions Judge in so far as it affirms the order of the learned Chief Judicial Magistrate directing payment of Rs. 28,000, from out of the fine, if realised, to the Mental Hospital at Ranchi on account of the maintenance charges of patients sent there by the Andaman and Nicobar Administration. We also set aside the order of the learned Chief Judicial Magistrate in that regard. The present Revisional application is thus disposed of. The Petitioner shall now surrender to his bail bond.

Susanta Chatterji, J.

27. I agree.