

A SHABBIR AHMED SHERKHAN
V.
STATE OF MAHARASHTRA
Criminal Appeal No.1042 of 2005

B MARCH 20, 2009
(DR. ARIJIT PASAYAT, LOKESHWAR SINGH PANTA
AND P. SATHASIVAM, JJ)

Penal Code, 1860:

C s. 409 – *Criminal breach of trust by public servant – Police official receiving money from department for TA and DA of his colleagues – Not giving the money to them and absenting himself from duty without any sanctioned leave – Conviction and sentence of six months imprisonment – Upheld by*
D *appellate court, and High Court in revision – HELD: Admittedly accused had received the money for a particular purpose and did not hand over the same to persons concerned and, he remained absent unauthorisedly – Accused has already served the sentence – Order of courts below need no interference.*

E The appellant, a police official, was convicted and sentenced to six months imprisonment on the accusations that he received Rs.12,000/- from the department as TA and DA for his colleagues but did not pay the amount to them and unauthorisedly remained
F absent from duty, stood proved. The appellate court and the High Court in revision having upheld order, the accused filed the appeal.

Dismissing the appeal, the Court

G HELD: The only plea taken on behalf of the accused before the High Court was that a lenient approach should be adopted. The High Court rejected the plea holding that the courts below had already taken lenient view of the matter. The appellant has served out the sentence.

H

Admittedly, the appellant had received the money for a particular purpose, which he did not fulfil, and remained absent without any leave being sanctioned. That being so, there is no scope for interference in the orders of the court below. [para 5] [785-A-C] A

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No.1042 of 2005 B

From the Judgement and Order dated 08.02.2005 of the Hon'ble High Court of Judicature at Bombay in Criminal Revision Application No. 14 of 2005. C

Imtiaz Ahmed, Nagma Imtiaz (for Equity Lex Associates), for the Appellants.

Aniruddha P. Mayee, R.K. Adsure, Atul, Vishal, for the Respondents. D

The Judgement of the Court was delivered by

DR. ARIJIT PASAYAT, J.

1. Challenge in this appeal is to the order of a learned Single Judge of the Bombay High Court in Criminal Revision Application No. 14 of 2005. The appellant was convicted for offence punishable under Section 409 of the Indian Penal Code, 1860 (in short the 'IPC') and was sentenced to undergo six months' rigorous imprisonment and to pay a fine of Rs.2,000/- with default stipulation. E F

2. Background facts in a nutshell are as follows:

The appellant was on leave between 5.6.1998 to 14.6.1998 which was duly sanctioned by the department.

On 14.7.1998 a First Information Report (in short the 'FIR') was registered on a written complaint under Section 409 IPC against the appellant wherein it was stated that a Dog Squad Team consisting of the appellant as well as three other police officials of Thane Police Station were required to bring the dogs for training to be started from 5.6.1998 and for the said purpose, G H

A the D.S.P., Thane, Rural by his order dated 3.6.98 sanctioned
T.A./D.A. to the handlers of dogs and that on 4.6.98 the appellant
had taken a cash amount of Rs. 12,000/- towards the Traveling
Allowance from the Police Cashier for himself and on behalf of
the remaining handlers of dogs and that he did not make the
B payment to the concerned Police Officials and instead he went
to his native place and did not attend the training at Pune and
through out the period till 14.7.98 he was absent from his duties.
The appellant was arrested on the same day and after
investigation a charge sheet was filed and the charges were
C framed by the Learned Chief Judicial Magistrate, Thane against
the appellant under Section 409 IPC.

On 14.1.2004 the Learned Chief Judicial Magistrate,
Thane, accepting on the case of the prosecution and depositions
of the prosecution witnesses, held the Petitioner guilty for the
D offence punishable under Section 409 IPC and sentenced him
for 6 months rigorous imprisonment and a fine of Rs.2,000/ was
also imposed, with default stipulation.

On 8.12.2004 the appellant filed a Criminal Appeal No.9/
2004 against the judgment and order of the trial court convicting
E him. The learned Appellate Court by its judgment and order dated
8.12.2004 dismissed the appeal of the appellant by confirming
the order of conviction and sentence passed by the trial court.

On 8.2.2005 the appellant filed a Criminal Revision
F Application No. 14 of 2005 which by judgment and order dated
8.2.2005 was dismissed.

3. Learned counsel for the appellant submitted that there
is absolutely no mens rea involved. When the appellant came
back, he returned the amount which he had taken. Therefore,
G there is no scope for any conviction.

4. Learned counsel for the respondent on the other hand
submitted that no leave was sanctioned. The appellant
unauthorisedly left the head quarters and had taken the money
which was to be spent for a particular purpose.
H

5. It appears that before the order of the High Court the only plea taken was that a lenient approach should be adopted. The High Court rejected the plea holding that the courts have already taken lenient view of the matter. It appears that the appellant has already served out the sentence. Admittedly the appellant had received the money and was absent without any leave being sanctioned. There is no dispute that the appellant had received the money for a particular purpose. The appellant had not disputed that he had received the money for a particular purpose and that he had not made the payment and had remained absent. That being so there is no scope for interference in this appeal which is accordingly dismissed.

R.P.

Appeal dismissed.