

PETITIONER:
SRINIVASA REDDY, V

Vs.

RESPONDENT:
STATE OF ANDHRA PRADESH

DATE OF JUDGMENT: 05/02/1998

BENCH:
S.P. KURKUKAR, K.T. THOMAS

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

S.P. KURDUKAR, J.

This Criminal Appeal by Special Leave is filed by the accused/appellant challenging the legality and correctness of the judgment and order dated 11.10.1993 passed by the Andhra Pradesh High Court remanding the matter back to the Special Judge for disposal in accordance with law in the light of the observations made in the said judgment.

2. The accused/appellant was put up for trial before the Special Judge for CBI cases to answer the charges framed under Section 420, 477A IPC and Section 5(2) read with Section 5(1) (a) of the prevention of Corruption Act. The Special Judge on conclusion of the trial and on appreciation of oral and documentary evidence on record by his judgment and order dated March 16, 1991 acquitted the accused of all the charges. This order to acquittal was challenged by the State of Andhra Pradesh in Criminal Appeal and the said Criminal Appeal was allowed by the High Court vide its impugned judgment and remanded the matter back to the trial court. This judgment and order passed by the Andhra Pradesh High Court is the subject matter of challenge in this appeal.

3. The prosecution case in short is as under :

The appellant was working as a Branch Manager of Union Bank of India, Koratla during the period from 20.10.84 to 12.5.86 and while working in the said capacity he cheated the bank by falsifying the account of the bank showing that the amount of Rs. 5,09,000/- was advanced as loan to 13 persons against their Fixed Deposit Receipts (FDRs) or Deposit Re-investment Certificates (DRCs) without the knowledge of those depositors and obtained Demand Drafts either in favour of M/s Hall Mark Tobacco Co.. or M/s I.T.C. Ltd.. in respect of those loan accounts and delivered those demand drafts to one U. Koteswara Rao, Balaji Enterprises, Kareemnagar and thereby derived monetary advantages by cheating the bank and falsifying the account of the banks.

4. It is further alleged by the prosecution that in respect of two instances the appellant sent loan proceeds to one accounts of U. Koteswara Rao by sending telegraphic transfer to Nizamabad branch of Union Bank of India to clear

certain loans taken by him. While sanctioning the loan, the appellant prepared debit vouchers in respect of loan accounts opened and secured loan ledger corresponding credit vouchers for issuing Demand Drafts without receiving any application for loan from the parties and without taking the Original FDRs of DRICs as securities for the loans which were essential for sanction of such loans. Thus the appellant has abused his position as a public servant and obtained the advantages to himself to the tune of Rs. 5,09,000/- and caused loss to the bank. It is not necessary to set out the details of these 13 loan transactions sanctioned by the accused/appellant against FDRs/ DRICs.

5. It may also be stated that although the inspection of the bank was carried out by its Auditors in 1984 and 1985 but no such lapses were noticed in their reports. However, in 1986 when the bank was again inspected, the Auditor submitted his report Ex. P-74 referring to the several irregularities noticed by him during inspection. On the basis of this report a complaint was lodged which was investigated and a charge-sheet came to be filed against the accused/appellant for the offence mentioned hereinabove.

6. The appellant admitted that he was working as a Branch Manager during the relevant period but denied that he had committed any offence. He also pleaded that the Statutory Audit Report submitted in the year 1984 and 1985 did not disclose any lapse or irregularity on his part and, therefore, he could not be prosecuted on the basis of 1986 Report. He, therefore, pleaded that he is innocent and he be acquitted.

7. The prosecution examined as many as 25 witnesses and produced various documents in support of its case. The appellants. However, did not lead any evidence in support of his defence.

8. The trial court after considering the oral and documentary evidence on record found that the prosecution has failed to establish any offence against the appellant and accordingly acquitted him of all the charges. The High Court on appeal by the State of Andhra Pradesh allowed the said appeal and remanded the matter back to the trial court for disposal in accordance with law.

9. The High Court in its judgment observed :

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"Thus, in my opinion the trial Judge has failed to consider the relevant material for ascertaining accused. The trial Judge should have tried to ascertain whether the accused. The trial Judge should have tried to ascertain whether the persons in whose names the secured loans against deposits were sanctioned, had in fact such deposits either in Union Bank of India at Koratla or in any branch of that bank. If so, whether such depositor had in fact applied for and obtained any loan against such deposit. What is the procedure to be followed in case such loans are granted and whether the same has been followed by the accused in sanctioning these loans. It should also have been ascertained whether these deposits are discharged and if so, whether those deposit

receipts are available with the Bank and should also have ascertained whether any such deposit receipts were under bank lien at any time. But, unfortunately the trial Judge did not address himself to any of these questions before deciding the cases, I, therefore, feel that it is just and proper to remand the case for fresh disposal".

10. From the judgment of the trial court it appears that both the reports submitted by the Auditor in the year 1984-85 did not mention any of such lapse and irregularity in the loan transactions and therefore, the prosecution ought to have looked into the earlier audit reports before filing the charge-sheet against the appellant. In our opinion the approach of the trial court was not legally sustainable and the High Court had very rightly observed that the trial Judge should have considered the evidence adduced during the trial to find out the guilt or otherwise of the appellant.

11. We have gone through the judgment of the trial court wherein the trial Judge discussed the oral evidence adduced by the prosecution. In our opinion, the evidence of the material witnesses was considered in a most perfunctory manner and it had over-looked various other circumstances which were relied upon by the prosecution.

12. Mr. T.S.Arunachalam. Learned Sr. Counsel appearing in support of this Criminal Appeal urged that the High Court has committed a serious illegality while setting aside the order of acquittal and remanding the matter back to the trial court. According to him the High Court by remanding the matter to the trial court has afforded an opportunity to the prosecution to cure the lacunas in its evidence. In support of this submission he relied upon the decision of this Court in *Ukha Kolhe vs. State of Maharashtra* 1964 (1) SCR 926 and *Mohd, Ahmed vs. State of A.P.* 1979 (4) SCC 172. We have gone through these decisions and in our opinion the same are clearly distinguishable on facts.

13. It was then urged by Mr. Arunachalam that if the High Court felt that further evidence was necessary for disposal of the case then it could have exercised its power under Section 391 Cr. P.C. and ought not to have set aside the order of acquittal and remanded the matter for fresh disposal. This argument also did not impress us because the High Court instead of recording the additional evidence in terms of Section 391 Cr. P.C.; preferred to remand the matter back to the trial court for disposal in accordance with law. It also appears from the record that some of the documents including FDRs, loan applications etc., should also have been brought on record for effective disposal of the controversy raised in the case and to do justice between the parties. It is needless to say that the trial court will strictly adhere to the observations and directions given by the High Court in its judgment.

14. In the result the appeal fails and is dismissed. The trial court will, however dispose of the matter as expeditiously as possible preferably within six months from the date of the receipt of the order and the record. The Registry is directed to send the record to the trial court at an early date.