

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1166 OF 2014

[Arising out of Special Leave Petition (Crl.) No.84 of 2013]

With**CRIMINAL APPEAL NO. 1181 OF 2014**

(Arising out of Special Leave Petition (Crl.) No.85 of 2013)

Dayanand Ramkrishna Shet
Appellant(s)**versus****State of Karnataka**
Respondent(s)**J U D G M E N T**

JUDGMENT

C. NAGAPPAN, J.

1. Leave granted in both the special leave petitions. CRMP No.3134 of 2013 and CRMP No.13115 of 2013 seeking extension of time for deposit are allowed.

2. The appeals are preferred against the judgment dated 13.9.2011 passed by the High Court of Karnataka Circuit Bench at Dharwad in Criminal Appeal no.838 of 2005.

3. The appellants in both the appeals are accused nos. 1 and 2 respectively in C.C. no.135 of 2001 on the file of Principal J.M.F.C., Honnavar and they were tried for the offences punishable under Sections 409 and 467 of IPC and the Trial Court acquitted them of the charges. Challenging the same the State preferred appeal in Criminal Appeal no.838 of 2005 on the file of the High Court of Karnataka and the High Court after hearing both sides allowed the appeal and set aside the judgment of acquittal and found both the accused guilty of the charges framed and sentenced them each to undergo one year simple imprisonment and to pay a fine of Rs.10,000/-, in default to undergo simple imprisonment

for three months for the offence punishable under Section 467 read with Section 34 IPC and further sentenced them each to undergo one year simple imprisonment and to pay a fine of Rs.10,000/-, in default to undergo three months simple imprisonment for the offence punishable under Section 409 read with Section 34 IPC and directed the sentences to run concurrently. Challenging the conviction and sentence both the accused have individually preferred these appeals.

4. Briefly the facts of the case are as follows : Accused no.1-Dayanand Ramkrishna Shet was the Manager and accused no.2-Marthappa Radhakrishna Shet was the Assistant Manager in Suvarnakarar Co-operative Society Ltd. and they were empowered to sanction the loans to the customers of the bank on the security by pledging gold and gold ornaments. During the audit conducted for the period from 1.4.1997 to 31.3.1998, PW26-Balakrishna Subraya Naik found that an amount to the

tune of Rs.5,76,000/- has been misappropriated by the accused nos.1 and 2 by forging the documents and falsifying the accounts. On the complaint at the instance of the Deputy Registrar of Co-operative Society a case under Crime no.285 of 1999 came to be registered on 1.12.1999 against both the accused for the offences punishable mainly under Sections 467 and 409 read with Section 34 IPC for the misappropriation of the amount of Rs.43,500/- during the period from 30.3.1995 to 3.11.1995 and after investigation the final report came to be filed. The Trial Court framed charges under Sections 467 and 409 read with Section 34 IPC and the prosecution examined PW1 to PW35 and marked Exs. P1 to P72 besides MOs 1 to 22. Ex.D1 was marked as side of the defence. The Trial Court acquitted both the accused only on the ground that the sanction to prosecute as required under the provisions of the Karnataka Co-operative Society Act was not obtained. The State preferred the appeal and the High Court set

aside the judgment of acquittal by allowing the appeal and convicted and sentenced both the accused as directed above.

5. Challenging the conviction and sentence both the accused preferred independent appeals and this Court by common order dated 2.1.2013 directed both the appellants to deposit a sum of Rs.2,88,000/- each being the sum embezzled by them, before the Trial Court within four weeks and subject to that condition issued notice to the respondent to the question of sentence only and further directed the Trial Court to release the said amount to the complainant bank.

6. The learned counsel for the appellants submitted that the appellants have deposited the entire sum as directed and have also paid the fine and the appellants are now aged 64 and 52 years respectively and not keeping good health. We also heard the learned counsel appearing for respondent-State.

7. The charges in the present case pertained to embezzlement of the amount of Rs.43,500/- for the period from 30.3.1995 to 3.11.1995. We also find that the total amount of Rs.5,76,000/- allegedly embezzled by the appellants have already been deposited before the Trial Court pursuant to our order dated 2.1.2013. The appellants are aged persons as on date and are said to be not keeping good health. In the totality of the circumstances, therefore, we are inclined to modify the sentence awarded to the appellants suitably.

8. Accordingly, we reduce the sentences awarded to the appellants in both the appeals to the period already undergone by them. The deposit of Rs.5,76,000/- made by the appellants in the present case will not prejudice them in so far as other cases pending against them and the said deposit shall be deemed to be compensation in terms of Section 357 Cr.PC towards embezzlement allegedly committed by the appellants and the same

shall be released to the complainant-bank, if not already released. With the above modification in sentence, these appeals are partly allowed and disposed of.

.....J.
(T.S. Thakur)

.....J.
(C. Nagappan)

**New Delhi;
May 9, 2014**



JUDGMENT