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RAMESHWAR PRASAD
v.
STATE OF RAJASTHAN
(Criminal Appeal No. 434 of 2009)

B

MARCH 5, 2009

**[DR. ARIJIT PASAYAT, V.S. SIRPURKAR AND ASOK
KUMAR GANGULY, JJ.]**

C

Code of Criminal Procedure, 1973:

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s.374 – Appeal against conviction – Appellate court, without examining the case on merits, remanding the matter to trial court observing that there were lacunae in prosecution case – In revision High Court set aside order of remand but upheld the conviction – HELD: Matter remitted to High Court for decision on merits – Practice and Procedure.

E

The appellant, a Branch Manager in Central Cooperative Bank, was convicted and sentenced u/s 408 IPC. The appellate court found certain lacunae in the prosecution version and remanded the matter for re-examination. The High Court in revision petition held that order of remand was against the position of law, but upheld the conviction. Aggrieved, the accused filed the appeal.

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Allowing the appeal and remitting the matter to the High Court, the Court

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HELD: Neither in the appeal before the Sessions Judge nor in the revision before the High Court there was examination of the case on merits. The appellate court, as rightly noted by the High Court, remanded the matter to the trial court for consideration of various aspects which in essence were to fill the lacunae in the

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prosecution version. The High Court noted that this was impermissible in law, but restored the conviction and the sentence without examining merits of the case. In the circumstances, the order of the High Court is set aside and the matter is remitted to it for a decision on merits. [Para 6] [1164-H; 1165-A, B]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 434 of 2009.

From the Judgment and Order dated 29.5.2007 of the High Court of Judicature for Rajasthan at Jaipur in S.B. Criminal Misc. Appeal No. 854 of 2007.

S.C. Gupta and Rameshwar Prasad Goyal for the Appellant.

Manish Kumar, Ansar Ahmad Chaudhary, Satya Prakash and Promila Matta for the Respondent.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Leave granted.

2. Challenge in this appeal is to the order passed by a learned Single Judge of the Rajasthan High Court, Jaipur Bench dismissing the application filed for recalling/modifying the order dated 14.3.2007 passed in Criminal Revision Petition No.671 of 2004.

3. Background facts need to be noted in brief.

The appellant was appointed as the Branch Manager in Central Co-operative Bank, Branch Bonli in District Sawai Madhopur. On 25.4.1982 the First Information Report was lodged by the S.H.O. of the concerned police station for alleged commission of offence punishable under Sections 408 and 462 of the Indian Penal Code, 1860 (in short the 'IPC'). Subsequently, cognizance was taken for the allegation relating

A to offence punishable under Section 408 IPC for alleged
criminal breach of trust of certain amounts. The trial Court by
order dated 11.2.2003 convicted and sentenced the appellant
in the aforesaid criminal case. The appellant filed appeal
B Appellate Court however remanded the case for fresh trial
stating that there were certain lacunae which had to be rectified
and the matter was to be re-examined. Against the order dated
16.4.2004 the appellant filed a Criminal Revision before the
High Court. The High Court quashed and set aside the order
C of remand stating that it was against the settled position of law
but upheld the judgment of the trial Court. In other words, the
direction for remand was set aside but there was no
examination on merits of the various stands taken by the
appellant. An application was filed for review before the High
D Court stating that while setting aside the direction for remand
the High Court had also dismissed the appeal not examining
the appeal on merits and upheld the conviction as recorded by
the trial Court. The application as noted above was dismissed.

4. In support of the appeal, learned counsel for the
E appellant submitted that there is lot of confusion at different
stages. Firstly, the Appellate Court set aside the order of the
trial Court and remanded the matter under Section 368(B) of
the Code of Criminal Procedure, 1973 (in short the 'Code') after
consideration of certain matters which according to the learned
F Sessions Judge were lost sight of by the trial Court. The High
Court accepted that the order of remand was bad yet did not
examine the same on merits.

5. Learned counsel for the respondent-State on the other
G hand supported the judgment.

6. It is to be noted that neither in appeal before the learned
Sessions Judge nor in the revision before the High Court there
was no examination of appeal on merits. The first Appellate
Court as rightly noted by the High Court remanded the matter
H to the trial Court for consideration of various aspects which in

essence were to fill the lacunae in the prosecution version. The High Court noted that this was impermissible in law. Having said that the High Court ought to have examined the case of the appellant on merits because the same was not done by the first Appellate Court. In the circumstances, we set aside the impugned order of the High Court and remit the matter to the High Court for a decision on merits. It is needless to say that we have expressed no opinion on the merits of the case.

7. The appeal is allowed.

R.P.

Appeal allowed.