

Kassim Pillai Abdul vs State Of Kerala on 28 February, 1978

Equivalent citations: AIR1978SC1081, 1978CRILJ994, (1978)4SCC481, AIR 1978 SUPREME COURT 1081, 1978 CRI APP R (SC) 199, 1978 SIMLC 409, 1978 SC CRI R 239

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Bench: P.N. Shinghal, S. Murtaza Fazal Ali

JUDGMENT

S. Murtaza Fazal Ali, J.

1. In this appeal by special leave the appellant has 'been convicted under Section 409 I.P.C. and sentenced to two years R.I. and a fine of Rs. 500/-, in default simple imprisonment of two months. The Sessions Judge on appeal upheld the conviction but reduced the sentence to six months R.I. maintaining the fine. A revision was taken to the High Court which was also dismissed. It appears that between the 2nd March and 3rd April, 1967 the appellant, who was a clerk-cum-accountant in the Block Development Office in. district Quilon received various sums of money amounting to about Rs. 100/-, which he did not deposit in the Treasury as required by the rules. According to the prosecution the appellant misappropriated this amount and in the course of a departmental enquiry he gave an explanation that as there was no safe in the office: he used to keep the money, received by him in the drawers, which appears to have been stolen by his peon. The learned Sessions Judge has clearly mentioned in his judgment that the Collector, who held the departmental enquiry, accepted the explanation given by the accused and allowed him to deposit the amount said to have been misappropriated and- in. fact the accused not only deposited the entire amount, which was received by him but he also made some over payment which had to be refunded to him. It also appears that the accused was not a very experienced official in the department and that is why the Collector condoned the lapse on his part. Mr. Nambiar, appearing for the appellant, has pressed this appeal only on the question of sentence. In view of the concession, made by the counsel for the appellant, we are not called upon to examine the legal question arising in the case as to the applicability of Section 197 of the CrPC to the facts of this case. It is submitted that having regard to the peculiar circumstances of this case, the inexperience of the appellant, and further having regard to the fact that he also deposited the money as ordered by the Collector a lenient view may be taken. We are of the opinion that the contention is well founded and must prevail.

2. Having regard to the special circumstances of the case we do not see any reason to send the appellant back to jail. We, therefore, allow this appeal to the extent that while upholding the conviction of the appellant we reduce the sentence to the period already undergone maintaining the fine as also the sentence in default of payment thereof.