

## **Om Prakash vs State Of Haryana on 25 January, 1979**

**Equivalent citations: AIR1980SC476, 1980CRILJ311, (1979)4SCC550, 1979(11)UJ914(SC), 1980 CRI. L. J. 311, 1979 SCC 550, 1980 SCC (CRI) 125, 1979 CRILR(SC MAH GUJ) 694, AIR 1980 SUPREME COURT 476, 1979 CRI LJ 97 (1980) SC CR R 144, (1980) SC CR R 144**

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**Bench: A.D. Koshal, S. Murtaza Fazal Ali**

### **JUDGMENT**

S. Murtaza Fazal Ali, J.

1. This appeal by special leave is directed against the judgment and order of the Punjab and Haryana High Court by which the conviction and sentence passed against the appellant have been affirmed. The appellant was convicted under Section 439 of the Indian Penal Code and sentenced to one year's rigorous imprisonment and a fine of Rs. 1,000/-, or in default to undergo rigorous imprisonment for six months. The amount said to have been embezzled by the appellant was Rs. 535/. The appellant was at the relevant time performing the duties of an accountant though his original duty was that of a clerk. He was in charge of payments and disbursing of T.A. Bills and other amounts to the staff of the cooperative department. The gravement of the charge against the appellant was that he did not pay a number of bills of the officials of the department, although he had taken receipts from the persons concerned and in some cases he had stamped the receipts also. Another allegation against the appellant was that he made delayed payments to the officials although he had taken their signatures before the payment was made. The defence of the appellant was that he was not a regular accountant and was performing the duties of an accountant in a purely temporary capacity and the Disbursing Officer was the Assistant Registrar and it was his responsibility to see that the payments were disbursed to the officials of the department. The appellant also denied the allegation of delay or that no payments were made after long and he showed false payments on the receipts. The Courts below have, no doubt, accepted the prosecution case and affirmed the conviction and sentence passed on the appellant.

2. It seems to us, however, that neither the trial court nor the High Court seems to have noticed the most important circumstance which goes to discredit the case of the prosecution completely. It is not disputed that the Assistant Registrar was the paying and disbursing officer and it was his responsibility to see that the payments were made. The plea taken by the Assistant Registrar was that he signed the payments on being told by the appellant that the money has been disbursed. It is also not disputed that the initials of the Assistant Registrar concerned appear on all the entries regarding the payments. In order to prove that certain payments were made after a long time or

were not made at all, the prosecution examined some witnesses depose that although they had signed the receipts, they did not receive any payment from the appellant. These witnesses who say that they received the payments but the payments were delayed by a few months. These witnesses are P.W. 10-Kishori Lal, P.W. 11-Bahadur P.W. 12-Bhagwan Dass, P.W. 13-Ram Karan PW.19-Ch. Gulab Singh, PW 20-Tara Chand, P.W. 21-Balbeer Singh. From the evidence of these witnesses it however appears that although they made oral or written complaints to the Assistant Registrar or other officials yet the prosecution has not produced the original complaints made by them nor has the Assistant Registrar stated in the court in his evidence that any oral complaint was made to him regarding the delayed payments. In these circumstances, therefore, it is difficult for us to place any reliance on the evidence of these witnesses which run counter to the documentary evidence in the case consisting of the signature on the receipts in the payment register, which appears to have been received by them long before the alleged complaint was made. The second category of witnesses are those who have signed and slated that they did not receive any money at all but they do not appear to have made any complaint whatsoever. These witnesses are PW 4 Nihar Singh, PW 5 Ralla Ram, PW 9 Tara Singh PW 14-Pomeshwar & PW 18-Ram Kumar These witnesses also have said that they have filed the complaint to the officials of the department but no complaint. It is difficult to believe that even if those a witnesses received the payment after having signed the receipts, they kept quiet & slept over the matter and filed any complaint to the superior officer against the appellant that they were not paid the money. The conduct of these witnesses remaining quiet for ever seven years over the matter the case of the prosecution that they had not been paid the money. In fact, PW 6 Vijay Singh who was a Deputy Registrar has clearly admitted that he did not remember if any member out of the employees of his department made a complaint to him regarding the non payment of TA or salary. Similarly, PW 7 Shivdev Singh who was an Assistant Registrar, has made a similar statement in his evidence. This witness also stated that he used to see the receipts duty stamped obtained from the payee at the time of verification. In this view of the matter, it cannot be held that the prosecution has proved the charges against the appellant beyond reasonable doubt. For these reasons, we, therefore, allow the appeal, set aside the judgment of the High Court and quash the conviction and sentence passed on the appellant and acquit him of the charges framed against him. The appellant who is on bail, will now be discharged from his bail bonds.