Supreme Court of India
Vasant Moghe vs State Of Maharashtra on 27 November, 1978
Equivalent citations: AIR 1979 SC 1008, 1979 CriLJ 885, (1979) 3 SCC 771, 1979 (11) UJ 38 SC
Author: O C Reddy
Bench: J Singh, O C Reddy
JUDGMENT O. Chinnappa Reddy, J.

1. These criminal appeals may be disposed of by a single judgment. The Trial Court, the appellate court and the Court of Revision have concurrently found the appellant guilty of charges under Section 409 Indian Penal Code in two separate cases. Ordinarily we would not have taken a fourth look at the evidence but we did so because some of the findings recorded by the Court of Revision appeared to us to be halting. Having considered the entire evidence and all the facts and circumstances of the case, we are satisfied that the appellant was rightly convicted by the Courts below.

2. The appellant was working as a Tahsildar at Bharni from 18th June. 1967 to 24th June 1968. Pande and Wedhonkar were working under him during that period as Reader and Clerk respectively. As Tahsildar the appellant was Incharge of receipt of amounts due to the Government by way of revenue, fines etc. The case of the prosecution was that between 2nd February 1968 and 1st March 1968 he received a total sum of Rs. 824.20 ps. from sixteen persons towards land revenue and issued receipts to them. The receipts were prepared by Pande and countersigned by the appellant. The amounts covered by the receipts were never credited in the Treasury at Chikhalda. That was the subject matter of the first case. In the second case the allegation was that the appellant had auctioned certain timber and had received a sum of Rs. 1195/- from the auction purchaser. This amount was also not credited to the Government in the Treasury.

3. The defence of the appellant was not that the amounts were not received but that the amounts had been handed over on 25th March 1968 to Wadhonkar for the purpose of being remitted into the treasury. A receipt said to have been given to him by Wedhonkar was produced by the appellant. The receipt was in the writing of the appellant but signed by Wadhonker.

4. The principal submission of Shri Phadke learned Counsel for the appellant was that the evidence did not show that any amount was entrusted to the appellant. The evidence showed that the amounts were entrusted to Pande alone and if Pande had not remitted the amount into the treasury immediately, the appellant could at the worst said to be guilty of lack of super vision but could not be said to be guilty of an offence under Section 409 Indian Penal Code. The learned Counsel sought to derive support for his argument from the finding of the Court of Revision that it was Pande that received the amount and not the appellant, but that the appellant must be held to have dominion over the amount received by Pande. According to the learned Counsel it would be going too far to hold that the appellant had dominion over the amounts received by Pande.

5. We are unable to agree with the submissions of the learned Counsel for the appellant. It is true that the actual physical act of receiving the money was that of Pande but the evidence shows that the money was paid into the hands of Pande in the presence of the appellant. The receipts were

prepared by Pande and signed by the appellant then and there. The evidence of PWs 5 and 7 shows that three account books were maintained, a Cash book by the Reader, a chest cash book by the Tahsildar and a general cash book by the Naih Tahsildar. The evidence shows that the procedure followed was that after necessary entries were made in the account books, the amount would be kept in the Tahsildar's chest or in the Nazir's chest before being deposited in the Treasury. If the amount was less than Rs. 500/- it would be kept in the Nazir's chest and if the amount was more than Rs. 500/- it would be kept in the Tahsildar's chest. The duty of depositing the amount in the treasury was that of the Nazir. It was the duty of the Tahsildar to check the cash books and the cash every day. If the Cash Books were not maintained every day, it was the duty of the Tahsildar to see that they were maintained properly. In the present case it has been established by the prosecution evidence and it is also admitted by the accused that there are no entries whatever in the cash books or the Cash register concerning the amounts which are the subject matter of the two cases. In fact the books contain no entries at all for the period in question. According to the statement of the appellant under Section 342 Criminal Procedure Code (old) all the accounts were in a mess, when he took charge as Tahsildar. He had made a complaint about it and accounts were being slowly wiitten up for the past period. This statement of the accused far from improving matters makes thing worse for him. If he found everything in a mess and if he had made a complaint about it surely he should be more careful and vigilent after taking charge. The issue of the receipts signed by him clearly shows that he had full knowledge of the collections of the amount. If knowing that accounts were already in a mess, he did not bother to see that the amounts were properly credited, it can only mean that he was either grossly negligent in the discharge of his duties or that he had himself misappropriated the amounts. It is difficult to accept any case of negligence on the part of the appellant since he himself had already complained about the sorry state in which the accounts were maintained when he took the charge. A sure pointer to the guilt of the accused is the production by him, at a late stage, of the receipt signed by Wadhonkar. This receipt Ex. 58 is a tell-tale document. It recites "Received two envelopes containing an amount of Rs. 1195/-and Rs. 874 20 respectively from Shri Y.B. Pande, Reader of the Tehsildar, Dharni, for crediting in the Chikhelda treasury". It is signed by Wadhonkar. Wadhonkar has denied his signatures. There are certain suspicious features about this receipt. In the first place according to the appellant the money was handed over to Wadhonkar on 25th March 1968. The appellant offered no explanation as to why the money had been retained so long. In the second place it was not explained why a receipt had been taken from Wadhonkar. There is no evidence whatever to indicate that it was the practice to take a receipt from the Clerk whenever any money was handed over to him far being remitted into the treasury. In the third place, the money was not in fact credited in the treasury and the accused offered no explanation as to what steps he took to find cut whether the money had in fact been deposited or not, finally the receipt itself was produced by the appellant before the police at a very late stage of the investigation. If the present varsion that the money had been handed over to Wadhonkar and the receipt obtained from him on 25th March 1968 is true surely the appellant would have straightaway produced the receipt before the Police We think that the appellant is seeking to take advantage of the circumstance that the witness stated that the money was physically handed over to Pande. Having regard to the circumstances of the case we do not think that circumstance make any difference. The accused certainly obtained dominion over the amounts and it was he that was responsible for misappropriating the amounts. The procedure followed in the office, the issue of receipts signed by the appellant, the total lack of entries in the account books including the book

maintained by the accused, and the production of the suspictious receipt P. 58 at a late stage of the case clearly establish the guilt of the appellant. In the result the conviction of the appellant in both the cases is confirmed. In regard to the sentence the learned Counsel for the appellant argued that the appellant has last his job and is now a broken man and therefore, he may not be sent back to prison after so many years, this appeal having been admitted in 1972. Having regard to the circumstances of the case we thank that no useful purpose will be served by sending the appellant back to jail. The sentence of imprisonment passed on the appellant in each of the case is reduced to the period of imprisonment already suffered by him. The sentence of fine will however, stand. With this modification in regard to the sentence, both the appeals are dismissed.