



**IN THE HIGH COURT OF MADHYA PRADESH  
AT INDORE  
BEFORE  
HON'BLE SHRI JUSTICE SUBODH ABHYANKAR**

**ON THE 5th OF SEPTEMBER, 2024**

**CRIMINAL APPEAL No. 9738/2019**

***SHASHI MISHRA  
VS.  
STATE OF MP***

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***(SHRI ABHISHEK RATHORE', - ADVOCATE FOR APPELLANT)  
(SHRI MRIDULA SEN- ADVOCATE FOR RESPONDENT)***  
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**JUDGEMENT**

1] This criminal appeal has been filed under Section 374 of the code of Criminal Procedure, 1973 against the judgment dated 8.11.2019 passed by the I Additional Sessions Judge, Indore in S.T.No.62/2011; whereby finding the appellant guilty, the learned Judge of the trial Court has convicted him as under:-

CONVICTION		SENTENCE		
Section	Act	Imprisonment	Fine	Imprisonment inlieu of Fine
420	IPC	5 year R.I	Rs.500/-	15 days
467	IPC	10 year R.I	Rs.1,000/-	1 month
468	IPC	5 years R.I	Rs.2,000/-	15 days
409	IPC	10 years R.I	Rs.1000/-	1 month

2] In brief, the facts of the case are that the Collector, Tribal Welfare Department, District Indore sent a letter to the Superintendent, District Indore on 22.4.2009 alleging the embezzlement by the appellant Smt. Shashi Mishra, who was Superintendent of SC/ST Girls Hostel Mahugaon, alleging that the



appellant had withdrawn certain amount from the Bank by fraudulent means, towards the Scholarships to be given to the students of SC/ST, by forging signatures of the Principal of the School, thus, on the basis of which FIR (Ex-D-3) was lodged against the appellant on 28.2.2009. The investigation ensued, the charge sheet was filed, and the learned Judge of the trial Court, after appreciating the evidence adduced by the parties on record, convicted the appellant as aforesaid. Hence, this appeal.

3] Counsel for the appellant has submitted that the appellant is lodged in jail since 8.11.2019, and as such she has already completed four years and ten months, and even assuming the case of the prosecution to be true, the appellant deserves to be released on the period already undergone by her as the total amount of defalcation is stated to be Rs.9675/- only, which is apparent from Ex-P-6 and Ex-P-167.

4] Counsel for the appellant has submitted that although it is alleged that the appellant had withdrawn the amount in the name of the students, however, none of the students have been examined as prosecution witnesses, and no grievance has ever been raised that students have not obtained the scholarship as provided to them by the State.

5] Counsel for the appellant has also submitted that the appellant had paid the amount of scholarship to the students, however, she has withdrawn the same without following due procedure, which can be termed as an irregularity only and not an illegality leading to her conviction.



6] Counsel for the respondent/State on the other hand has opposed the prayer, and it is submitted that no case for interference is made out as it has come on record that the register in which the details of the students, who were residing in hostel have been given, were not signed by Principal of the school, and her signature has been found to be forged as per the Hand writing expert's report Ex-P-178 and Ex-P-179. It is also submitted that the appellant used to withdraw the amount in respect of those students also, who were not residing in the hostel during the said period, and thus, there was no question that any student would also raise any objection regarding nonpayment of the amount, as it was the appellant, who used to withdraw the amount in the name of girl students, who were not even present in the hostel.

7] Heard. Having considered the rival submissions and on perusal of the record, it is found that admittedly the total amount of defalcation is Rs.9675/- (Ex-P-6), which is the report of enquiry committee in which it is alleged that excess amount received by the appellant was Rs.9675/- only, which has been arrived at assuming that all students were also present in the hostel. It is also found that the hand writing expert's report has not been rebutted in which he has clearly stated that the signatures in the register of scholarship of girl students have not been made by the Principal of school which only leaves to one conclusion, that the aforesaid signatures were made by the present appellant only as the Principal has also stated that she had not signed the vouchers of the Bank, although there is no comparison of her hand writing in Bank Voucher by the hand



writing expert.

8] Be that as it may, considering the period of incarceration which is 4 years 11 months, and the amount of defalcation to be Rs.9675/- only, which was not a big amount even in the year 2010, this Court is of the considered opinion that sentence of 10 years of incarceration awarded to the appellant is apparently on the higher side, and since she has already suffered for more than 4 years 11 months of incarceration, although her conviction is maintained, but her sentence is reduced to the period already undergone by her.

9] The appellant is lodged in jail, she be released forthwith, if not required in any other case.

10] Consequently, **Criminal Appeal No.9738/2019 stands partly allowed and disposed of.**

11] Let a copy of this judgment be sent to the concerned trial Court for information and necessary compliance.

(SUBODH ABHYANKAR)  
JUDGE

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