

Basanti Singha Vs. State of Assam

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Court : Guwahati

Decided On : Nov-10-2003

Judge : P.G. Agarwal, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 409

Appeal No. : Crl. Revn. No. 526 of 2000

Appellant : Basanti Singha

Respondent : State of Assam

Advocate for Def. : B. Ahmed, A. Lashkar, N. Haque and P.P. Assam, Advs.

Advocate for Pet/Ap. : N. Dhar, P.B. Mazumdar and P.J. Saikia, Advs.

Disposition : Revision petition allowed

Judgement :

P.G. Agarwal, J.

1. Informant Mobarak Ali filed a complaint case on 5.11.1994 stating inter alia, that he is a teacher at Patharkandi Girls' M.E. School herein after referred to as the school where accused Smt. Basanthi Sinha is officiating as Head Mistress. In respect of arrear pay allowance and salary for the month of January and February 1994 of the complainant Mobarak Ali, the said school prepared T.A. bill of Rs.

13,770 and the amount was drawn from the Bank on 11.3.1994. The accused, however, did not pay the amount to the complainant on this or that plea and has dishonestly misappropriated the same. The complaint was sent to police whereupon, G.R. Case No. 1153/1994 was registered and investigated. On receipt of the chargesheet, the Addl. Chief Judicial Magistrate, Karimganj held trial under Section 409 IPC wherein the prosecution examined as many as five witnesses. On conclusion of the trial, the trial Court convicted the accused person under Section 409 IPC and sentenced her to imprisonment for 3 years and to pay a fine of Rs. 5,000 in default to further imprisonment for 3 months.

2. The petitioner filed Criminal Appeal No. 27(4) of 1999 before the Sessions Judge, Karimgan and vide impugned order dated 19.9.2000, the appellate Court dismissed the appeal and hence, the present appeal.

3. In the present case there is no dispute at the Bar that the accused petitioner was serving as a public servant at the relevant time and a bill was drawn for Rs. 13,770/- for payment to the informant Mobarak Ali towards his salary and arrear pay and allowance etc. Further, it is not disputed that the said amount was of Rs. 13,770/-. It is also not disputed and there is finding that the said amount of Rs. 13,770/- was not paid to MobarakAli.

4. The dispute in this case is in a very narrow compass. The appellate Court had observed.

'It is stated by convicted-appellant that said Mobarak Ali had not accepted the amount after signing the concerned record and so she failed to disburse the amount to him. She has also submitted that before delivery of the amount Mobarak Ali was asked to sign the document which he objected without receipt of the amount. That may be the situation due to misunderstanding between them, but then what prevented her to disburse the amount by any other manner including sending it through money order etc. in the address of the complainant Mobarak Ali? As she did not done it, it indicates that intentionally she had retained the amount for her own purpose.'

5. The above finding is based on the evidence adduced by of the prosecution itself. The plea raised by the petitioner in this case, is that the complainant had refused to accept the money, and the accused person informed the matter to the higher authority.

6. The PW4 was examined by the prosecution who was working as in-charge, Block Elementary Education Officer. It is seen that both the informant as well as accused had approached the Block Elementary Education Officer, Sri Gopinath Singh who made an enquiry regarding the matter. The defence has submitted that there was no intention to mis-appropriate the amount. Prosecution is required to establish dishonest intention in order to bring home the charge under Section 409 IPC. The prosecution is required to establish dishonest intention on the part of the public servant. The trial Court was also aware of the above requirement, which is seen from the trial court's judgment :

'Criminal intention to misappropriate is proved when as post-man repays the amount of money order to the payee's mother subsequent to the filling of complainant with the postal authorities (1993 Cr. L.J. 1030 H.P.). It was further decided in a reported case-temporary retention of money would not be itself amount to criminal breach of trust. Retention of property entrusted would amount to the offence under the section, only if from the fact of retention of property, the second ingredient namely, dishonest misappropriation or conversion etc. can be correctly inferred. Here in the factual situation of the case as discussed by learned court below and referred by this Court above, it is very well established that the convict-appellant had dishonest intention to misappropriate the amount which she had withdrawn as a public servant, but did not pay to PW 1. Thus she has committed breach of trust.'

7. The defence plea is that as the accused is required to sign the acquittance roll prior to receipt of the money. The amount could not be paid to him and the matter was reported to the higher authorities as the accused insisted that he should be paid the money first and thereafter he will sign in the acquittance roll which is against rule. There seems to be some ego problem between the parties and both the parties approached PW 4. The accused also submitted that the said amount

was deposited in the Bank account on 6.4.1994 itself and hence there is no misappropriation of the amount by the accused.

8. A photo-copy of the deposit slip was produced before the appellate court and the appellate court found that the alleged amount was deposited on 6.4.1994. the appellate Court however, refused to accept the above plea by observing that 'Moreover, if that was the fact, then why she had not reported the matter to PW 4 who visited her school on last 19.4.1994 and 21.4.1994?' The appellate Court held it completely a false one.

9. On perusal of the evidence on record we find that above finding of the Appellate Court is not based on evidence on record and there is misreading of evidence in appellate Courts judgment. In the evidence PW 4 categorically stated that the accused Head Mistress and informed him that the amount has been deposited in the Bank. The PW 4 categorically stated during enquiry, he came to know that the amount was deposited in the Bank. The said amount was withdrawn from Bank on 11.3.1994 and thereafter a try of war was going on between the informant and the Head Mistress and as the informant refused to accept the money, the said amount was deposited in the School Bank account on 6.4.1994. The above act of the Head Mistress does not disclosed any dishonest intention, or it cannot be said to be temporary misappropriation of money as the petitioner is the Head Mistress and she had approached higher authority in the matter and she expected that the dispute will be settled soon.

10. The learned counsel for the informant has filed written argument before this Court. He has referred to the decision of the Apex Court in the case of Bachchu Singh v. The State of Haryana reported in 1999 Cr. L.J. 3528, wherein the accused collected money from the villagers as house tax and took the plea that the collected money paid to the Sarpanch. In Bachchu Singh case the fact was different as because on inquiry it was found that the plea raised by the accused is a false one whereas in the present case the plea raised by the petitioner that the amount was deposited is admitted by PW 4 and photocopy of the deposit slip was produced by the prosecution herself and there is no reason to dis-believe the same.

11. In the instant case, we find that the trial Court as well as appellate Court have failed to examine the main question i.e., regarding dishonest intention of the accused in proper perspective. The appellate Court's judgment shows mis-reading of evidence. In the facts and circumstances we find that dishonest intention has not been established by the prosecution.

12. We, therefore, acquit the petitioner accused and set her at liberty forthwith. The judgment of conviction and sentence is set aside. She need not surrender to the bail bond. Send down the records.

13. The revision petition is allowed.

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