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Court : Patna

Decided On : Dec-16-1999

Judge : D.P.S. Choudhary, J.

Appeal No. : Criminal Revision No. 125 of 1996

Appellant : Bihari Ram

Respondent : State of Bihar

Disposition : Application Dismissed

Judgement :

D.P.S. Choudhary, J.

1. This application in revision is directed against the judgment and order dated 29-11-95, passed by the Addl. Sessions Judge, IInd, Patna in Cr. Appeal No. 23/92, by which he dismissed the appeal and confirmed the judgment and order of conviction dated 3-3-92, passed by the Judicial Magistrate, Ist Class, patna, in G.R. No. 336/ 89, convicting the petitioner under Section 409, I.P.C. and sentencing him to undergo rigorous imprisonment for three years.

2. The prosecution case in brief is that the Booking Supervisor, Patna lodged a written report on 20-1-89 addressed to the Officer Incharge, Govt. Railway Police, alleging therein that on 4-1-89, it was brought to his notice that excess fare tickets

book having ticket No. 800224 to 800249, was handed over to Mr. Bihari Ram, the petitioner at 14 hours on 4-1-89 after issuing of the ticket up to 800224 of the said book by Sri Binod Kumar Singh, ABC/PMBE for further issue. But the petitioner, Bihari Ram did not mention in CS book the accountal of the book issued by him during his duty hour from this book. On being asked vide letter No, 27/ BS/PMBE/89, dated 6-1-89, the petitioner did not reply and the matter was reported to Sr. DES/DMR on 11-1-89, who advised to lodge the FIR as well as a complaint was filed. On the basis of the aforesaid written report, Patna GRP instituted a case being case No. 27 dated 20-1-89, under Section 409, I.P.C. and after investigation submitted charge-sheet and the trial proceeded in the Court below.

3. The prosecution in support of its case in all examined six witnesses, out of them P.W. 5 Sukhdeo Chaudhary is the informant and P.W. 6, Ashok Kumar is the Investigating Officer. The prosecution also exhibited documentary evidence which were marked as Ext. 1, 1/1 and 1/2 respectively. It also exhibited letter of P.W. 4, Binod Kumar Singh as Exts. 2 and the concession tickets of Eastern Railway as Exts. 3 to 3/7.

4. The defence of the petitioner is that the alleged EFT book bearing No, 800200 to 800249 was received by him from the Booking clerk, Binod Kumar Singh and the book was kept at the table of the booking counter in the room of the booking office and he went to drink water from the tape water, and when he returned back, he did not find the said book on the table. He enquired from the employees working there and also made search, but could not locate the book. He brought the matter to the notice of then Booking Supervisor (the informant, Sukhdeo Choudhary), who ordered to issue other EFT book. At that time, he also mentioned the said fact in the daily trains cash cum summary book. Oh the next day, the accused-petitioner again searched for the EFT book but could not find the same and then he informed the matter through telegram to the higher authorities at Howrah and Sr. D.E.S. Danapur on 5-1-89. The further defence of the petitioner is that he has not committed any offence as alleged and he has been implicated in this case at the instance of some employees who did not like him to be promoted in near future. The defence also examined 3 D.Ws., namely, D.W. 1 Bihari Ram,

D.W. 2, Sitaram Singh and D.W. 3, Bharti Bhushan Raut and also brought on the record the photocopy of the telegram sent by him, to Howrah on 5-1-89, marked as Ext. 'X'.

5. On behalf of the petitioner, it was contended that the trial Court has erred in coming to the conclusion that the prosecution has proved the allegation under Section 409, I.P.C. against the petitioner. The prosecution has alleged the entrustment of the EFT book with the petitioner, but failed to prove that the said property was used by the petitioner for his personal gain. The trial Court has not considered the defence version and his subsequent conduct judicially, which has vitiated the finding of the Court below. The petitioner had reported the matter regarding missing of the EFT book from the counter table to the higher authorities which was his bona fide conduct. It was further submitted on behalf of the petitioner that the trial Court has not considered the prosecution evidence in right perspective. The witnesses have admitted that the petitioner had informed the higher authorities about the missing of the EFT book. It is further submitted that the evidence of the informant, P.W. 5 has not been construed in right perspective, which has caused serious prejudice to the petitioner. In paragraph 15 of the his evidence, P.W. 5 has stated that the accused-petitioner was given EFT book containing 25 tickets and out of which, it was available on the record that he had sold tickets Nos. 800225 to 800237, but there was no account available for the remaining tickets. This witness further admitted that some amount of selling of the tickets of this book, on the relevant date, was deposited by the accused- petitioner, but he was unable to give the detail account of the deposited money. In paragraph 16, he stated that he did not enquire from the Account Section whether the petitioner had deposited the entire amount of the tickets or not. He voluntarily stated that the petitioner had deposited the amount with the cash clerk. He further stated that the petitioner deposited Rs. 117/- less, but the admitted that he does not remember whether this fact was stated by him before the Investigating Officer of the case. This witness further stated that on 4-1-89, the petitioner in all deposited Rs. 3984/. Therefore, from the admission of the informant it is crystal clear that the petitioner had deposited on 4-1-89 the amount of EFT book which he sold, and as such there was no question of misappropriation of any amount by him.

6. Learned lawyer for the petitioner further submitted that before instituting the case the prosecution has not verified from the cash deposit as to how much amount was missing out of the EFT book sold ; thus the allegation against the petitioner is vague, as such the conviction of the petitioner is bad in law and is fit to be set aside.

7. From the submissions mentioned above, the admitted fact of the case is that the accused-petitioner in the capacity of Railway Booking Clerk, at Patna Junction was on official duty on the alleged date and time of the occurrence at counter No. 1. He was entrusted with the E.F.T. Book for booking tickets to the passengers and from Exts. 6 And 6/1 it is apparent that in the daily trains cash cum summary book dated 4-1-89, no account has been given by the accused-petitioner for his duty hours. The E.F.T. Books from 800225 to 800249 were entrusted to him for booking tickets to the passengers. Ext. 2 shows that on the next morning when Binod Kumar Singh (P.W. 4) took over his duty, he did not find any entry by the accused regarding the alleged E.F.T. book tickets entrusted to him. He mentioned this fact in the summary book (Ext. 6/1) and gave a written information to the Booking/Commercial Superintendent Patna Jn. on 5-1-89 and spot enquiry was made by P.W. 5 on the same day and he found the matter true. When the accused-petitioner came to office on 6-1-89, he was given a letter regarding the said matter and was asked to give explanation. But he did not give any written reply. Thereafter the matter was reported to the higher Railway Officials. There is concurrent finding regarding the above facts by both the Courts. I have carefully scrutinised the evidence of P.W. 5 (Sukhdeo Choudhary) as mentioned above on whose evidence, learned lawyer for the petitioner relied upon in support of his contention. In paragraph 15, P.W. 5 Stated that after examining the E.F.T. Book, it was found that the accused-petitioner had given the account of selling tickets of EFT Book up to No. 800237, but did not furnish the account of the remaining 15 tickets. He further stated that he was unable to say whether the accused-petitioner had deposited the amount of the tickets bearing No. 800225 to 800237 because on that date he had not given any account of selling tickets of E.F.T. Book. He admitted that though on that date the accused had deposited some amount, but it was not clear as to of which account, he deposited the said money. After carefully scrutinising the evidence of D.Ws. 1 and 2, it is clear that the accused-petitioner

has failed to give satisfactory explanation in support of his plea that the E.F.T. book was stolen by some one from the counter. He has not given any written complaint of this fact on that date (4-1-89). His bona fide conduct should have been to immediately give in writing to the higher authorities the E.F.T. Books were stolen from the counter. But he did not do. Even the original document through which he claimed to have informed the superior authority by telegram on the next day has not been brought on the record. Thus, the prosecution has been able to prove beyond doubt that the petitioner was entrusted with the E.F.T. Book and he had issued the same to the passengers, but its account was not given nor the same was mentioned in the cash book. Therefore, misappropriation of the property entrusted to him and its conversion by the accused-petitioner for his own use is proved by the prosecution beyond all reasonable doubt.

8. The alleged occurrence took place on 4-1-89 and considering the amount involved in the alleged misappropriation and the fact that there is no criminal antecedent of the accused-petitioner, to meet the ends of justice, the period of sentence awarded to him i.e. three years R.I. is reduced to one year.

9. With this modification in the order of sentence, this revision fails and is dismissed accordingly.