Dwarkadas Haridas Vs. Emperor

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Court : Mumbai

Decided On : Jun-28-1928

Reported in : 114Ind.Cas.399

Judge : Charles Fawcett, Acting, C.J. and ;Mirza, J.

Appellant : Dwarkadas Haridas

Respondent : Emperor

Judgement :

Charles Fawcett, Acting, C.J.

1. The only point of law that has been taken before us by Mr. Coyajee for the applicant is that the second count of the charge against the applicant in respect of a gross sum that was alleged to be dishonestly misappropriated does not properly fall within the provisions of sub Section (2) of Section 222 of the Criminal Procedure Code. That question was also taken in the appeal to the Sessions Judge, who has given reasons for considering it to be of no substance. I agree in this opinion. Section 105 of the Indian Penal Code, which defines criminal breach of trust, is in very wide language, viz., 'whoever being in any manner entrusted with property or with any dominion over property, dishonestly misappropriates or converts to his own use that property...commits 'criminal breach of trust.' The words 'in any manner' are noticeable, and ill. (e) is to the point. A Revenue Officer is described as entrusted with public money, and under a duty to pay it into a

Government treasury. In such a case Government does not actually hand over the money to the Revenue Officer, but the Revenue Officer receives it from those who owe it to Government and pay it to him. In the same way here certain goods were entrusted to the accused, and under the contract between him and the complainant he had to sell those goods and obtain money for them, which he would hold on account of the complainant, subject to deduction of certain charges. In my opinion, when he received that money, although he did not receive it actually from the complainant, he was 'entrusted with' it, within the meaning of the definition; and if the section is read in that way, no difficulty whatever arises under Section 222(2) of the Criminal Procedure Code. Mr. Coyajee for the applicant relied on Balthasar v. Emperor 19 C.W.N. 42215 Cr. L.J. 683 as an authority to the contrary. But it will be seen that the first paragraph of the head note to that case is too wide and is not justified by the terms of the judgment. Their Lordships have not laid down that Section 405 of the Indian Penal Code, does not cover misappropriation by a person of the sale-proceeds of property entrusted to him; on the contrary, they say that it ought to be assumed that the word 'properly' in Section 405 includes the sale-proceeds of goods entrusted to the accused. Nor does the second paragraph of the head-note apply to the present case, for the accused was not charged with criminal breach of trust in respect of goods entrusted to him, but of such breach of trust in respect of a specific sum obtained by the sale of such goods.

2. But, even supposing that the charge under criminal breach of trust was wrong, it is quite clear that the accused could have been charged under Section 403 of the Indian Penal Code with having dishonestly misappropriated this gross sum, so that under Sections 236 and 237 of the Criminal Procedure Code he could have been convicted of that offence, and the sentences passed upon him could equally have been imposed under Section 403, Indian Penal Code. Therefore, in my opinion, there is no sufficient ground for interference on this point in revision.

3. With regard to the findings of facts, as to dishonesty of the accused and the terms of the contract between him and the complainant, it suffices to say that the accused was, on the facts found, properly convicted, and we see no reason in revision to go into those findings of fact.

4. I agree with the Sessions Judge that it is a bad case, and, in my opinion, there is no sufficient reason for reducing the sentence.

5. Therefore, the Rule is discharged.

Mirza, J.

6. I agree.