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Court : Karnataka

Decided On : Jul-31-1957

Reported in : AIR1958Kant82; AIR1958Mys82; 1958CriLJ784; ILR1957KAR374

Judge : S.R. Das Gupta, C.J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 21, 406 and 409; Madras Co-operative Societies Act - Sections 38(2)

Appeal No. : Criminal Revn. Petn. No. 286 of 1956

Appellant : Karnam Siddappa

Respondent : State of Mysore

Advocate for Def. : Adv. General

Advocate for Pet/Ap. : V. Krishnamurthy, Adv.

Judgement :

ORDER

1. In this petition, Mr. V. Krishnamurthy, Advocate for the Petitioner-Accused raised several contentions. One of such contentions, in my opinion, requires consideration.

2. The accused was charged under Section 409 of the Indian Penal Code and was convicted and sentenced to six months' Rigorous Imprisonment and to pay a fine

of Rs. 500/- and is default of payment to undergo Simple Imprisonment for one month more. He was the President of a Co-operative Society. The charge against him was that he misappropriated between 30th June 1953 and 18th January 1954 a sum of Rs. 7,849-2-8. He was previously convicted on the same allegations and against that conviction he preferred an appeal to the Sessions Court at Bellary and the Sessions Judge set aside the conviction and sent the matter back for framing the charge properly, he being of opinion that the charge framed was not proper. Thereafter the present charge was framed and the trial took place and he was convicted and sentenced as mentioned before.

3. It appears that as President of the Society the Petitioner had in his hands the said sum of Rs. 7,849-2-8. On 18th January 1954, the Assistant Registrar of Co-operative Societies inspected the accounts of the Society and the money in the hands of the President was not then forthcoming. He took time to produce the same till 31st January 1954 but failed to do so. The Assistant Registrar again visited the Society on 11th April 1954 and on 10th April 1954. On these days he made enquiries whether the money had been repaid. But it was found that money had not been repaid. It was only on 19th April 1954 that the whole sum was repaid, except a small sum of Rs. 149-2-8 which was alleged to have been applied for the purchase of a carpet for the Society,

4. It may be mentioned that this repayment of the sum in question was made before the charge sheet was filed. The charge sheet was filed on 30th June 1954. The present revision petition has been filed against the conviction and sentence to which I have already referred.

5. The principal point in the argument of Sri Krishnamurthy, Advocate for the Petitioner, was that on the facts proved a case under Section 409 of the Indian Penal Code was not made out. He contended that the essential element of a case under that section was dishonest misappropriation. In other words, it must be proved that the accused dishonestly misappropriated or converted into his own use the property in question before a case under Section 409 can be said to have been made out. In this case Sri Krishnamurthy contended what had been proved was mere retention of the property for a particular period and not misappropriation.

He relied on the observations made in a decision of this Court in *P. Durgappa v. State of Mysore*, AIR 1956 Mys 40 (A), where Padmanabhiah J. observed as follows:

'Where it is not clear from the evidence what the accused did with the money during the period he was in possession of it, the Court cannot assume, in absence of any evidence to show or circumstances to infer, that he misappropriated the amount dishonestly.'

In this case, Sri Krishnamurthy contended, it was not at all clear from the evidence that the accused misappropriated the money. What is clear is that he did not deposit the money though asked to do so but retained it for only a few months and that by itself, according to him, would not justify a conviction either under Section 406 or Section 409, I.P.C. He contended that although it is true that there may be circumstances from which it could be inferred, as observed by Padmanabhiah J. in the above-said case, that there has been misappropriation, such circumstances must relate to the fact of misappropriation itself. The circumstances showing that there was mere retention was not enough for that purpose. In other words, his contention was that the mere fact that the money was retained for some time was not such a circumstance from which it can be inferred that there has been misappropriation. By way of illustration Sri V. Krishnamurthy mentioned that such an inference may be permissible in a case where the accused is found to have been leading such a life which but for such misappropriation was not possible for him to lead. That would be a circumstance from which it can be inferred that there has been misappropriation of the amount in question. Shortly put, his contention was that mere delay in returning the money was not a circumstance as to justify such an inference. In my opinion, it is not possible to hold that extreme view which was propounded by Sri Krishnamurthy before me. It is true that normally mere retention is not such a circumstance from which there can be an inference that there has been misappropriation. But there may be cases where it is possible to draw such an inference. It is not possible to lay down a hard and fast rule to the effect that in no case retention would lead to an inference of misappropriation. In other words in my opinion whether or not an inference of misappropriation from the fact of retention would be drawn would depend on the particular facts of each case.

In this case under Section 38, Sub-section (2), Sub-clause (A) of the Madras Co-operative Societies Act, the Assistant Registrar, was empowered to summon any person in possession of the cash of the Society to produce the same at any place at the headquarters of the Society or any branch thereof. On several occasions the accused was called upon to produce the money. But he failed to do so, on the plea that the money was kept with his father who had gone out on a pilgrimage. I hold that it is possible to infer from such circumstances that there was misappropriation.

6. Sri Krishnamurthy contended before me that a charge under Section 409, I.P.C. would not lie against his client for the obvious reason that he was not a public servant. He relied on a decision of the Bombay High Court and also a decision of the Madras High Court to show that the President of a Co-operative Society is not a public servant within the meaning of that expression in the Indian Penal Code. In my opinion this contention of Sri Krishnamurthy should be upheld. The authorities to which he has referred make that position quite clear. But it has been urged by the learned Advocate-General that the conviction if not maintainable under Section 409 of the Indian Penal Code can be sustained under Section 406 of the Indian Penal Code. Sri Krishnamurthy frankly conceded before me that he has nothing to say on this point; in other words, he did not dispute that the conviction in question although not maintainable under Section 409, I.P.C. could still be sustained under Section 406 of the Indian Penal Code. The matter, therefore, proceeded before me on the footing that the conviction was sustainable under Section 406 of the Indian Penal Code.

7. In the result, therefore, the conviction of the accused is altered from under Section 409 of the Indian Penal Code to one under Section 406 of the Indian Penal Code.

8. As for the sentence, there are some extenuating circumstances which, in my opinion, should be taken into consideration for the purpose of determining whether or not the sentence in this case should be reduced. I have already pointed out that the entire sum was paid except a small sum of Rs. 149-2-8 which has been accounted for and such payment was made before the charge sheet was filed. So, although there may be in law a case of misappropriation, substantially the accused

has made good the amount which he was liable to do. In these circumstances the sentence which has been passed by the lower Court seems to me to be rather harsh and in the ends of justice I would reduce the said sentence. I, therefore, order that the accused do pay a fine of Rs. 200/- only and in default he will undergo simple imprisonment for a fortnight. With this modification, the Revision Petition is dismissed.

9. Petition dismissed.

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