

P. Durugappa Vs. State of Mysore

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Court : Karnataka

Decided On : Dec-19-1955

Reported in : 1956CriLJ630

Judge : Padmanabhiah, J.

Appellant : P. Durugappa

Respondent : State of Mysore

Judgement :

ORDER

Padmanabhiah, J.

1. This is a revision petition preferred against the judgment of the learned Sessions Judge, Bellary, in Cr. App. No. 16 of 1955, confirming the conviction and modifying the sentence passed by the Sub-Divisional Magistrate, Hospet, in C. C. No. 56 of 1954.

2. The case for the prosecution was that the accused, who was a panchayatdar and a member of the Co-operative Society at Kuruvathi, was entrusted on 21-1-1953 with a sum of Rs. 7,700/- by the Hospet Co-operative Central Bank, Ltd., for being credited to the Co-operative Society at Kuruvathi, that he did not credit the said amount till 21-2-1953, that he misappropriated the same temporarily and that he thereby committed an offence under Section 409, I.P.C.

The learned Magistrate found the petitioner guilty of the offence with which he stood charged and sentenced him to undergo simple imprisonment for one month and also to pay a fine of Rs. 1,000/- and in default to undergo simple imprisonment for a period of six months. The petitioner preferred an appeal as against this judgment to the learned Sessions Judge who confirmed the conviction but reduced the sentence of imprisonment to the period already undergone. The sentence of fine was also confirmed. As against that decision, this revision petition is filed.

3. The point that arises for consideration is whether the conviction of the petitioner can be sustained. It appears to me that the guilt has not been brought home to the petitioner beyond all reasonable doubt. That the petitioner was a public servant at the relevant time and that he was entrusted with a sum of Rs. 7,700/- on 21-1-1953 is admitted on his side, and there is also both oral and documentary evidence adduced in the case in support of these contentions.

It is also proved and admitted by the petitioner that the sum he drew from the Hospet Co-operative Central Bank was credited to the Co-operative Society at Kuruvathi on 21-2-1953 i.e. a month after he was entrusted with the money.

But the contention of the petitioner was, and is, that after he withdrew the amount from the Co-operative Central Bank at Hospet he fell ill and had to stay at Dayangere upto 21-2-1953 and that he could not credit the amount earlier, and that he did not misappropriate the amount as alleged on the side of the prosecution.

It may be pointed out, in this connection, that the illness set up by the petitioner has not been proved, as found by the Courts below. But the point that the Courts had to consider, and will have to consider, is, not whether the defence put forth by the accused was proved, but whether the prosecution has discharged the burden that initially lay on it.

The Courts below appear to have been very much influenced in their decision by the fact that the contentions urged by the petitioner have not been made out. In my opinion, the way in which the Courts below have proceeded to determine the guilt of the petitioner is not correct.

4. Section 409 I.P.C. prescribes the penalty for the offence of criminal breach of trust. What is criminal breach of trust is defined in Section 405 I. P, C. To sustain a conviction under Section 409 I.P.C. the prosecution, besides proving that the accused is a public servant and that he was as such public servant entrusted with property, has also to establish that the accused committed criminal breach of trust in respect of the money be entrusted.

One of the most essential ingredients of that offence is the dishonest intention on the part of the accused for the commission of the alleged crime. What is criminal misappropriation is defined under Section 403 I.P.C. A person will be guilty of that crime only when it is proved that he dishonestly misappropriated the property or converted it to his own use.

'Dishonestly' is denned under Section 24 I.P.C. as doing anything with the intention of causing wrongful gain to one person or wrongful loss to another person. To 'appropriate' means 'setting apart or assigning to a particular person or use', and to 'misappropriate' means 'improperly setting apart for one's use to the exclusion of the owner'. 'Converts' means appropriation and dealing with property of another without right as if it is his own property.

5. In the present case, it appears to me that the prosecution has not proved that the accused misappropriated or converted the amount in question to his own use and that too dishonestly. Dishonesty may be proved by evidence or may be presumed from the circumstances but under no circumstances can it be assumed as a matter of course. In the present case, there is no evidence worth the name that the petitioner appropriated the amount in question dishonestly to his own use or that he dealt with it for some other purpose.

The learned Magistrate has observed in the course of his judgment that the accused parted this money in favour of P. W. 6 which fact has been denied by the latter. Even the learned Magistrate is not definite as to whether the accused had paid this amount to P. W. 6 because the observes in the course of his judgment that the accused must have paid it to P, W. 6 or somebody else.

This is not a correct view to have been taken under the circumstances, nor are there circumstances, to infer that the accused made use of this amount for himself or somebody else. What the accused did with the money during the period he was in possession of it is not clear from the evidence. We cannot assume, in the absence of evidence to show or circumstances to infer, that he misappropriated the amount dishonestly.

The possibility of his not having credited the amount negligently and his having kept the amount with himself without being used for any other purpose cannot at all be excluded. He was not asked to deposit the money in the Co-operative Society at Kuruvathi within such and such a time i.e. no period was fixed within which he amount had to be deposited. This is not a case of a public servant not depositing the amount within a particular time fixed or within a particular time according to the departmental rules.

In this connection, I would like to refer to a case in 'Nurul Hassan v. Emperor' AIR 1920 Pat 168 (2)(A). In that case also an accused was entrusted with money and he had to deposit a certain amount to the treasury but no period was fixed as to during which time the amount had to be deposited. It is found in that case that the accused under those circumstances committed no criminal breach of trust.

Again we have got another case reported to 'Muthuswami Udayan, In re : AIR1941 Mad761 . In that case, a Village Munsiff collected some amounts on 15-3-37 and 17-4-1937 and he remitted the first collection on 21-5-1937 and the subsequent one on 24-4-1937. It was held therein that the mere retention of money was not itself sufficient to conclude that the accused was guilty of criminal breach of trust.

This is contrary to the view taken by the learned Magistrate that even mere retention in this case had completed the offence of criminal breach of trust. In the present case, except that the accused retained money for one month, there is no other evidence to show that he has committed an offence under Section 409 I.P.C. At any rate, his complicity in the crime is full of suspicion and he is entitled to the benefit of doubt.

6. In the result, the conviction of the petitioner and the sentence passed on him are set aside and this revision petition is allowed. The fine, if already recovered, shall be refunded to him.

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