Surendra Pal Singh Vs. the State

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Court : Allahabad

Decided On : Sep-18-1956

Reported in : AIR1957All122; 1957CriLJ170

Judge : V. Bhargava and ;Sahai, JJ.

Acts : Indian Penal Code (IPC), 1860 - Sections 405, 409 and 420; Code of Criminal Procedure (CrPC) , 1898 - Sections 238, 238(2) and 439

Appeal No. : Criminal Revn. No. 1228 of 1953

Appellant : Surendra Pal Singh

Respondent : The State

Advocate for Def. : Shri Rama, Dy. Govt. Adv.

Advocate for Pet/Ap. : Jagdish Sahai, Adv.

Disposition : Application allowed

Judgement :

V. Bhargava, J.

1. This is a revision filed by one Surendra Pal Singh who has been convicted for an offence punishable under Section 409, Penal Code, and sentenced to one year's rigorous imprisonment and a fine of Rs. 250/- and, in default of payment of

fine, to three months' further rigorous imprisonment.

2. The findings of fact recorded by the lowerappellate court are that the applicant realised asum of Rs. 596/14/- from certain cultivators onaccount of canal dues in his capacity as extra canalamin and deposited only a sum of Rs. 398/4/6 outof it in the Government treasury. The excesssum of Rs. 198/9/6 was not deposited in the treasury, though it was realised from the cultivators.The circumstances justify the presumption thatthis amount had been misappropriated by the applicant.

It further appears that the sum of Rs. 596/14/-realised by the applicant was not really due from those cultivators as canal dues. The sum due was Rs. 398/4/8 and that was the sum which, after realisation, was deposited by the applicant in the Government treasury. The amount of Rs. 198/9/6, which was misappropriated by the applicant, had been realised by him from the cultivators representing that it was due from them as canal dues, though this was not correct. The point, that has to be considered by us, is whether, on these findings, the conviction of the applicant for the offence punishable under Section 409, Penal Code is justified.

3. In order that Section 409, Penal Code should apply, the offence committed by the applicantshould be one of criminal breach of trust as defined in Section 405, Penal Code. A necessary element Of the offence of the criminal breach of trust is that there should be entrustment of property to the accused. The entrustment may be in any manner. Another alternative is that the accused may. get dominion of the property in any manner. In both cases, the law contemplates that the accused person should receive the money and hold it on behalf of the other, so that he should be the trustee of the property.

In the case of a canal amin who, by virtue of his appointment in that capacity, is authorised to realise canal dues, the money is paid by the cultivators to him as an agent of the State Government whose employee he is. When the money is actually handed over by the cultivator to the canal amin, the cultivator loses all dominion over that money as well as he surrenders all his rights in that money. The moment the money is handed over to the canal amin, it becomes the property of the State Government. The money so realised by the canal amin is, thereafter, held by him as a trustee on behalf of the State Government and not as a trustee

on behalf of the cultivator who pays the money.

The position would have been different if the money had been paid by the cultivator to an agent of his own for the purpose of its being deposited in the Govt. treasury in which case that agent would be amin is not an agent chosen by the cultivators for depositing their money in the Government treasury. He is, on the other hand, an employee of the State Government charged with the duty of realising canal dues from the cultivators, so that the moment he realises the money from the cultivators, he holds it on behalf of the State Government.

The sum of Rs. 398/4/6 correctly realised from the cultivators by the applicant as canal dues thus came into his hands as a trustee on behalf of the State Government & the findings of fact show that he discharged that trust properly by depositing that amount in the Government treasury. So far as the balance of Rs. 198/9/6 is concerned, that amount was never due to the Government. It was, therefore, never the property of the Government at any stage When the applicant realised this sum of money, it did not become Government property, nor did he ever become its trustee on behalf of the Government.

At the same time, he could not become the trustee of this money on behalf of the cultivators from whom he realised this money because, when they handed over the money to the applicant, they purported to surrender all their rights in that money. Their intention was that the money should go to the Government and it was in pursuance of that intention and for its fulfilment that they handed over the money to the applicant. Thereafter, therefore, it cannot be said that the money was held by the applicant as a trustee on their behalf.

The cases, where a person hands over his property to another intending to retain his rights in that property, are totally distinguishable from the present case. In cases, where the right in the property is retained by the person who hands over the property to another person who misappropriates it, the question of an offence of criminal breach of trust being committed may arise, even though the entrustment of the property may have been obtained by wrongful representations.

In such a case, it is possible that two different offences -- one of committing criminal breach of trust and another of cheating by obtaining delivery of the property by false representations --may have been committed and it may' be possibleto convict the person committing the acts for any one of those offences or both of them. In a case like the present one, where the money was realised by the applicant representing that the amount was due as canal dues, no entrustment of the property with the applicant, either on behalf of the State or on behalf of the persons who paid the money, came into existence.

The only offence, which, on these facts, the applicant can be held liable for, is the offence of cheating and obtaining delivery of property by commission of that offence which would be punishable under Section 420, Penal Code. We may say with respect that the remarks made by the Full Bench of the Madras High Court in Emperor v. John Melver : AIR1936 Mad353 and the remarks made by the Law Lords in Lake v. Simmons, 1927 AC 487 . (B) support our view. In such a case as the present one, the appropriate provision of law is only Section 420, Penal code, where Section 409, Penal Code, cannot apply at all.

4. On this view, we have considered the question as to what would be the appropriate order in the present case. The conviction and the sentence of the applicant under Section 409, Penal Code, have to be set aside. In our opinion, the offence punishable under Section 420, Penal Code, is not an offence minor to the offence punishable under Section 409, Penal Code, within the meaning of the words 'minor offence' used in Section 238(2). Criminal P. C.

The conviction cannot, therefore, be altered under Section 238, Criminal P. C. It was suggested that, on the application of Sections 236 and 237, Criminal P. C., we may alter the conviction and sentence of the applicant but, in our opinion, it is not a proper case where the provisions of those sections should be applied. The trial proceeded on the basis that the applicant was charged with misappropriating sums of money entrusted to him in his capacity as canal amin. The facts indicating that he had committed the offence of cheating by obtaining money from the cultivators were never considered to be the subject-matter of the charge. Consequently the alteration of the conviction would be prejudicial to the applicant.

This being so, the next alternative, which was suggested to us by the learned Deputy Government Advocate, was that we may direct re-trial of the applicant for the offence punishable under Section 420, Penal Code.

The proceedings against the applicant started about six years ago. He was convicted by the trial court four years ago and by the lower appellate Court three years ago & we are also informed by learned counsel for the applicant, who has acted on information given to him by the person who came to instruct him on behalf of the applicant, that the applicant has already undergone about one month's rigorous imprisonment.

Considering all these circumstances, we think that this is not an appropriate case where we should direct a re-trial but, if it is considered necessary, it may remain open to the State Government to start a fresh prosecution.

5. As a result, we allow this revision, set aside the conviction and sentence of the applicant and, without recording any order of acquittal, quash these proceedings against the applicant. His bail bonds are discharged. The fine if paid, shall be refunded,