

Raghubir Singh Vs. State

Raghubir Singh Vs. State

SooperKanoon Citation : sooperkanoon.com/466037

Court : Allahabad

Decided On : May-01-1964

Reported in : 1966CriLJ202

Judge : S.D. Khare, J.

Appellant : Raghubir Singh

Respondent : State

Judgement :

ORDER

S.D. Khare, J.

1. This is an application in revision against an order dated 18th March 1963, passed by the learned Additional Sessions Judge, Bulandshahr, dismissing the appeal filed by Raghubir Saran applicant against his conviction under Sections 406 and 424, Indian Penal Code, and the sentence of three years' rigorous imprisonment under the first count and two years' rigorous imprisonment under the second count.

2. It has been contended before me that the conviction and sentence of the applicant under Section 406, Indian Penal Code, are illegal and that the sentence awarded under Section 424, Indian Penal Code, is severe.

3. The facts leading to this revision application might be briefly stated as followx
The applicant Raghubir Saran was a partner of a firm Messrs Raghubir Saran and Company, brick-kiln owners. Karaura, within Police Circle Pahasu, District Bulandshahr. Another person of the same name, who happened to be the manager of the C. V. Inter College, Karaura, was also a partner in the same firm. That other Haghubir Saran (who is now dead), the manager of C. V. Inter College, Karaura, secured an allotment of 17 wagons of coal dust in favour of C. V. Inter College, Karaura, and the railway receipts were received in the name of the manager of the said College, namely, the aforesaid Raghubir Saran who is now dead. All the 17 wagons of coal dust were received by Raghubir Saran applicant after obtaining necessary endorsements on the railway receipts from the District Supply Officer, Bulandshahr. A com-plaint was subsequently made by the management of the College to the District Supply Officer, Bulandshahr, who got the entire stock frozen.

It was not easy to remove the coal dust from the place where it was stocked, and for that reason it was given in the custody of Raghubir Saran applicant, who executed a supurdiginama, Ex. Ka-1, on 27th April, 1960. A report was made by the President, C V. Inter College, Karaura, that the applicant was utilizing the coal under enquiry. The Supply Inspector was required to make an enquiry and after measuring the coal stocks a report was submitted by the Supply Inspector that there were only 9 wagons of coal left. Again, a similar report was made to the Supply Officer and when the stocks were measured again, it was found that only 6-1/3 wagons of coal dust was left at the spot. The applicant was required to Explain, but he gave no reply. A case under Section 406/ 424, I. P.C. was started against him and he was committed to the Court of session. The Assistant Sessions Judge, who heard the case, convicted and sentenced the applicant as aforesaid and the appeal preferred by him was dismissed.

4. The facts mentioned in the preceding paragraph have not been disputed before me. The main question to be determined is whether the conviction and sentence of the applicant under Section 406, I. P.C. were proper.

5. In order to establish that an offence under Section 406, I. P.C. has been committed the prosecution has to prove that there was entrustment of moveable property belonging to another person to the accused. In the present case, however, no attempt was made by the prosecution to prove that the coal belonged to some one other than the accused himself, Basdeo Sahai (P. W. 3), the President of the C. V. Inter College, Karaura, was examined in support of the prosecution case. All that he could state was that the applicant had illegally procured the coal in question in the name of the school and had taken its delivery. It was on a complaint made by this witness that the District Supply Officer had ordered that the stock of coal lying with the applicant should be frozen. The witness admitted in his cross examination that the College authorities had not made any application to the District Supply Officer for supply of coal nor the stock in question was allotted to the College. He also admitted that the College had not paid the price of that coal and the applicant must have paid it at the time the delivery of the coal was taken by him.

6. The applicant had examined Sheo Charan (DW. 1) as a defence witness. Sheo Charan Lal stated that his father Raghubir Saran was a partner in the brick-kiln of the applicant and was also the manager of the C, V. Inter College, Karaura. The father of this witness had obtained a permit for 17 wagons of coal from the office of the District Supply Officer, Bulandshahr. The railway receipts of that coal were in the name of the manager of the C, V. Inter College, Karaura. The price of that coal had been paid by the witness and his father and after the delivery of that coal had been taken his father had deposited it at the joint brick-kiln belonging to him and the applicant. The statement of the witness was, therefore, to the effect that the coal had belong-ed to the applicant and his partner Raghubir Saran deceased. Section 405, I. P.C. defines criminal breach of trust and reads as follows:

Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other persons so to do, commits 'criminal breach of

trust'.

7. It is, therefore, clear that the offence of criminal breach of trust cannot be committed in respect of one's own property. In criminal breach of trust the property of another person is lawfully acquired or acquired with the consent of the owner but is dishonestly misappropriated by the person to whom it is entrusted. The word 'trust' in Section 405 is a comprehensive expression which has been used not only to cover the relationship of trustee and beneficiary, but also those of bailer and bailed, master and servant, pledger and pledgee, guardian and ward and all other relations which postulate the existence of fiduciary relationship between the complainant and the accused. However, the property in respect of which the offence is said to have been committed must belong to another person, (vide *State v. Jage Ram* AIR 1951 Punj 103).

8. The charge under Section 406, I. P.C. cannot be framed against a person who is a joint owner of the property in his capacity as a partner. The Full Bench case of *Bhuban Mohan Das v. Surendra Mohan* : AIR1951 Cal69 is an authority for this proposition. The same view was also taken in the case of *Mohammad Abdul Sattar v. State* AIR 1958 Andh Pra 555.

9. The learned Additional Sessions Judge, who heard the appeal, was fully conscious of that defect in the prosecution case and he had observed as follows:

There has been a comedy of errors so far as the prosecution is concerned, otherwise the prosecution made no attempt to prove that the coal belonged to some one else than the accused himself. It is a basic fact to be proved in a case under Section 408, I. P, C. that the ownership of the property misappropriated vests in some one else than the accused. The accused him-self in this case has proved by evidence that the ownership of coal did not vest in him. If that had not happened, and a good defence counsel would seldom do, the case under Section 408, I. P.C. might have collapsed altogether.

10. It is difficult to understand how the evidence led on behalf of the accused had in any way helped the prosecution. As already observed by me, all that the defence evidence proved was that the coal belonged to the applicant and one

more person in partnership In the absence of any agreement to the contrary, all the partners hold) use and have interest in the whole of the partnership property and a partner cannot be prosecuted for criminal breach of trust in respect of the partnership property.

11. The fact that the applicant had executed a supurdiginama in respect of this coal after it had been frozen under an order of the District Supply Officer can hardly be of any help to the prosecution. The order passed by the District Supply Officer must be under Cl. 6 of the U. P. Coal Control Order, 1959. The aforesaid Order was made by the State Government under the powers delegated to it under Section 3 of the Essential Commodities Act, 1955. Section 3 deals with power to control production, supply or distribution of any essential commodity. Clause 11 of the U. P. Coal Control Order provides that if any person contravenes any of the provisions of the said Order he shall be punishable under Section 7 of the Essential Commodities Act, 1955. The punishment provided under Section 7 of the Essential Commodities Act, with regard to an offence committed in respect of coal is of imprisonment or fine or both. The property with regard to which the order was disobeyed might or might not be forfeited by the court. It is however to be noted that for reasons best known to the prosecution, the applicant was never prosecuted for an offence punishable under Section 7 of the Essential Commodities Act, 1955,

12. In the circumstances stated above, the coal which had been ordered to be frozen continued to be the property of the applicant. The applicant did not dispute that he had transferred some of the stock to others, though he claimed that he had done so under the verbal directions of the District Supply Officer. The transfer of a part of his own property against the terms of the supurdiginama could not constitute an offence under Section 406 I. P.C. although the applicant could be punished under Section 424, I.P.C. or under Section 7 of the Essential Commodities Act, 1955.

13. The conviction and sentence of the applicant under Section 400 I. P.C. are, therefore, wholly un-justified and must be set aside.

14. The applicant was rightly convicted under Section 424, I. P.C. which reads as follows:

Whoever, with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits 'mischief..Explanation 2--Mischief may be committed by an act affecting property belonging to the person who commits the act, or to that person and others jointly.

15. An offence under Section 424, I. P.C. can very well be committed against one's own property. There can be no doubt -that the act of the applicant in disposing of the coal was dishonest or fraudulent. The contention that the applicant had done so under the verbal direction of the District Supply Officer is not supported from the evidence on the record. The District Supply Officer was examined and he has stated that he had given no such permission. Besides, Cl. 6 of the U. P. Coal Control Order provided that a person who has been allotted coal by the licensing or other authority empowered to do so shall not utilise or cause it to be utilised otherwise than in accordance with the conditions contained in the order of allotment and for a purpose other than the purpose for which it was allotted and shall not divert or transfer any such coal except under a written authority from the State Coal Controller. No written authority from the State Coal Controller was obtained by the applicant. He no doubt seems to have made an application to the District Supply Officer for such permission, but no order had been passed on that application and the applicant had no right to dispose of the coal without the written directions of the State Coal Controller.

16. The applicant, has therefore, been rightly convicted under Section 424, I. P.C. However, in view of the fact that the application of the applicant for disposal of the coal on the ground that it was getting spoiled had remained pending with the District Supply Officer for quite a long time and the applicant has already remained in jail for more than two months, the ends of justice would be met if the sentence of imprisonment awarded to the applicant is reduced to the period already undergone.

17. The revision application is partly allowed. The conviction and sentence of the applicant under Section 400, I. P.C. are set aside. The conviction of the applicant under Section 424, I. P. C, is maintained but the sentence is reduced to the period already undergone. The applicant need not surrender to his bail, His bail bonds are discharged.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com