

Kalka Prasad Vs. State

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Court : Allahabad

Decided On : Sep-25-1958

Reported in : AIR1959All698; 1959CriLJ1264

Judge : M.C. Desai, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 82, 83 and 408

Appeal No. : Criminal Revn. No. 1452 of 1956

Appellant : Kalka Prasad

Respondent : State

Advocate for Def. : H.N. Seth, Asstt. Govt. Adv.

Advocate for Pet/Ap. : Hari Swarup, Adv.

Disposition : Application dismissed

Judgement :

ORDER

M.C. Desai, J.

1. The applicant challenges his conviction and sentence for the offence of Section 408. I.P.C, He has been found guilty of having criminally misappropriated a sum of Rs. 1,701/- entrusted to him by his employer for being taken and deposited in the

Allahabad Bank in order to have a bank draft prepared. The applicant absconded with the money and did not return to his employer. Nothing was said about the facts before me in revision, but it was contended that the applicant was a minor and could not commit the offence of Section 408, I.P.C. He claimed before the trial Court to be 17 years of age but the trial Court thought that he was much older. He appeared before the appellate Court also and it was not satisfied that he was a minor because he appeared to be a 'grown up man'. In the absence of evidence to prove that he is a minor it cannot be contended that he could not enter into any contract.

2. Even if the applicant was a minor he is guilty so long as his case is not covered by Sections 82 and 83 of the Penal Code. Any offence punishable under the Penal Code, including an offence punishable under Section 408, can be committed by a person more than twelve years old. Criminal liability is quite distinct from civil liability. A person may be criminally liable even though he may not be civilly liable. What is required under Section 408 is the actual entrustment of property and it is irrelevant to consider whether the property could have been legally entrusted or not. If entrustment was made, it is enough, whether it could have been made legally or not, in the present case the applicant was entrusted with dominion over the money and regardless of the question whether he could legally be entrusted or not, he rendered himself liable when he misappropriated it dishonestly.

3. I do not see any substance in the argument that the appellate Court did not consider the defence evidence. The applicant had examined four witnesses in defence but their evidence was useless and could not rebut the prosecution evidence. Because of its uselessness no reliance seems to have been placed on it by counsel in the appellate Court. It would have been better on its part, however, to refer to it in brief, or at least to state that it was not relied upon in argument.

4. The sentence of one year's rigorous imprisonment for the offence committed by the applicant is not at all severe. There is nothing in the circumstances in which he committed the crime on account of which he deserved to be released as a first offender. Not only did he abscond with such a large amount of money belonging to his employer but also in defence he tried to make out that his employer was

evading payment of income tax and sales tax by not maintaining his accounts correctly. The appellate Court has not acted arbitrarily in refusing to release him on probation and I would not be justified in interfering in revision.

5. The application is dismissed. The applicant must surrender himself to undergo the sentence.

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