

State of U.P. Vs. Amln Beg

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Court : Allahabad

Decided On : Sep-23-1997

Reported in : 1998CriLJ1964

Judge : N.S. Gupta, J.

Acts : Indian Penal Code (IPC) - Sections 409; Code of Criminal Procedure (CrPC) , 1974 - Sections 197, 197(1), 311 and 313

Appeal No. : Government Appeal No. 401 of 1992

Appellant : State of U.P.

Respondent : Amln Beg

Advocate for Def. : Syed Mansoor Abidi, ;P.K. Khare and ;J.K. Chakrawarthy, Advs.

Advocate for Pet/Ap. : A.G.A.

Disposition : Appeal dismissed

Judgement :

ORDER

N.S. Gupta, J.

1. This is a Government Appeal against the order of acquittal dated 22-10-1991, passed by Sri Janardan Singh, the then IXth Additional Chief Judicial Magistrate, Bareilly, acquitting the accused respondent Amin Beg on the charges under Section 409 IPC.

2. The prosecution case briefly stated is as follows :-

On 14-10-88 Sri Ashok Kumar Saxena, P.W. 1 who was then working as Deputy Divisional Inspector North Bareilly in the postal Department lodged a written report with police-station Izatnagar, district Bareilly with the allegation that on 21-9-83 Sri Ambika Prasad Joshi and Smt. Geeta Joshi of Base Office, Air Force Station Bareilly opened a Recurring Deposit Account No. 15761 for Rs. 100/- per month. Till August, 88, they had deposited a sum of Rs. 6,000/- into the said account. It was revealed that the deposits made by Sri Ambika Prasad Joshi for the period from June, 1985 to August, 1988 were riot accounted for in the Account of the Post Office, whereas, the entries of all these deposits were made in the Pass Book. In the same way w.e.f. June, 1985 to August, 1988, 39 instalments of Rs. 3,900/- were missing.

3. Sri Ambika Prasad Joshi and Smt. Geeta Joshi opened another Recurring Deposit Account bearing No. 15774 on 9-11-83 of Rs. 100/- per month and had deposited Rs. 5,800/- in the said account till August, 1988: The deposits for the period from June, 1985 to August, 1988 of the account holder were missing and were not . accounted for. In this way the accused respondent mis-appropriated a sum of Rs. 3,900/- regarding to account No. 15761 and similar amount relating to Account No. 15774. The entries of all these deposits were made in the respective pass books.

4. Sri Ambika Prasad Joshi opened a third Account being No. 15760, in the name of his minor daughter Km. Reeta Joshi on 13-9-83 and had regularly deposited instalments of Rs. 50/-per month. Sri Joshi regularly deposited instalments in this account as well till August, 1988. Instalment of this account w.e.f. December, 1985 to August, 1988 amounted to Rs. 1,650/-were not accounted for in the account book of the Post Office. In this way a sum of Rs. i ,650/-relating to this account was also misappropriated by the accused respondent.

5. It was alleged that during the said period the respondent Amin Beg was posted as Clerk on Saving Bank Accounts Counter, Sri Joshi made all the deposits in the aforesaid Recurring Deposit Accounts through Amin Beg, who was then Counter Clerk. The entries in the Pass Books were made by the accused respondent. Since the amount deposited by Sri Joshi to the tune of Rs. 9,450/- was not properly accounted for by Amin Beg, he was accordingly prosecuted for committing an offence punishable under Section 409 IPC. The accused respondent pleaded 'not guilty' and maintained that he was falsely implicated into this case. He, however, did not adduce any evidence in his defence.

6. After needful investigation and trial into the matter, the learned Addl. Chief Judicial Magistrate, Bareilly had acquitted the accused respondent as per his impugned judgment. Aggrieved of the same, the State has preferred this appeal.

7. I have heard Sri V. B. Singh, learned Addl. Government Advocate for State and Sri Syed Mansoor Abdi and Sri Jitendra Kumar Chakravarty on behalf of the accused respondent considered their contentions and have gone through the records of the case.

8. It was very much admitted by the accused respondent in his examination under Section 313 Cr.P.C. that he was working as a Clerk at Air force Sub-Post Office, Izatnagar during the period from June, 1985 to August, 1988. He however, denied to have committed any misappropriation of the amount in question.

9. I find that only two witnesses were examined by the prosecution before the Court below. They were Sri Ashok Kumar Saxena, P.W. I who was Inspector of Post Office and who had inquired into the matter and found that the accused respondent had not accounted for a sum of Rs. 3,900/- relating to Recurring Account No. 15761, Rs. 5,800/- relating to Recurring Account No. 15774 and Rs. 1,650/- relating to Recurring Account No. 15760, during the period from June, 1985 to August, 1988 in the Account Book of the Post Office, whereas, the same were duly mentioned in the Pass Book of the accounts holder Sri Ambika Prasad Joshi.

10. Sri Ashok Kumar Saxena had produced the original ledger of the post office before the court below and supported his contention on the point that the aforesaid amount of Rs. 9,450/- was not accounted for in the Recurring Deposit Ledger of the Post Office with reference to the entries of the said ledger. It was averred by Sri Ashok Kumar Saxena that on the basis of his enquiry, he had reached to the conclusion that the accused ' respondent had mis-appropriated the said amount and that his conclusions were based upon the 'entries in the postal ledger. He was well acquainted with the signature and handwriting of the accused respondent.

11. P.W. 3, Sri Ambika Prasad Joshi was the account holder who stated to have deposited the amount in question through the accused respondent Amin Beg and obtained proper entries about the same in his Pass Book. He stated that Inspector Ashok Kumar Saxena had informed him that some mis-appropriation in the amount deposited by him has been made and then he had given the Pass Books to him. He stated that the enquiry was going on but he received his amount. During the course of his cross examination he admitted that he had deposited the amount in question by means of Pay-in-slip, but no counter foil of the same was given to him. Only entries in his Pass Book were made.

12. It is clear from the evidence of both these witnesses that Sri Ambika Prasad Joshi had opened the aforesaid accounts as stated above and has got back his entire amount.

13. Now the pertinent question which arises from determination before this court is to see as to whether the said amount was mis-appropriated by the accused respondent or not.

14. Of course, on the basis of the omission in the entries of postal ledger an inference could have been drawn that the said amount was mis-appropriated by the accused respondent, but when and how the said mis-appropriation was made is not clear from the records of the case. Besides the accused respondent a Post Master was also there. He was not examined as a witness before the court below. Even the Investigating Officer was also not examined by the prosecution before the Court below. The postmaster who was working during the aforesaid period during which the accused respondent is said to have committed mis-appropriation

of the amount in question as also the Investigating Officer of the case were material witnesses. If for any reason the prosecution had failed to examine them, the court below should have summoned them by exercising his powers under Section 311 Cr.P.C.

15. That apart, the prosecution failed to obtain proper sanction regarding the prosecution of the accused respondent in accordance with the provisions of Section 197 Cr.P.C. which reads as under:-

Section 197. Prosecution of Judges and public servants.

(1) When any person who is or was a judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction.

(a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, the Central Government.

(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government.

16. Sri V. B. Singh, learned A.G.A. had vehemently argued before me that the sanction of the competent, authority would have been necessary had the accused respondent been an honest and sincere officer. It was argued that since the accused respondent committed dishonesty in discharge of his duties, he was not entitled to the protection afforded by Section 197 Cr.P.C.

17. Reliance was placed upon the proposition of law laid-down by their lordship of the Supreme Court in following cases :-

1. Shambhoo Nath Misra v. State of U. P. reported in : 1997 CriLJ2491 .

in : 1957 CriLJ575 .

3. Manohar Nath Kaul v. State of J. & K. reported in : [1983]2SCR791 and

4. Dhulamani Behara v. State of Orissa reported in 1988 Cri LJ 1027.

18. The proposition of law laid down in Shambhu Nath Misra case : 1997 CriLJ2491 is the latest pronouncement of the Apex Court and has got direct bearing on the case in question.

In this case their Lordships were pleased to lay down as follows at page 2103 :-

the question is when the public servant is alleged to have committed the offence' of fabrication of record or misappropriation of public fund etc. can be said to have acted in discharge of his official duties? It is not the official duty of the public servant to fabricate the false record and misappropriate the public funds etc. in furtherance of or in the discharge of his official duties. The official capacity only enables him to fabricate the record or misappropriate the public funds etc. It does not mean that it is integrally connected or inseparably interlinked with the crime committed in the course of same transaction, as was believed by the learned Judge. Under the circumstances, we are of the opinion that the view expressed by the High Court as well as by the trial Court on the question of sanction is clearly illegal and cannot be sustained.

19. As against the aforesaid rulings the learned counsel for the accused respondent relied upon the proposition of law laid down by the full bench of their lordships of the Supreme Court in Matajog Dobey v. H.C., Bhari reported in : [1955]28ITR941(SC) in which their lordships of the Supreme Court were pleased to lay down as follows at page 49 of AIR :-

The offence alleged to have been committed must have something to do, or must be related in some manner with the discharge of official duty. No question of sanction can arise under Section 197 unless the act complained of is an offence; the only point to determine is whether it was committed in the discharge of official duty. There must be a reasonable connection between the act and the official duty. It does not matter even if the act exceeds what is strictly necessary for the discharge of the duty, as this question will arise only at the later stage when the

trial proceeds on the merits.

What we must find out is whether the act and the official duty are inter-related that one can postulate reasonably that it was done by the accused in the performance of the official duty, though possibly in excess of the needs and requirement of the situation. In *Horiram Singh v. Emperor*, Suleman J. observed :

The section cannot be confined to only such acts as are done by a public servant directly in pursuance of his public office, though in excess of the duty or under a mistaken belief as to the existence of such duty. Nor is it necessary to go to the length of saying that the act constituting the offence could be so inseparably connected with the official duty as to form part and parcel of the same transaction. The interpretation that found favour with Baredachariar J, in the same case is stated by him in these terms at page 56; 'There must be something in the nature of the act complained of that attaches it to be the official character of the person doing act.' In affirming this view the Judicial Committee of the Privy Council observed in Gill's case (A)

A public servant can only be said to act or purport to act in the discharge of the official duty, if his act is such as to lie within the scope of his official duty.... The test may well be whether the public servant, if challenged, can reasonably claim that what he does, he does in virtue of his office. AIR 1939 FC 43 (B) is referred to with approval in the later case of *H.P. Huntley v. Emperor* but the test laid down that it must be established that the act complained of was an official act appears to us unduly to narrow down the scope of the protection afforded by Section 197, Criminal PC. as defined and understood in the earlier case. The decision in '*Albert West Meads v. The King*' does not carry us any further; it adopts the reasoning in Gill's case (A).

(18) There are two cases of this Court to which reference may be made here. In *Shreekantiah Ramayya Munipalli v. State of Bombay* : 1955 CriLJ857 Bose J. observes as follows :

Now it is obvious that if Section 197 of the Code of Criminal Procedure is construed too narrowly, it can never be applied, for of course, it is no part of an

official's duty to commit an offence and never can be. But it is not the duty we have to examine so much as the act, because an official act can be performed in the discharge of official duty as well as in dereliction of it. The section has content and its language must be given meaning. The question of previous sanction also arose in *Amrik Singh v. State of Pepsu* : 1955 CriLJ865 . A fairly lengthy discussion of the authorities is followed up with this summary;

If the acts complained of are so integrally connected with the duties attaching to the office as to be inseparable from them then sanction under Section 197(1) would be necessary; but if there was no necessary connection between them and the performance of those duties, the official status furnishing only the occasion or opportunity for the acts, then no sanction would be required.

(19) The result of the foregoing discussion is; There must be a reasonable connection between the act and the discharge of official duty; the act must bear such relation to the duty that the accused could lay a reasonable, but not a pretended or fanciful claim, that (what) he did it is in the course of the performance of his duty.

20. Judging the present case in the light of proposition of law laid down in the aforesaid of Hon'ble the Supreme Court which was the ruling given by as many as Hon'ble five Judges viz. Hon'ble S. R. Das, Actg. C.J. Rose, Jagannadhadas, Imam and Chandrasekhara Aiyar, JJ. I find, that it was the case of the prosecution itself that the respondent was a postal Clerk whose duty was to receive money from the account holders like the complainant Sri Ambika Prasad Joshi, P.W. 2 and to account for the same into the books of accounts of the postal department. Since he failed to do so, he should be deemed to have committed a criminal breach of trust in respect of the amount in question.

21. It would thus be seen that there was a direct connection between the act of receiving money and of account for the same in the postal, ledgers in discharge of official duty by the respondent. When their lordships were pleased to lay down that there must be a reasonable connection between the act and discharge of official duty and when in the instant case before this Court the acts complained of were integrally connected and inseparable from each other, I am of the opinion that

sanction of the Competent Authority for the prosecution of the accused respondent was necessary before launching the prosecution of the accused respondent.

22. When no such sanction was obtained by the prosecution, it is obvious that the prosecution failed to comply with the mandatory provisions of Section 197, Cr. P.C. The prosecution of the accused respondent was, therefore, bad on that score, notwithstanding the fact that he committed criminal breach of trust and thereby betrayed public confidence of the various account holders, every day coming and dealing with their accounts maintained by the post office.

23. I accordingly hold that there is no perversity in the approach of the Court below in acquitting the accused respondent on that score. The appeal has go no force. It is hereby dismissed.

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