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Dhulji Vs. Kanchan

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Court : Madhya Pradesh

Decided On : Jul-27-1955

Reported in : 1956CriLJ224

Judge : Nevaskar, J.

Appellant : Dhulji

Respondent : Kanchan

Judgement :
ORDER

Nevaskar, J.

1. Accused Dhulji s/o Champalal was prosecuted under Section 404, I.P.C. upon a complaint filed by one Kanchanbai. On issue of process against him, accused applied on 13-9-1954 for quashing the order for such an issue on the ground that the complaint referred to an offence under Section 404. I, P.C. with respect to an immovable property whereas no such offence could be committed with respect to a property of that description.

2. The trying Magistrate overruled that contention. The accused therefore preferred revision petition to the Court of Session. The learned Sessions Judge was of the view that no offence under Section 404, I.P.C. can be committed with respect to immovable property. He therefore has made this reference.

3. Prosecution case as stated in the complaint is that there is a house in Mouja Piploda which belonged to one Nandram, Nandram executed a will in respect of this house in favour of the complainant who was the mistress of his deceased brother Deepchand. A few months later Nandram died. The house was in actual occupation of a tenant named Ratan-lal. After the death of Nandram accused Dhulji in collusion with Ratanlal obtained possession of the house. The complainant Kanchanbai therefore has filed this complaint under Sections 404 and 404/109, I.P.C. against both Dhulji and Ratanlal.

4 The question for consideration is whether any offence can be said to have been committed by the accused.

5. It is clear that the case can fall under no other Section of the Penal Code except perhaps Section 404, I.P.C.

6. In order to determine whether the case can fall under Section 404, I.P.C. we will have to refer to Sections 403 and 404, I.P.C.

Section 403, I.P.C.:-

Whoever dishonestly misappropriates or converts to his own use any movable property, shall be punished with imprisonment of either description for e term which may extend to two years, or with fine, or with both.

Section 404, I. P. C:-

Whoever dishonestly misappropriates or converts to his own use property, knowing that such property was in the possession of a deceased person at the time of that person's decease, and had not since been in the possession of any person legally entitled to such possession, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and if the offender at the time of such person's decease was employed by him as a clerk or servant, the imprisonment may extend to seven years.

7. Thus Section 403, I.P.C., is general and deals with dishonest misappropriation or conversion of any movable property by an accused person. Next Section deals with dishonest misappropriation or dishonest conversion of property peculiarly needing protection particularly when the previous owner, who was possessed of it, is dead and the subsequent owner has not obtained possession thereof. The Section prescribes different sentences where the offence is committed by strangers and when the offence is committed by persons who occupy position of confidence.

In the case of former, the maximum sentence is three years and fine while in the case of later the maximum sentence is seven years and fine. Thus if the word property in Section 404, I.P.C. is read as movable property it will mean that offence under Section 404, I.P.C. is an aggravated form of an offence under Section 403, I.P.C.

8. Does the context and the object of the provision justify us in holding that the word property in Section 404, I. P. C means movable property'

9. In my opinion yes. Both the Sections are put under a common heading of Criminal Misappropriation of Property'. The object behind Sec, 404, I.P.C. is to afford protection of property which by reason of its being peculiarly placed needs protection where the person who could look after it is dead and the person who is expected and entitled to look after it after the death of the aforesaid person has not appeared on the scene.

There is a chance available to strangers to dishonestly misappropriate and convert the same. Under these circumstances if such strangers are allowed to do so the subsequent owner may lose that property entirely. In majority of cases there is no evidence as to what the property was and there is hardly any possibility of following the property which has passed into several hands or changed its form. All these possible risks ought to be checked.

It is for this reason that a provision is made by which dishonest misappropriation or conversion under these circumstances is made specially punisnable with a higher sentence. It is clear that in the case of immovable property no such risk is involved

except where the immovable property is first demolished and converted into moveable property and thereafter it is dishonestly misappropriated or converted

Where the immovable property stands intact no person can acquire title to it except in accordance with law. Mere delivery of possession by an unauthorised person cannot confer any title to the transferee and he can be deprived of possession any time...

10. In view of this position of immovable property, it is difficult to say that property where the subsequent owner has not stepped in, is open to any risk or needs any protection. The Legislature could not have intended to protect that proporty which is otherwise safe and evidence pertaining to which cannot be lost. The provision for prescribing punishment with respect to such property will be unnecessary and uncalled for.

11. It is therefore clear that the word property in Section 404, I.P.C. can mean no other property except movable property.

12. Both Calcutta and Bombay High Courts have taken the view that the word property in Section 404, I.P.C. does not include immovable pro-perty vide - 'Jugdown Sinha v. Queen Empress' 23 Cal 372 (A) and-'Reg v. Girdhar' 6 Bom HCR Cr 33 (B).

13. In 'Daud Khan v. Emperor' AIR 1925 All 675 (C), Allahabad High Court differed from this view mainly on the ground that the word used in Section 404, I.P.C., is 'Property' and not 'movable property' as in Section 403, I.P.C.

14. Mr. Mohammad Ahmad Khan who appears for the complainant has taken me through various Sections of the Penal Code to emphasise the fact that wherever the Legislature intended to limit the meaning of the term it has specifically said so and words 'movable property' and 'immovable property' are specially used.

15. No doubt the word used in Section 404, I.P.C. is general and taken by itself may mean both movable and immovable property but having regard to the context in which it is used and the object fought to be achieved by the provision as discussed above there is no doubt that the word 'property' used in that Section

means movable property.

16. Apart from this on the facts of the present case accused Dhulji is the brother of deceased Nandram while the complainant is a woman of different caste and was admittedly in keeping of his deceased brother. The accused even if he took possession can only be said to have done so in bona fide exercise of his right and a criminal prosecution in such a case is misconceived vide - 'In re Karri Mangadu' AIR 1915 Mad 506 (1) (D).

17. There are two other reasons indicating that the issue of process was erroneous in the present case. Assuming the allegations in the complaint to be correct, the accused nave not taken possession of property while it was in possession of no one. Ratan-lal, being a tenant, was entitled to he in possession & was in possession at the time of the death of Nan-dram and Dhulji has now entered. Under these circumstances ingredients of Section 404, I.P.C. cannot be said to have been satisfied,

18. Lastly there are no allegations of dishonest misappropriation or dishonest conversion.

19. For all these reasons the order for the issue of process deserves to be quashed.

20. The reference is therefore accepted. As no offence is made out against the accused on the allegations in the complaint it is unnecessary to proceed Further against both of them. The accused are there-tore discharged.

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