

The State of Madhya Pradesh Vs. Hari Mohan and ors.

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Court : Madhya Pradesh

Decided On : Jan-17-1976

Reported in : 1976CriLJ930

Judge : S.M.N. Raina and; K.K. Dube, JJ.

Appellant : The State of Madhya Pradesh

Respondent : Hari Mohan and ors.

Judgement :

S.M.N. Raina, J.

1. This is an appeal by the State Government against an order of acquittal.
2. The respondents (hereinafter referred to as 'the accused') are employees of the Nepa Mills, which is a Government undertaking, and are as such public servants. The accused Harimohan, aged 38 years, is the Stores Officer, the accused Majiri Karunakaran, aged 40 years, is the Stores-keeper, while the accused Suresh Cihand Negar aged 33 years is the Assistant Stores-keeper of the said mills, On 24-1-1969 on a physical verification of the stock of mercury flasks, six such flasks valued at Rs. 35,000 were found short. So far the facts were not disputed before us.

3. The case for the prosecution was that as the said flasks were in charge of the accused at the material time and they had offered no plausible explanation for the shortage, they were guilty of criminal breach of trust. They were, therefore, prosecuted and tried on a charge under Section 409 read with Section 34 of the Indian Penal Code. The accused abjured their guilt and were acquitted after trial by the Additional Sessions Judge, Khandwa. This appeal is directed against the said order of acquittal.

4. The main point for consideration in this appeal is whether there is sufficient evidence to convict the accused on the said charge.

5. Shri Majumdar (P.W. 5) testified that the store is divided into three sections 1 and mercury is kept in Section A. The accused Nagar was the Assistant Stores-keeper in charge of Section A and the other two accused were also in charge thereof. This is also not disputed by the accused vide paragraph 10 of the judgment of the learned Additional Sessions Judge.

6. The learned Additional Sessions Judge arrived at the conclusion that none of the accused was, in any manner, entrusted with or having dominion over the mercury flasks kept in the Stores building of the Nepa Mills, Napanagar vide paragraph 32 of the judgment. This conclusion is patently erroneous because once it is admitted that mercury flasks are kept in Section A of the Stores and the accused were placed in charge of that section in various capacities referred to above, they would be deemed to be entrusted with or having dominion over the mercury flasks kept in the section. The basic question, however, is whether they can be held guilty of criminal breach of trust in respect of the six mercury flasks which were found short on verification on 24-1-1969, merely because they were unable to explain the shortage.

7. In *J. M. Desai v. State of Bombay* : [1960]3SCR319, their Lordships laid down guidelines for proof of charge under Section 409 of the Indian Penal Code in paragraph 4 in the following terms:

The principal ingredient of the offence being dishonest misappropriation or conversion which may not ordinarily be a matter of direct proof, entrustment of

property and failure in breach of an obligation to account for the property entrusted, if proved, may, in the light of other circumstances, justifiably lead to an inference of dishonest misappropriation or conversion. Conviction of a person for the offence of criminal breach of trust may not, in all cases, be founded merely on his failure to account for the property entrusted to him, or over which he has dominion, even when a duty to account is imposed upon him, but where he is unable to account or renders an explanation for his failure to account which is untrue, an inference of misappropriation with dishonest intent may readily be made.

It is clear from the aforesaid observations of their Lordships that though the entrustment of property and failure in breach of an obligation to account for the property entrusted are important elements for establishing the charge of dishonest misappropriation, they are not by themselves sufficient and must be considered in the light of the facts and circumstances of the case to find out whether an inference of dishonest misappropriation can be safely drawn.

8. In the instant case it would appear that no sooner shortage was detected by Shri Y. R. Swami (P.W. 11), Senior Assistant of the Accounts Department of the Mills, the accused Harimohan who was then the Stores Officer, submitted a report (Ex. P-I) to the Security Officer and the Assistant Stores Manager on 15-1-1969 and this led to further investigation of the matter. We do not propose to deal with the evidence which has been adduced by the prosecution to show that there was actually a shortage of six flasks on 24-1-1969 because the evidence on this point was found reliable by the learned trial Judge and the finding was not assailed before us by the learned Counsel for the accused. It has, however, to be borne in mind that each flask weighed about a maund or so, as would appear from the Stores Issue Notes (Exs. 14-A, 14-B, etc.). It is not a small flask which can quietly be removed without attracting the notice of others. Moreover, mercury is not an article which can be consumed on the premises. With the strict security arrangements it is not possible for any such article being carried outside the Mill area without a gate-pass. The learned Additional Sessions Judge has dealt with this aspect of the matter in paragraph 57 (1) of the judgment. After discussing the relevant evidence on the point, the learned Judge arrived at the following

conclusion:

I have no doubt that the evidence definitely points out that removal of mercury flasks in the ordinary course from out of the Mills compound without notice of the security staff is rather an Improbability. And the absence of a gate-pass, to my mind, implies that no mercury flask was removed by or on behalf of the accused in the reasonable course of things.

9. Shri Bhargava, learned Counsel for the State, made no attempt to challenge the conclusion of the learned Additional Sessions Judge. There is no evidence, direct or circumstantial, to show that any quantity of mercury was found outside the Mill area. It can, therefore, be legitimately inferred that the contents of the flasks in question were consumed in the Mill area itself, in fact, it appears from the evidence that mercury was consumed for the legitimate purpose of production and that the shortage was mainly due to the fact that there was some lapse on the part of either the accused or other employees of the Mills, who happened to be in charge of the stores at the material time, in either issuing the flasks without obtaining a proper requisition-slip or omitting to make an entry about their issue in the Bin Card (Ex. P-4) on the basis of the requisition slips received in the stores on which the flasks were issued.

10. Om Prakash Garg (P.W. 8) testified that whenever there was need of a mercury flask, a requisition-slip was Issued by him and handed over to some artisan of his department, According to Gopaldas Shah (P.W. 10), Assistant Stores-keeper, and Venkat Swami (P.W. 11), mercury flasks were actually handled by the issue-boys and whenever a requisition-slip was issued, it was given to the issue-boy who, on the basis of such requisition-slip, used to give the mercury flask and keep the requisition-slip on the table in the stores-room. On the basis of such requisition-slips entries in the logbook and the Bin Card used to be made in the evening. Apart from this, the Production Manager, Shri Majumdar (P.W. 5) admitted that sometimes certain articles used to be supplied from the stores without a requisition-slip which was obtained subsequently. According to him, on one occasion some wire was issued without a requisition-slip which was obtained six months later, Shri Majumdar made the following significant admission

in paragraph 11 of his deposition:

Store-staff could issue mercury flask without first receiving the requisition-slip; but then they had subsequently to obtain the requisition-slip. It was their responsibility.

11. A lapse in the discharge of official duty, which may be either due to inadvertence, negligence or over-work, stands on a different footing and must be clearly distinguished from criminal liability. Criminal liability can be fastened only when it is established that the goods have been dishonestly misappropriated and not otherwise.

12. From the practice obtaining in the Stores Department, as disclosed by the evidence, it appears that the flasks were actually handled by the issue-boys who used to bring the requisition-slips. The requisition-slips were left on the table and on their basis entries were made in the log-book and the Bin Card (Ex. P-4). It is, therefore, not unlikely that there was some mistake in making entries on the basis of the requisition-slips at the fag end of the day. It is also in evidence that flasks could be issued without a requisition-slip which could be obtained later. If the Stores-keeper failed to obtain the requisition-slip or to make the necessary entries in the Bin Card, the shortage would be indicated on the record. Thus, the shortage could be attributable to some lapse on the part of the Stores-keeper or the Assistant Stores-keeper in making entries in the log-book or the Bin Card on the basis of the requisition-slips or issuing the flasks without a requisition-slip and failing to obtain the same and thereby failing to make entries in the log-book or the Bin Card regarding their issue. Such a lapse on the part of the accused may call for a departmental action but no criminal liability can be fastened on them for this reason.

13. There is another very important circumstance in favour of the accused. According to the prosecution, six flasks of mercury were lost during the period from 19-10-1968 to 24-1-1969. It is not their case that they were lost on any particular date during the said period vide paragraph 57-K. of the judgment. From the testimony of Gopaldas (P.W., 10) it would appear that the accused Nagar was on leave for some days in December 1968 and January 1969, while the accused Rhemka was out for about ten to twelve days for training in the first fortnight of

January 1969. According to Harisingh (P.W. 13), Nagar was on leave from 18-12-1968 to 18-1-1969. As regards accused Karunakaran, Shri Majumdar (P.W. 5) stated that he had gone out on transfer on 18-1-1969. It is, therefore, difficult to say if the shortage occurred during the period the accused or any of them was actually holding the charge of-the stores.

14. Thus, after a careful consideration of the entire evidence on record, we find no material for an inference that the six mercury flasks, which were found short on the basis of the record, were dishonestly misappropriated by the accused. There is a reasonable possibility of the same being used in the Mills and the shortage being due to lapse on the part of the officers concerned in either securing proper requisition-slips or making necessary entries in the Bin Card and the logbook. The acquittal of the accused was, therefore, perfectly proper and there is no justification for interference with it.

15. The appeal, therefore, fail and is hereby dismissed.