

Vimal Kumar Vs. State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : Jan-10-2005

Reported in : 2005(3)MPHT167; 2005(4)MPLJ420

Judge : S.L. Jain, J.

Acts : Code of Criminal Procedure (CrPC) , 1974 - Sections 197, 212, 219, 220, 226 and 482; Indian Penal Code (IPC) - Sections 32, 34, 409, 420, 465, 466, 467 and 468

Appeal No. : Misc. Cr. Case No. 7040/2002

Appellant : Vimal Kumar

Respondent : State of Madhya Pradesh

Advocate for Def. : J.K. Jain, Government Adv.

Advocate for Pet/Ap. : A.K. Jain, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

S.L. Jain, J.

1. Invoking extra-ordinary jurisdiction of this Court under Section 482 of the Code of Criminal Procedure (henceforth the 'Code') the petitioners has filed this petition for quashing the order dated 17-1-2001, passed by Additional Chief Judicial Magistrate, Deori in Criminal Case No. 801/2000 and order dated 9-8-2002, passed by IInd Additional Sessions Judge, Sagar in Criminal Revision No. 26/2001.

2. The facts leading to the filing of the petition pithily narrated are as follows:--

(i) Police of Police Station, Kesli, Distt. Sagar had registered Crime No. 116/99 for the offences punishable under Sections 420, 409, 465, 466, 467 and 468/34 of the IPC against eight persons including the petitioner. After investigation, a charge-sheet was filed against the applicant and seven other persons in the Court of ACJM, Deori and Criminal Case No. 801/2000 was registered. Vide order dated 17-1-2001. Additional CJM, Deori framed charges against the petitioner under Sections 409 and 420 of the IPC.

(ii) Against the framing of charge, the present applicant and one Gulab Chandra Jain filed a revision before the Court of Session which was registered as Criminal Revision No. 26/2001. By the orders of Sessions Judge, Sagar, other six co-accused persons were also impleaded in the revision. Vide order dated 9-8-2002, IInd Additional Sessions Judge, Sagar remanded the case directing the Trial Court to frame the charge in terms of Section 226(c) and (e) read with Sections 219, 220, 212 of the Code. The Revisional Court found that the offences under Sections 409 and 420 of the IPC are made out against the applicant and the provisions of Section 197 of the Code do not apply in case of the present applicant.

3. I have heard Shri A.K. Jain, learned Counsel, appearing for the petitioner and Shri J.K. Jain, learned Government Advocate, appearing for the State and perused the record and also the case diary made available by Government Advocate.

4. Learned Counsel for the petitioner vehemently argued that according to the prosecution case itself, the petitioner was posted as Branch Manager of District Co-operative Central Bank (Maryadit), Kesli from 25-10-1993 to 17-6-1995. A

challan was filed against the applicant two years after his tenure. It is alleged against the present applicant that he was a supervising authority and because of the lack of supervision, the offence of misappropriation and cheating has been committed. The contention is that there is no evidence that any property was entrusted to the applicant in his capacity as public servant. One of the essential element of breach of trust is that accused must have been entrusted with the property. There is also no evidence against the applicant regarding dishonest conversion to his own use. Hence the charge framed against the applicant is liable to be quashed.

5. The contention is not acceptable. The accounts of Aadim Jaati Seva Sahakari Samiti (Maryadit), Sahajpur were audited by the auditors in the year 1998. In this audit report, it was found that the applicant being the Branch Manager of Kesli Branch and Sahajpur Society being under the control of aforesaid Kesli Branch, it was the duty of the applicant to have effective control on the society. It was also found against the applicant that he did not follow the rules. The money was withdrawn by the Branch Manager without giving any requisition. A bunch of fixed deposit receipts was given by the applicant.

6 Section 32 of the IPC provides that words referred to 'acts' include 'illegal omission'. By virtue of this section word 'act' must be taken to include an 'illegal omission'. Under Section 32, an illegal omission would constitute an 'act' in law. An illegal omission, thus, is an 'act'. It is true that mere casual inadvertence to duty is not criminal under the Code but where but for the omission of the person an act would not have been committed a person can not escape the liability by simply saying that it was a merely casual inadvertence to duty. Where a person deliberately closed the eyes, the omission will amount to the act. In the audit report, there are specific allegations against the applicant. There is prima-facie evidence about the conspiracy of the applicant.

7. At the stage of framing the charge, the Court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. If the material collected by the investigating agency is very

grave and serious and is sufficient to constitute the crime, the Court has to frame the charge. Truth, veracity and effect of evidence are not to be judged at initial stage of the trial. When there is material which leads the Court to think that there is ground for presuming that accused has committed an offence then the Court can proceed against the accused by framing charge against him. The test to be applied by the Court is whether there is sufficient ground to proceed and not for sufficient ground to conviction. When the two Courts found that there is prima facie material to proceed against the applicant and the orders passed by the Courts below are not perverse, I do not consider it to be a fit case for interference.

8. Learned Counsel for the applicant next contended that the trial can not proceed against the applicant without sanction envisaged in Section 197 of the Code.

9. Before the sanction under Section 197 of the Code can be invoked two conditions must be satisfied--

(a) that, the accused must be a public servant of the kind mentioned in the Section, i.e., he must be a public servant not removable from his office save by or with the sanction of the State Government;

(b) that, the offence must be committed by the accused while acting or purporting to act in discharge of his official duty.

10. The applicant admittedly was the Branch Manager and for removal of a Branch Manager of a Co-operative Bank, the sanction of the State Government is not required. Even otherwise it is known to all that it is not the part of the official duty to commit offence. An official is not expected to commit offence of cheating or misappropriation, therefore, the applicant is not entitled to protection under Section 197 of the Code.

11. In the light of the aforesaid discussion, I do not find any merit in this petition and the same is accordingly dismissed.