

**Narayan Singh Vs. State of M.P**

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**Court :** Madhya Pradesh

**Decided On :** Dec-06-1986

**Reported in :** 1986CriLJ1481

**Judge :** K.K. Verma, J.

**Appellant :** Narayan Singh

**Respondent :** State of M.P

**Judgement :**

ORDER

**K.K. Verma, J.**

1. This is a revision from the judgment dt. 14th July 1983 of the Additional Sessions Judge, Datia in Criminal Appeal No. 42/81, dismissing that appeal preferred by the applicant against an order of conviction under Section 408 I.P.C. carrying one year's rigorous imprisonment therewith, passed by the Chief Judicial Magistrate, Datia on 28-74981 in regular Criminal Case No. 750/77.

2. The trial was however on a charge under Section 409 of the I.P.C. in the following terms:

That you, between the 2nd day of March, 1975 to 28th of April, 1975, at village Jhujharpur (P.S. Indargarh), as Chairman of the Sewa Sahakari Samiti,

Jhujharpur, and a banker, and public servant, and in such capacity being entrusted with certain property, to (Illegible) a sum of Rs. 5,845/- committed criminal breach of trust in respect of Rs. 2,936/- and thereby committed an offence punishable under Section 409 of the I.P.C.

3. The Magistrate who decided the case held in paras 6, 7 and 8 of his judgment that during the material period of time, applicant Narayan Singh was the Chairman of the Vrihatakar Sewa Sahkari Samiti Maryadit, Jujharpur but was not a public servant or a banker. These findings were accepted by the first appellate Court.

4. The learned Magistrate held that the applicant was a mere servant of the aforementioned Samiti.

5. It was also held that the applicant, as the Chairman of the Samiti, recovered from several members of the Samiti different sums of money, totalling Rs. 5,846/- and issued them printed receipts under his signatures. However, the applicant deposited only a sum of Rs. 2900/- in the Datia branch of the Central Co-operative Bank Limited on 28-4-1975. The trial Magistrate held that the amount of Rs. 5,846/- came into the applicant's hands by way of entrustment and that he did not deposit the balance amount of Rs. 2900/- in the Bank within a reasonable period of time and therefore, he committed a temporary criminal misappropriation of the sum of Rs. 2,936/-.

6. The learned Magistrate held that the printed receipt dt. 18-6-1978 (Ex.D. 1) (issued from a receipt book of the Samiti) to the tune of Rs. 4,188.25 included the sum of Rs. 2,936/- due by the applicant on account of the balance of the amount recovered by him from the Samiti members from 2-3-1975 to 28-4-1975 and retained thereafter.

7. The learned appellate Judge did not deal with the question whether the coming of the money into the hands of the applicant amounted to entrustment or not. He, however, agreed with the other findings and dismissed the appeal.

8. The applicant's learned Counsel said that he was not challenging the following concurrent findings of fact. Applicant Narayan Singh recovered a sum of Rs.

5,846/- as the Chairman of the Samiti from its several members' and retained a sum of Rs. 2900/- even after he had ceased to be the Chairman of the Samiti at the end of April 1975 and deposited the amount back on 18-6-1978.

9. The first point for determination is whether any offence of criminal breach of trust is made out from the aforementioned facts. The persons from whom the applicant recovered the amounts were the members of the Samiti of which he was the Chairman. It is the prosecution case that the applicant was entitled to recover dues from the members of the Samiti. It is also not in dispute that the amounts recovered from the members were dues and that receipts were issued to them in respect of the amount recovered. Thus, no question of entrustment arose between members and the Samiti because the receipts issued to the members in question discharged their liability to the Samiti. The fact that the Samiti was to pay the amounts to the Bank was, by all accounts a matter between a debtor that is the Samiti and a Creditor that is the Bank. The bank had, therefore, no property in the amounts when they passed from the members of the Samiti to the applicant. Hence, there was in law no entrustment of the amounts recovered by the applicant from the members. Hence, there was no criminal breach of trust.

10. It was urged by the learned Counsel for the applicant that the retention of the balance amount till 18-6-1978 did not amount to criminal misappropriation because the prosecution has failed to produce the relevant bye-laws and rules of the submissions (Samiti?) to show that retention of the amounts recovered by the applicant was in breach of any bylaw or rule of the Samiti. This argument is beside the point because the applicant ceased to be the Chairman of the Samiti at the end of ;.month of April 1975.

11. The Bank wrote a demi-official letter to him on 24-9-1975 (Ex. P. 78) calling upon him to deposit the amount due to the Bank from out of the fund of the Samiti with him since Mar. 1975. The applicant should have then handed over the money to his successor or to any other official of the Samiti. Apparently, he did not do so and it was only on 18-6-1978 that is during the trial, that Bhagwan Das (DW 1) deposited the amount in the Samiti vide receipt No. Ex. DI. Thus, the only inference that can be drawn is that the applicant had criminally misappropriated

the amount in question as evidenced by an unexplained retention of amount for such a long period of time. The offence committed by him is punishable under Section 403 I.P.C.

12. The applicant's learned Counsel then submitted that the amount having been refunded to the Samiti and the applicant having been in jail for 5 days and the fact that the litigation has been going on for about 10 years, the man may not be sent back to jail. The plea for giving him benefit of the Probation of Offenders Act does not commend itself to me, in view of the nature of the offence. However, the extenuating circumstances put forward by the applicant's learned Counsel satisfy me that the ends of justice may be met otherwise than by sending the man back to jail.

13. In the result, the applicant's conviction under Section 408 I.P.C. is altered into one under Section 403 I.P.C. In the place of one year's R.I. the applicant is sentenced under Section 403 I.P.C. to the period of imprisonment already undergone, and he shall, in addition pay a sum of Rs. 1,250/- on account of fine or in default of payment undergo R.I. for a term of three months. With the above modifications, in the matter of conviction and sentence, the revision is dismissed. The applicant shall now appear before the Chief Judicial Magistrate, Datia on 4th Feb. 1986 to hear the result.

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