

State of Madhya Pradesh Vs. Prempal

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Court : Madhya Pradesh

Decided On : Nov-22-1990

Reported in : 1991CriLJ2878

Judge : P.C. Pathak and ;S.K. Chawla, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 409

Appeal No. : Criminal Appeal No. 285 of 1985

Appellant : State of Madhya Pradesh

Respondent : Prempal

Advocate for Def. : Sohan Choudhary, Adv.

Advocate for Pet/Ap. : A.S. Jha, Govt. Adv.

Disposition : Appeal allowed

Judgement :

S.K. Chawla, J.

1. The State has filed this appeal against acquittal of the respondent of the offence Under Section 409, I.P.C.

2. Respondent Prempal Uike was Extra Departmental Branch Post-Master at Gillore Branch Post-Office. One Gokulprasad (PW-2) had a savings account in that post office. An amount of Rs. 675/- was in balance in that savings account as on 19-4-1980. The respondent had duly accounted for that amount in the accounts of his post-office. Thereafter, Gokulprasad had on 21-4-80, 5-5-1980, 9-5-1980, 26-5-1980, 3-6-80 and 14-6-1980 deposited sums of Rs. 225/-, 300/-, 300/-, 68/- 400/- and 1035/- respectively. In other words, Gokulprasad had between 21-4-1980 to 14-6-1980 deposited from time to time a total sum of Rs. 2328/-. The prosecution case was that the respondent Prempal Uike during that period had not accounted for the said gross sum of Rs. 2328/- and hence he had committed the offence of criminal breach of trust punishable Under Section 409, I.P.C.

3. The learned Judicial Magistrate, First Class, Nasrullahganj, Shri S. N. Khatki who tried the case, recorded acquittal of the respondent. Aggrieved there by the State has come up in appeal.

4. The learned Magistrate acquitted the respondent on two contradictory grounds. The first ground taken by the learned Magistrate was that since the respondent had deposited the entire sum alleged to have been defalcated with interest, before the filing of the challan, no offence was committed. The implication was that if the deposit had been made after the filing of the challan, that would have made a difference. The second ground taken by him was that the respondent had not passed any receipts for the various sums alleged to have been defalcated by him, although he had passed such receipts previous to that. The respondent had also denied having made entries of deposit in the passbook of the depositor for the sums alleged to have been defalcated; hence it was not proved that he had received the various sums alleged to have been defalcated.

5. The second ground taken by the learned Magistrate may be disposed of first. The learned Magistrate did not choose to disbelieve, and rightly so, the direct evidence of depositor Gokulprasad (P.W. 2) that he had paid to the respondent the various sums totalling Rs. 2328/-. Gokulprasad further deposed that the respondent had on each occasion made an entry of deposit in his passbook and had also initialled and affixed the seal of the post office. This -was sufficient

evidence of the deposits having been made with the respondents. The fact that the respondent did not in addition pass receipts on such occasions, although he used to do so previously, would rather show that the respondent was actuated by some dishonest intention. His intentional failure to pass receipts in the circumstances could hardly be a circumstance in his favour or create any kind of doubt about the fact of deposits having been made. The matter was taken beyond the domain of any kind of controversy when the respondent without any demur or protest deposited the entire defalcated sum alongwith interest with the postal department. No one deposits money which he had not received and that too without any demur or protest. The learned Magistrate's finding that it was not safe to hold that the respondent had received from depositor Gokulaprasad (PW. 2) from time to time the total defalcated sum of Rs. 2328/- must be held to be an idle doubt. It must be held that the respondent had received the sums alleged to have been defalcated.

6. Coming to the second ground, there was prosecution evidence to show that after the depositor had on 27-6-1980 made a complaint to Superintendent Post-offices Sehore against the respondent, the latter on 9-7-1980, 17-7-1980, 1-8-1980, 16-10-1980 and 21-9-1981 had deposited with the postal department Rs. 1500/-, 300/-, 150/-, 269/- and 29.35/- respectively, that is to say a total sum of Rs. 2248.35/-. The challan was filed on 31-3-1982. The learned Magistrate in his judgment has reasoned that because the respondent had deposited the entire defalcated sum with interest even before the filing of the challan, there was no dishonesty on his part and hence he could not be said to have committed the offence of criminal breach of trust, It is implied in the reasoning that the matter would have been different if the respondent had deposited the money after the filing of the challan. If certain offence had been committed, it could matter a little whether the deposit was made by the accused before the filing of the challan or after its filing. The offence of criminal breach of trust by a public servant Under Section 409, I.P.C. is a grave offence punishable with imprisonment for life or with imprisonment which may extend to 10 years. The offence is non-compoundable. Nothing, therefore, could turn on the fact whether the deposit of the defalcated amount was made by the accused either before the filing of the challan or thereafter. In either case, the postal department could not have compounded the offence. The police was bound to file the challan even if the accused happened to

make the entire deposit of the defalcated amount even before the filing of the challan. Reference may here be made to the case of *Vishwanath v. State of J & K*, AIR 1983 SC 174 : (1983 Cri LJ 231), in which the principle laid down is that if a public servant entrusted with government money misappropriates that amount for personal use, refund to that amount, after the act of defalcation is discovered, does not absolve the accused of the offence. The learned Magistrate was clearly wrong in holding that no offence was committed because the accused happened to deposit the entire defalcated amount before the filing of the challan.

7. It is worth noticing that the respondent could not deposit the entire sum all at once. He deposited it bit by bit on five dates spread over an interval of 14 months. This would clearly show that he had spent the amount entrusted to him. This was dishonest misappropriation or conversion of the entrusted money on the part of the accused, which is gravamen of the offence of criminal breach of trust. The further circumstance that the respondent had also not accounted for the entrusted sums in the accounts of his post-office and purposely did not pass receipts for those sums to the depositor also point towards dishonest misappropriation or conversion on the part of the respondent. He had not merely retained the entrusted money for an unusual long time, which itself may not be an offence. The circumstances of the case clearly show that he had dishonestly converted or misappropriated the money entrusted to him. He had clearly committed the offence of criminal breach of trust.

8. All the same the respondent had committed at the worst the offence of temporary defalcation. The ends of justice are met in such cases if the accused is visited with light punishment. Reference may be made to cases of temporary defalcations in *Rammohan Saxena v. State of M. P.*, 1977 (II) MPWN 377, *Bahadur Singh v. State of M. P.*, 1976 J LJ SN 120, *Narbada Singh Chouhan v. State of Madhya Pradesh*, 1971 J LJ SN 11 and *State v. Antar Singh*, 1966 J LJ SN 99. In all these cases light sentences were imposed on the accused committing temporary defalcation. The respondent has moreover lost his job in the wake of the present misdemeanour.

9. For the foregoing reasons, the appeal is allowed. The acquittal of the respondent Prempal Uike Under Section 409, I.P.C. recorded by the learned Magistrate is set-aside. Instead, the respondent is convicted of that offence and is sentenced to imprisonment till rising of the Court and to pay a fine of Rs. 300/-, in default to undergo rigorous imprisonment for three months. The fine shall be paid within one month from the date when the result of this appeal is made known to the respondent.

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