Dayaram Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Nov-03-2004

Reported in : 2005(1)MPHT140; 2004(1)MPLJ524

Judge : A.K. Shrivastava, J.

Acts : Indian Penal Code (IPC), 1860 - Sections 409

Appeal No. : Criminal Revision No. 1454/2003

Appellant : Dayaram

Respondent : State of M.P.

Advocate for Def. : Sudesh Verma, Govt. Adv.

Advocate for Pet/Ap. : None

Disposition : Revision allowed

Judgement :
ORDER

A.K. Shrivastava, J.

1. The applicant has preferred this revision against his judgment of conviction and order of sentence passed by the Trial Court and affirmed by Appellate Court convicting him for the offence punishable under Section 409, IPC and sentencing

him to suffer rigorous imprisonment of two years and fine of Rs. 1,000/-, in default further R.I. of three months.

2. In brief the case of the prosecution is that applicant Dayaram was serving on the post of 'Rajasva Moharir' (Revenue Clerk) in the office of Municipal Council, Kymore. On 9-6-1989 he collected the house tax and issued receipts but did not deposit the said receipt book nor deposited the amount. On 29-12-90 a written notice was given to applicant to deposit the book but he did not deposit and thereafter it was advertised in newspaper to general public that if any assessee has deposited an amount of house tax and is having receipt issued from the receipt book which was issued to applicant, may submit the original receipt. On 2-2-1991 one Chhotelal Mishra submitted a receipt bearing receipt No. 29 dated 26-7-89. According to prosecution, a sum of Rs. 648/-was obtained from said Chhotelal by applicant, but, the amount was not deposited in the office of Municipality. Thereafter a written report was submitted by Chief Municipal Officer on 6-2-91 to Police Station, Kymore and on the said report a case was registered. During investigation one Mohd. Hanif submitted the receipt book and stock register.

3. After investigating the case a charge-sheet was submitted and applicant was charged under Section 409, IPC. Needless to emphasis, he denied the charge and pleaded complete innocence. The defence of the accused is that he was not serving on the post of 'Rajasva Moharir' (Revenue Clerk) but was serving on the post of 'Rajasva Nirikshak' (Revenue Inspector). According to him he was not informed about the deposit of receipt book and on account of enmity he has been falsely implicated.

4. The prosecution examined its witnesses and the Trial Court on scrutiny of the evidence found that charge under Section 409, IPC is proved against the applicant and, therefore, he was convicted for the offence under Section 409, IPC and was sentenced which I have mentioned hereinabove.

5. The appeal which was preferred by the applicant also met the same result. Hence this revision.

6. In this revision none appeared for the applicant. Perused the record and heard Shri Sudesh Verma, learned Govt. Advocate.

7. If the prosecution is basing its case under Section 409, IPC it is incumbent upon it to prove that property was entrusted to the accused person or he was having dominion over property in his capacity as public servant or in the capacity of person, the list of which has been mentioned in Section 409, IPC. Thus, the prosecution is duty bound to prove by cogent evidence that money Rs. 648/- was entrusted to the applicant. In the present case, prosecution did not examine Chhotelal who had paid Rs. 648/- to applicant towards house tax since he (Chhotelal) had died. However, the fact remain as such whether amount of house Lax Rs. 648/- was ever entrusted to present applicant. Merely because Chhotelal had died, would not mean that this fact could not be proved. The prosecution was obliged to examine other witness or should submit application to adduce secondary evidence in regard to the entrustment and payment of house tax by Chhotelal to present applicant. Since the entrustment of Rs. 648/- has not been proved, it is difficult to uphold the conviction under Section 409, IPC. Apart from this, there is no evidence in order to prove the signature of applicant on Ex. P-2. The prosecution has also not examined the signature of applicant by handwriting expert. In this view of the matter, it is also not proved that receipt (Ex. P-2) bears signature of present applicant.

8. Since the entrustment of money Rs. 648/- paid by Chhotelal to applicant is not proved, according to me, the applicant can not be held to be guilty of offence committed under Section 409, IPC.

9. In the result, the revision succeeds and is hereby allowed. The conviction of appellant is set aside. The amount of fine, if deposited, be returned to the applicant. The applicant is on bail, his bail bonds are discharged.