

Trilochan Singh and ors. Vs. State of Jharkhand

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Court : Jharkhand

Decided On : Apr-27-2006

Reported in : [2006(3)JCR279(Jhr)]

Judge : D.K. Sinha, J.

Acts : Code of Criminal Procedure (CrPC) - Sections 482; Indian Penal Code (IPC) - Sections 34, 405 and 406; Cochin Penal Code (IPC) - Sections 385

Appeal No. : Cr. M.P. No. 1093 of 2005

Appellant : Trilochan Singh and ors.

Respondent : State of Jharkhand

Advocate for Def. : A.P.P

Advocate for Pet/Ap. : M.S. Chhabra, Adv.

Judgement :

D.K. Sinha, J.

1. The petitioners have preferred this petition under Section 482 of the Code of Criminal Procedure for quashing the entire criminal proceeding in Lower Bazar Police Station Case No. 136 of 2004, corresponding to G.R. No. 2219 of 2004, pending in the court of Sri D.K. Mishra, Judicial Magistrate, Ranchi including the

order impugned dated 2.9.2004 whereby and whereunder Chief Judicial Magistrate, Ranchi has taken cognizance of the offence under Section 406/34 of the Indian Penal Code against them.

2. The prosecution story, in brief, is that the informant Ashiwini Kumar Malhotra had presented a written report before the Lower Bazar Police Station stating, inter alia, that on 23.7.2004 he had entered into 'Malhotra Dresses' at 8 P.M. situated at Roshpa Tower to purchase cloth and after said purchase, returned back to his home leaving his Mobile inadvertently on the counter of Malhotra Dresses. On recalling such missing after some times, he immediately went to Malhotra Dresses and enquired from the owner of the shop as well as from the other staff but they declined having been in possession of his Mobile and that there was no customer in the shop, therefore, he had reason to believe that four named accused persons removed his Mobile No. Nokia 3200/IMEI-352518004156423 with Sim card No. 5839162916. He lodged a criminal case which was instituted under Section 406/34 of the Indian Penal Code against the petitioners.

3. It has been submitted that petitioner No. 1 Trilochan Singh is the owner of the Malhotra Dresses whereas three other petitioners are the staff of that shop. It is further stated that Malhotra Dresses (Malhotra Exclusives) is the shop of ready made garments at Roshpa Tower, Main Road, Ranchi and is quite busy shop. It would be apparent from the plain reading of the written report that no Mobile was entrusted by the informant to any of the petitioners or he had ever left his Mobile Phone particularly at the said shop on the alleged date and time of occurrence. The police after institution of the case submitted charge-sheet mechanically for the offence under Section 406/34 of the Indian Penal Code as against the petitioners without there being any evidence or material of any entrustment of the property/Mobile Phone by the informant and, therefore, no offence is made out under such section. Similarly, by the order impugned cognizance of the offence under Section 406/34 of the Indian Penal Code has been taken by the Chief Judicial Magistrate, Ranchi in mechanical manner and without applying his judicial mind therein, even in absence of any element of entrustment of the Cell Phone to the petitioners and the dishonest misappropriation of the same in respect thereof.

4. Learned Counsel for the petitioners submitted that criminal breach of trust is defined under Section 405 of the Indian Penal Code and Section 406 is its penal section, and for that there must be entrustment of the property first or with any dominion over property and thereafter, there must be a dishonest misappropriation or conversion of the same by the accused for his own use or disposal of the same in violation of the direction of law which prescribed the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust. Even during investigation the prosecution failed to collect any evidence in respect of any element of any entrustment of Mobile Phone to the petitioners except his statement that he had forgotten his Mobile Phone in the shop and without there being any evidence of any person, having seen the same being left out. Even if the allegation made in the First Information Report taken on its face value, no evidence is constituted in view of the fact that the shop 'Malhotra Exclusive' is very busy shop of ready made garments visited by a large number of customers during its working hours, may be possibility of lifting it by any one of the customers and, therefore, the continuance of the criminal proceeding of the offence under Section 406/34 of the Indian Penal Code is nothing but abuse of the process of the Court causing unnecessary harassment to the petitioners and, therefore, the same may be quashed.

5. Learned Counsel relied upon the decision reported in : AIR 1953 SC478 , The Hon'ble Supreme Court of India in Chelloor Mankkal Narayan Ittiravi Nambudiri v. State of Travancore, Cochin held as under:

The other point that requires consideration is whether on the prosecution evidence as it stands, the accused can be held guilty of criminal breach of trust? As laid down in Section 385, Cochin Penal Code (corresponding to Section 405, Indian Penal Code) to constitute an offence of criminal breach of trust it is essential that the prosecution must prove first of all that the accused was entrusted with some property or with any dominion or power over it. It has to be established further that in respect of the property so entrusted, there was dishonest misappropriation or dishonest conversion or dishonest use or disposal of violation of a direction of law or legal contract, by the accused himself or by someone else which he willingly suffered to do.

6. Having regard to the fact and circumstances of the case and for better appreciation, reference may be made to the case of Dr. Sarda Prasad Sinha v. State of Bihar reported in 1977 Cri LJ 1146 wherein the Supreme Court held,

It is now settled law that where the allegations set out in the complaint or the charge-sheet do not constitute any offence, it is competent to the High Court exercising its inherent jurisdiction under Section 482, Criminal Procedure Code to quash the order passed by the Magistrate taking cognizance of the offence. The question which, therefore, arises for consideration is whether the allegations set out in the written report presented before the police station by the informant constitute any offence against the appellant.

7. From the plain reading of the written report as also from the cognizance order impugned it is nowhere alleged that the entrustment of the Mobile Phone was made by the informant to any of the petitioners within the definition of Section 405 of the Indian Penal Code so as to attract the punishment under Section 406 of the Indian Penal Code and also that all the petitioners had shared their common Intention in such misappropriation after entrustment.

8. Section 405 of the Indian Penal Code is very clear which speaks as under:

Criminal breach of trust - Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits 'criminal breach of trust'.

9. Under the facts and circumstances of the case the court finds that no offence under Section 406/34 of the Indian Penal Code is attracted against any of the petitioners. There appears merit in this petition under Section 482 of the Code of Criminal Procedure and hence it is allowed. The entire criminal prosecution including the cognizance order in Lower Bazar Police Station Case No. 136 of 2004, corresponding to G.R.No. 2219 of 2004, pending in the court of Sri D.K.

Mishra, Judicial Magistrate, Ranchi or his successor is quashed.

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