

Purna Chandra Behera Vs. State

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Court : Orissa

Decided On : Nov-27-1965

Reported in : AIR1966Ori106; 1966CriLJ571

Judge : G.K. Misra, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 405 and 409

Appeal No. : Criminal Revn. No. 104 of 1965

Appellant : Purna Chandra Behera

Respondent : State

Advocate for Def. : R.K. Mohapatra, Adv. for Standing Counsel

Advocate for Pet/Ap. : S.C. Mohapatra, Adv.

Disposition : Revision allowed

Judgement :

ORDER

G.K. Misra, J.

1. The petitioner was Convicted under Section 409, I. P. C. and sentenced to R. I. for one year and to pay a fine of Rs. 1,000, in default, to R. I. for six months. Out of the fine, if realised, the Kuliana Gram Panchayat (hereinafter referred to as the

Panchayat) was directed to get a sum of Rs. 700. In appeal, the order of conviction was maintained and so also the sentence of fine with the direction regarding payment of Rs. 700, if realised. But the sentence of imprisonment was reduced to a period of six months only.

2. Prosecution case is that, the petitioner was the Sarpanch of the Panchayat. He as a public servant committed criminal breach of trust of Rs. 3,185 from the Panchayat Fund. In 1960, Government had sanctioned the construction of Women Teachers quarters at Kuliana. The petitioner undertook to execute the work at Rs. 2,500. On 27th February 1960 he executed a written agreement (Ex. 3) in favour of the S.D.M., Baripada. He received a sum of Rs. 2,400 as advanced on the very day and passed a receipt (Ext. 4). There was a condition in exhibit 3 that in case the petitioner failed to execute the work according to the terms of the agreement, the entire amount of the advance was recoverable with interest at 6 1/4 per cent per annum from the date of advance.

The petitioner deposited Rs. 2,400 in the Panchayat Fund, He withdrew Rs. 3,185 on various instalments in between 29-2-1960 and 19-11-1960. Prosecution case is that the petitioner did work of the value of Rs. 212.06 and misappropriated the balance. In his statement under section 342 Cr. P. C. the petitioner admitted that he had received Rs. 2,400 under Ex. 3. He asserted that the Resolution (Ex. 1) in the Panchayat meeting on 23rd May 1960 authorised him to draw further amounts for the construction and that no part of the resolution, an question, was subsequently interpolated. No portion of it was left blank and everything was written on the same day and at the same time. He admitted to have withdrawn Rs. 3,185 on different dates by filing receipts and that the same were entered in the cash book as and when the amount was drawn. He had constructed the building upto plinth level, collected, various materials, such as, cement, earth, morum and sand etc., for further construction and given some advances to masons.

3. The learned Sessions Judge held that no criminal breach of trust was committed an respect of the sum of Rs. 2,400. According to him, the amount was received under a contractual obligation with the stipulation that if the amount was not utilised in the construction, the same was recoverable with payment of interest.

A certificate proceeding for recovery of this amount was pending. The Public Prosecutor had conceded before him that there had been no criminal breach of trust in respect of this item.

4. The only question for consideration is whether there has been any criminal breach of trust in respect of Rs. 785 withdrawn from the Panchayat Fund. The learned Sessions Judge has held that the Panchayat did not authorise the petitioner to withdraw any amount from the Panchayat Fund for the construction in question. Reliance was placed by the petitioner on the resolution (Ex. 1) authorising him to take advance from the Panchayat Fund. The substance of the relevant portion of the resolution may be extracted :

'The Sarpanch has deposited money in the Gram Panchayat Fund for construction of road and building. If money is necessary for expenditure over this work, he can also withdraw money from the Gram Panchayat Fund. After filing measurement he would redeposit the money in Panchayat Fund and obtaining the fund from the Government.'

The learned Sessions Judge has held that this part of the resolution had been subsequently interpolated after 23rd May 1960 in the blank space left in between the resolution and the signature given by the various members. Reliance was placed on the evidence of Indramani Naik (P. W. 1) a Ward member, Gopal Chandra Rose, Handwriting Expert (P. W. 3) and Muralidhar Panda, Secretary of the Panchayat (P. W. 4). The finding of the learned Sessions Judge on this question may be quoted in his own language.-

' The disputed passage must have been added to the resolution at the instance of the appellant to suit his purpose.'

The conviction of the petitioner was based on the following finding-

' The total estimated cost of the project was Rs. 2,500.00 out of which the appellant had received Rs. 2,400.00 but the value of the work done by him is Rs. 212.06 nP. only. So there was no necessity of withdrawing any amount out of the Panchayat Fund for the project. '

5. The first question for consideration is whether a part of the resolution dated 23rd May 1960 was interpolated subsequently. The alleged interpolated portion is in the Resolution Book of the Panchayat. Onus is on the prosecution to establish beyond reasonable doubt that, there was interpolation at the instance of the accused. It is to be noted that there has been no charge for forgery or fabrication. The approach of the learned Sessions Judge appears to be that it is the responsibility of the petitioner to establish that the interpolated portion is genuine. This approach is contrary to law and the fundamental principles of criminal jurisprudence.

[Then after discussing evidence (Para 5) His Lordship proceeded]

To sum up, the onus is on the prosecution to establish beyond reasonable doubt that the portion marked 'X' is an interpolated one. Prosecution has not established it by any satisfactory evidence. The scribe of the resolution, who is a Ward member and signatory to Ex. 1, was not examined to state the circumstances in which it was written in different ink and squeezed in. The conclusion was based merely on the speculative opinion of the Handwriting Expert who could only say that both the writings were done at different times but could not say that it was not done in course of writing the resolution after the main part of it was written and signatures obtained thereto. The finding is based on the testimony of P. W. 1, who is not only ill-disposed towards the accused but is unreliable. The evidence of P. W. 4 clearly supporting the defence version, was wholly over-looked. Prosecution has failed to establish that the portion marked 'X' in Ex. 1 was subsequently interpolated.

6. The next question for consideration is whether prosecution has been able to prove that Rs. 785, withdrawn from the Panchayat Fund, was not spent by the petitioner in connection with the construction. The Courts below have concurrently found that the construction had been made upto the plinth level and that the work done by the petitioner was upto the value of Rs. 212-06 paise. The learned Sessions Judge has not at all recorded a finding whether the balance out of Rs. 785 has been spent on the work. It thus becomes necessary to discuss the relevant materials on record. [After discussing evidence His Lordship proceeded]

Thus even witnesses for the prosecution admitted that the accused had collected bricks (P. Ws. 1 and 4), Morum (P. W. 5) and wood (P. W. 4) for the construction. D. Ws. 2's evidence supports the defence version that cement and door and window leaves are in the house of the accused as naturally these materials cannot be allowed to lie in open on the spot. The materials on record, therefore, justify a conclusion that the petitioner's version may be true. It was the duty of the authority, when they found that the accused had spent large amount of money, to ask him to explain as to how the money was spent and to investigate and see if in fact there was any truth in the explanation. The prosecution has made absolutely no effort to test the accuracy of the version of the accused. On the materials already discussed I hold that the expenses of the construction and of the materials collected might be Rs. 785. It is difficult to hold in favour of the accused that he spent the whole or a substantial part of Rs. 2,400 in connection with the construction. D. W. 2 says that the accused used to keep accounts of the expenditure. Whether he used to keep such accounts or not, it was the duty of the petitioner to explain as to how the amounts had been spent. Even if the whole of the evidence for the prosecution and defence is accepted, it is not possible to say that the accused has explained the expenditure of Rs. 2,400 though the story that he spent Rs. 785 is acceptable. In cases of criminal breach of trust, failure to account for the money proved to have been received by the accused or giving a false account as to its use is generally considered to be a strong circumstance against the accused. This, however, is a piece of evidence pointing to dishonest intention and is not conclusive. (See AIR 1930 Pat 209, H.K. Mahtab v. Emperor). This was accepted good law in AIR 1959 SC 1390. Even if the accused has not rendered a correct account for Rs. 785, he cannot be said to have dishonestly misappropriated Rs. 785.

7. Even on the finding that the petitioner spent Rs. 785 in connection with the construction, a question arises whether he should have withdrawn Rs. 785 from the Panchayat Fund without first spending Rs. 2,400 taken from the Government. The resolution authorising withdrawal from the Panchayat Fund makes it clear that he could withdraw if money would be necessary for expenditure over this work. That necessarily means that he must spend the amount drawn from the Government and if thereafter money becomes insufficient, authority was conferred

on him to draw money from the Panchayat Fund. The petitioner has failed to establish that he spent the whole or the substantial portion of Rs. 2,400. It was exclusively within his knowledge. Even in his statement under Section 342, Cr. P. C. he did not give any account of the amount spent on different heads. Conclusion is irresistible that the resolution did not authorise him to withdraw Rs. 785 until he had spent Rs. 2,400.

8. For clarity, the findings may be summarised.

(i) The petitioner did not spend Rs. 2,400 for a substantial part thereof over the construction for which the amount had been advanced by the Government.

(ii) The Panchayat passed resolution authorising the petitioner to withdraw money from the Panchayat Fund, if necessary. In the absence of proof that Rs. 2,400 or a substantial part thereof had been spent, the petitioner had no authority to withdraw Rs. 785 from the Panchayat Fund.

(iii) The petitioner had made expenditure of about Rs. 785 in connection with the construction. At any rate, prosecution has failed to establish that the value of the work and of the materials collected would be less than Rs. 785.

9. It now becomes necessary to examine if on the aforesaid findings, an offence under Section 409, I. P. C. has been made out. Section 409 lays down-

'Whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and also shall be liable to fine.'

It is to be stated that the petitioner (Sarpanch) was a public servant.

'Criminal breach of trust' is defined in Section 405. I. P. C. thus- '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.' The essential ingredient of the section is that the accused must dishonestly misappropriate or convert to his own use the property. '

In this case, for reasons already stated, the petitioner, cannot be convicted under Section 409 though there are materials for a finding that he misappropriated Rs. 2,400. That is mainly on the basis that under the contractual obligation he was to refund the entire amount with interest and from the very inception of the agreement the position that is any part of it might not be spent for construction of the quarter was visualised.

So far as Rs. 785 is concerned, the finding is that the amount has been spent in connection with the construction. Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing 'dishonestly', (Section 24 I. P. C.) 'wrongful gain' is gain by unlawful means of property to which the person gaining is not legally entitled. (Section 23 I. P. C.). Once the finding is that Rs. 785 had been spent for requisite purpose for which authority had been granted, the petitioner makes no wrongful gain to himself. On the same reasoning he causes no wrongful loss to the Panchayat as the amount had been spent for the purpose for which he was authorised and the amount would be re-deposited in the Panchayat Fund after obtaining the same from the Government. Thus on the finding that Rs. 785 had been spent in connection with the construction, the petitioner cannot be said to have acted dishonestly. Once this ingredient is absent, no offence of criminal breach of trust can be committed.

The only charge against the petitioner would be that his withdrawal from the Panchayat Fund was unauthorised until Rs. 2,400, taken from the Government, had been spent. On that footing alone, the offence is not established. All the elements must be fulfilled before the prosecution can bring the charge under Section 409 I. P. C. home to the accused.

The accused is, therefore, entitled to an acquittal, though his conduct is reprehensive and his civil liability subsists.

10. Mr. S. C. Mohapatra, had raised a contention that in the absence of sanction, the prosecution was illegal and without jurisdiction. In view of my finding on the merits of the case, it is unnecessary to examine this point.

11. In the result, the conviction and sentence passed on the petitioner are set aside and he is acquitted. His bail bond be discharged. Fines, if paid, be refunded. The Criminal revision is allowed.

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