

Khandeswar Patra Vs. the State

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Court : Orissa

Decided On : Oct-16-1963

Reported in : AIR1964Ori119; 30(1964)CLT184; 1964CriLJ525

Judge : R.L. Narasimham, C.J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 23, 24, 403 and 408

Appeal No. : Criminal Revn. No. 20 of 1963

Appellant : Khandeswar Patra

Respondent : The State

Advocate for Def. : Standing Counsel, ;R.C. Misra, ;P. Palit and ;R.C. Patnaik, Advs.

Advocate for Pet/Ap. : D. Narasaraju, ;H. Kanungo and ;R.C. Mohanty, Advs.

Judgement :

ORDER

R.L. Narasimham, C.J.

1. This is a revision petition against the appellate judgment of the Sessions Judge of Puri maintaining the conviction of the petitioner under Section 403 Indian Penal Code and the sentence of six months rigorous imprisonment passed by the Sub-Divisional Magistrate of Khurda.

2. One Arakhit Patra is a resident of village Banpur in Khurda Sub-division of Puri district and the petitioner is none else but his brother in law (wife's brother). The petitioner is also a resident of Banpur. Arakhit Patra was associated with the paddy procurement scheme of the Government of Orissa from 1944. He had other business also and the petitioner has been found by the trial Court to be Arakhit's partner in all his business activity. He was also working as his authorised agent and receiving a remuneration of Rs. 150/- per month.

Arakhit agreed to be the storage agent of Government of Orissa for rice and paddy for the year 1957-58 and executed an agreement (Ext. 10) in a printed form in favour of the Government. The main function of the storage agent was to keep in safe custody stocks of rice and paddy delivered to him by the Collector on behalf of the Government, through any person authorised for the purpose and to dispose of the same according to the orders of the Collector from time to time -- vide paragraph 4 of the Preamble to the Agreement. The food-grains were required to be stored in a godown known as depot which may be either owned or hired by a storage agent provided it is approved by the Collector for the purpose of stocking food-grains. (See Ext. 6 (f)). The Collector and other authorised officers had a right to inspect the stocks kept in the depot. Clause 4 further says that in order to facilitate inspection the agent was required to affix at the entrance or some conspicuous place of the depot a notice to the following effect :

'The Stock inside the depot belongs to and is the property of Government.'

Paragraphs 2 and 3 of the preamble to the agreement reveal clearly the policy underlying the storage of food-grains. Government were concerned with the fact that there were chronically deficit areas where there was acute shortage of food-grains like rice and paddy and to meet the need of the people of those areas Government adopted a policy of purchasing rice and paddy from surplus areas and stocking them at selected places to facilitate their despatch to deficit areas from time to time. The storage agent was required to keep the food-grains entrusted with him by Government in safe custody at a godown or depot to be approved by the Collector and to despatch the same to various places in accordance with the orders of the Collector issued from time to time. It is therefore

obvious that removal of the food-grains from such depots, knowing them to be Government property, without the authority of the Collector would not only amount to a breach of the agreement but would also prevent regular inspection of the stocks of food-grains in the depots by inspecting authorities and also affect the prompt despatch of food-grains to deficit areas, as directed by the Collector from time to time. Thus the removal of food-grains from the depots would be an unsocial act which will have the far reaching effect of preventing the prompt supply of such an essential commodity like rice or paddy to deficit areas where due to certain sudden calamities like floods or drought it becomes necessary to despatch foodgrain very promptly. This aspect must be prominently borne in mind while considering the question as to whether the act alleged to have been committed by the petitioner amounts to a technical offence or should be viewed more seriously.

3. The facts found concurrently by both the lower Courts which were, quite properly, not challenged by counsel for the petitioner, may now be summarised briefly. The petitioner appears to have had some misunderstanding with Arakhit Patra due to the partnership business and other matters. Arakhit Patra had a depot at Balugan near Banpur in which Government paddy and rice were stored, and kept in charge of one Sanatan Swain who was his depot officer.

On 10-10-1958 when Arakhit Swain was away at Puri and Sanatan Swain also had gone away to Khurda, the petitioner was said to have removed huge stocks of food-grains from the said depot to his own house at Banpur by bullock carts. There was an allegation that he sent some of the food-grains by truck to Berhampur, but evidence on this part of the prosecution case is not satisfactory. A relation of Arakhit named Arjun (P. W.) on noticing this conduct of the petitioner immediately informed Arakhit on the phone and the latter contacted the Officers of the Supply department at Puri and then hurried to Balugan. Arakhit noticed that large quantities of food-grains had been removed from the depot. He immediately gave a written report to the Sub-divisional Officer, Khurda who was then camping at Balugan. That officer directed the local Police to register a case under Section 408, I. P. C. An F.I.R. was drawn up on 11-10-58 at 10 p.m. In the meanwhile the Civil Supplies Officer Puri Sri G. C. Nayak (P. W. 14) had hurried to the spot, inspected the depot and finding that large quantities of rice and paddy had been

removed, he went to the house of the petitioner at Banpur and questioned him as to why he removed Govt. stocks of food-grains from the depot and asked him to return the same. The petitioner then told him bluntly that he would not return the stocks of rice and paddy unless Arakhit settled his accounts with his family. The Civil Supplies Officer could not do anything more except to submit a report. (Ext. 19) to the Collector on 14-10-58. Meanwhile the Sub-Inspector of Police of Banpur (P. W. 10) took up investigation of the case and searched the house of the petitioner at 12 midnight on 11-10-58, and recovered about 350 bags of foodgrains from there. On 13-10-58 8 more bags of rice were recovered on production by the petitioner himself. Thus almost the entire quantity of food-grains taken away by the petitioner from the depot was recovered by the Police.

4. Mr. Narasaraju, eminent counsel for the petitioner, urged that no offence under Section 403, I. P. C. can be said to have been committed on the facts of the case, because the petitioner did not have the necessary dishonest intention either to misappropriate or to convert to his own use, the food-grains removed by him from the depot his sole intention being only to coerce Arikhit Patra to finally settle his accounts with the petitioner.

Alternatively he urged that even if an offence was made out, it would be only technical offence for which a severe sentence of six months' rigorous imprisonment was not justified.

5. The removal of the foodgrains from the depot having thus been well established, the first question for consideration is whether the petitioner acted dishonestly in removing food grains and keeping them in his house. I have already shown that the petitioner is not a stranger but a near relation of Arikhit Patra who was not only his partner in business but was also working as his agent on remuneration. He had also appeared before the Civil Supplies Officer, Puri (P. W. 14) on behalf of Arikhit Patra in connection with submission of returns and other matters connected with the depot. Furthermore he used to sign for Arikhit Patra and make entries in the Stock Book (Ext. 4-10).

Again from the answers elicited from the Inspector of Supplies (P. W. 13) during cross-examination by the petitioner's lawyer it is established that the notice

described in column 4 of the Agreement was affixed at the depot. It may thus be taken as well established that the petitioner was fully aware that the stock of food-grains in the depot at Balugan was the property of Government and he was also fully aware that the stock must be kept in depot with a view to facilitate inspection and speedy despatch to various deficit places on receipt of orders from the Collector. It was with this knowledge that the petitioner deliberately removed the food-grains to his house and when the Civil Supplies Officer (P. W. 14) asked him to return the same, the next day, he flatly refused, saying that Arikhit should first settle his accounts with him.

5a. Under the Penal Code an act is said to be done 'dishonestly' if it is done with the intention of causing wrongful loss to another person. The expression 'wrongful' loss has been defined in Section 23. The second paragraph of that Section says : 'A person is said to lose wrongfully if such person is wrongfully kept out of any property'. Here by removing the food-grains from the depot to his own house and telling P. W. 14 that he would not return the same the petitioner intentionally kept Arikhit out of property which had been kept in his charge by Government. He thereby caused' wrongful loss to Arikhit and his act of removing the foodgrains to his own house would amount to dishonest removal within the meaning of Section 403 of the Indian Penal Code.

6. It was urged however that there was no appropriation by the petitioner inasmuch as the goods were merely kept in his house for the purpose of coercing Arikhit Patra to settle up his accounts with him and no attempt was made either to sell them or appropriate the proceeds or even despatch them elsewhere. The prosecution version that some of the foodgrains were despatched to Berhampur by truck has already been shown to be not believable. In my opinion however the act of appropriation is completed as soon as the goods were removed from the depot and kept in his house by the petitioner with the intention of preventing Arakhit Patra from having any control over the same. There may be appropriation of goods by a person even though they are not converted to his own use, and there appropriation has taken place with dishonest intention in favour of a wrong person it must be held to amount to dishonest misappropriation. The question of good faith cannot possibly arise here because the petitioner knew full well that the

goods' belonged to Government not to Arakhit.

7. The next question for consideration is whether the offence is a technical one for which a nominal sentence would suffice. I find however that there is no extenuating circumstance in favour of the petitioner. He took advantage of temporary absence of Arakhit Patra and Sanatan Swain and removed the foodgrains. But for the vigilant action of Arjun Patra in informing Arakhit Patro about the occurrence on the phone and the latter's informing the authorities immediately the foodgrains might have been secreted away. Moreover the conduct of the petitioner in flatly refusing to return the goods to the Civil Supplies Officer (P. W. 14) when the latter went to his house the next day and demanded their return is an aggravating circumstance. It is true that by about midnight of 11-10-1958 the Police took charge of the foodgrains after search and recovery of the same from the petitioner's house, but the petitioner cannot claim the benefit of this prompt action on the part of the Police and plead that the goods were in his possession only for a short time. The speedy recovery of the grains was not due to any voluntary act on his part. Had he returned the goods when asked to do so by the Civil Supplies Officer, his action might have been viewed somewhat leniently.

His motive is quite irrelevant. It may be that he wanted to coerce Arakhit into settling accounts with his family thinking that by removing large quantities of Government Stock from the depot Arakhit will be so much unnerved that he would settle up his dues. But the criminal Court is concerned not with the ulterior motive but with his intention at the time of removal, and it has already been shown that, having regard to all the circumstances, his intention was to cause wrongful loss to Arakhit, by depriving him of his control over the stock of food-grains held by him as Storage Agent in the depot.

8. I am therefore of the view that the offence must be viewed somewhat seriously, especially as it would have caused serious dislocation to the procurement and distribution scheme of the Government of Orissa in respect of such an essential commodity as rice, but for the prompt action taken by the authorities concerned. At the same time a sentence of six months' rigorous imprisonment seems somewhat severe.

While therefore maintaining the conviction of the petitioner under Section 403, I. P. C., I reduce the sentence to three months' rigorous imprisonment. Subject to this reduction in the sentence the revision petition is dismissed.

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