

Uday Narayan Panda Vs. State

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Court : Orissa

Decided On : Nov-07-1977

Reported in : 45(1978)CLT215; 1978CriLJ1394

Judge : K.B. Panda, J.

Appellant : Uday Narayan Panda

Respondent : State

Judgement :

ORDER

K.B. Panda, J.

1. The petitioner has been convicted under Section 406, I.P.C. and has been sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs. 5,000/- in default to undergo rigorous imprisonment for another four months by the S. D. J, M, Karanjia which has been confirmed in appeal.

2. The prosecution case in brief is thus. The petitioner admittedly worked as the Secretary of the Karanjia Cooperative Circle Government Employees Co-operative Society from 14-9-1974 to 25-9-1974, i. e., for ten days. He made over charge to his successor one Sri A.R. Mohapatra (P. W. 4) on 25-9-1974 by virtue of a resolution of the Board of Directors dated 23-9-1974 as it was found that the petitioner was a member of two of the Societies which is against rule. It was

alleged by the prosecution that the petitioner made over charge of his office to P. W. 4 excepting cash in hand amounting to Rs. 1,814.15 p. Being asked to make over the cash to P. W. 4 the petitioner stated that he had done so to the President (P. W. 5) the informant. The petitioner repeated this before P. W. 5 but that not being a fact, P. W. 5 lodged information (Ext. 12) at Karanjia P. S. about the misappropriation of the amount by the petitioner on 26-9-1974. Consequently P. W. 7 the Officer-in-Charge of Karanjia P. S. registered a case under Section 406, I.P.C. and finally charge-sheeted the petitioner resulting in his conviction as aforesaid.

3. The petitioner in his statement admitted that he was Secretary of the Society during the period in question. But asserted that the sum of Rupees 1,8,14.15 p. was not with him, but with the President who according to the rules is the custodian of the cash. He however admits under Ext. 6 series that the entries in the Cash Book of the Society between 15-9-74 and 25-9-74 have been made by him and that he had taken charge of the cash of those days.

4. The prosecution examined 7 witnesses and the defence one. P. W. 1 is the Vice-President of the Society, P.W. 2 is the witness to the seizure of the documents, P. W. 3 is a Member-Director of the Society, P. W. 4 is the successor of the accused, P. W. 5 is the President of the Society, P. W. 6 is the Secretary at the time of trial and P. W. 7 is the Investigating Officer.

D. W. 1 is a temporary peon of the Society.

5. On an assessment of the oral and documentary evidence the learned Court below came to the finding that whatever may be the rules, the cash was being handled by the Secretary and not by the President. The alleged defalcated cash of Rs. 1,814.15 p. was similarly with the Secretary which he had not made over to the President and that it is he who has misappropriated the amount and so convicted him.

6. It was contended on behalf of the petitioner that under law the accused petitioner was not supposed to be the custodian of the cash (See Rule 41 of the Orissa Co-operative Societies Rules, 19G5) that the prosecution has failed to

prove entrustment, and that the entries in the Cash Book rather show that P. W. 5 was the custodian of the cash and not the petitioner.

7. The pith of the argument centred round Rule 41 of the Orissa Co-operative Societies Rules which provides thus:

41. Officer who will maintain Account Books etc. The Committee shall specify which of the officers of the society shall:

(a) keep books of accounts:

(b) keep custody of cash and stores;

(c) keep other books and registers and

(d) prepare returns and statements.

Provided that person charged with keeping of accounts shall not be in charge of cash except under a special or general order of the Registrar.

Relying on this it was strenuously argued that the Secretary was keeping accounts and therefore without any special order of the Registrar he was not put in charge of the cash. The presumption, therefore, is that it was not the Secretary who was in charge of the cash. That presumption has not been rebutted. Whatever might be the rules, the facts of a particular case have to be looked into. In the instant case for the defence to succeed has undoubtedly to make out a case as though in fact the custodian of the cash was the President and not the Secretary. But in that it has signally failed. Basing on a statement of P. W. 1 to the effect that-

During the daily sale of the Society I do not remain present. Once I had verified the stock and cash. At that time some amount was with the Secretary and he told that some amount was with the President and after bringing the same from him had shown me. It was during the period of Brajabandhu Mohapatra. I had verified on 1-7-1974. I endorsed it in the cash book (Ext. B). According to my report on that day, cash was with the President.

it was argued that the defence is borne out by this evidence. Also from the evidence of P. W. 3 the following was pointed out,

I do not know whether there is any resolution or any bye-law that the Secretary will keep cash of the Society, But from the very beginning, the Secretaries have been doing this. I have not seen where the Secretary was keeping money.

I fail to understand how these help the defence. Rather they undermine the defence. So far as P. W. 4 the successor of the accused is concerned, it was argued that he could not say where the accused was keeping cash. This also does not help the defence in any way. So far as P. W. 5 is concerned, he is the informant who stoutly denied to have received any cash from the Secretary. His evidence is that he sometimes goes on tour. If that be so, it is difficult how he would be receiving cash at the end of the day's transaction. Further from Ext. 6 series it is clear that the daily transactions were being made by the Secretary petitioner. As they indicate, some days transactions on the expenditure side are much more than what is on the income side. Thus unless he was in possession of the cash it was difficult for him to meet the expenses. This is a factor for consideration and that weighs against the defence. Again the Cash Book shows that several days' transactions are put before the President on a single day and his signature obtained. Much was made of an endorsement (Ext. A) in the Cash Book of B. Mohapatra the predecessor of the petitioner, But that is utterly barren of substance inasmuch as it only reiterates what the rule says and there was no need to make mention of it in the cash book. P. W, 5 only admits that at the end of the Co-operative year that is 1st July, 1974 he deputed staff to different Societies for cash verification and not on other days. He seems to be consistent in his stand. It was suggested to P. W. 5 vaguely that out of grudge he put the petitioner in this difficulty. But that makes no sense inasmuch as the petitioner himself laid blame on the President. P. W. 6 supports the prosecution case but it is alleged that by that time the rules had been amended and so need not be discussed. Much was made of the fact that no witness was examined to state as to where the accused was keeping cash. It is to the special knowledge of the petitioner and therefore it is not expected that a witness could be in a position to depose to that effect.

8. Finally it was contended that the prosecution has failed to establish entrustment of the cash which is more consistent with the defence pleas and as laid down in : AIR 1953 SC478 (C.M. Narayan v. State of Trav-Co.) the prosecution has failed to establish the two ingredients of offence under Section 406, I.P.C. in that it has failed to prove entrustment as well as the manner of dishonest misappropriation of the property. The Cash Book itself and the oral evidence prove beyond doubt that it was the Secretary who was dealing with cash and while making over charge he has not made over the cash to the President. Therefore, the entrustment is not only admitted but it is proved; so far as the manner of misappropriation it is none of the business of the prosecution to establish as to the mode in which the petitioner appropriated the sum. Thus the case against the petitioner has been well established and his conviction and sentence in the circumstances seem justified and proper calling for no interference.

9. As such the appeal is dismissed. The appellant has to surrender to the bail bond to serve out the unexpired period of sentence.

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