

Bhubaneswar Das Vs. State of Orissa

Bhubaneswar Das Vs. State of Orissa

SooperKanoon Citation : sooperkanoon.com/532829

Court : Orissa

Decided On : Nov-06-1984

Reported in : 1984(II)OLR1073

Judge : J.K. Mohanty, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 197(1); Orissa Grama Panchayat Act, 1964 - Sections 138(1)

Appeal No. : Criminal Revision No. 555 of 1981

Appellant : Bhubaneswar Das

Respondent : State of Orissa

Advocate for Def. : Jairaj Behera, Addl. Standing Counsel

Advocate for Pet/Ap. : S.D. Das and Ashok Mohanty

Disposition : Petition dismissed

Judgement :

J.K. Mohanty, J.

1. The petitioner was the Secretary of Bajusold Grama Panchayat. He was appointed as such in the year 1967 and he continued till 1970. In his capacity as the Secretary of the Grama Panchayat, he was entrusted with the funds of the

Graroa Panchayat. He was also the custodian of the cash book and other registers. The petitioner was operating' the pass book (Savings Bank Pass Book No. 65198) of the Grama Panchayat from 5. 1. 1958. It is alleged that on 24. 2. 1969 he withdrew a sum of Rs. 4,000/-from the pass book, but did not enter the same in the cash book. It was only on 30. 6 1969 that the petitioner entered in the cash book the deposit of Rs. 3,600/- for payment of certain loan and on the said date he had shown to have withdrawn Rs. 4,000/- from the pass book. During inspection the Subdivisional Officer, Parlakhemundi detected the said irregularity. He also found that there was no challan in respect of the deposit of Rs. 3,530/- towards pisciculture loan. Subsequently it was found that the petitioner instead of repaying the loan has misappropriated the said amount. It is further alleged that between 10.4.1969 and 25.4.1970 a sum of Rs. 423/- was shown in the cash book and acquittance roll to have been paid to the two sweepers of the Grama Panchayat. But actually they had not received the amount. So the petitioner was prosecuted for misappropriating a total sum of Rs. 4,020/-.

2. The plea of the accused-petitioner was that in his capacity as the Secretary of the Grama Panchayat, he withdrew a sum of Rs. 4,000/-from the pass book on 24. 2. 1959. But the same was paid to the Sarpanch (P.W. 3). He had not deposited Rs. 3,600/- towards pisciculture loan on 30.6.1969. He has merely entered the same in the cash book on the verbal direction of the Sarpanch. He has also taken the plea that the Sarpanch was the custodian of the cash, cash book and pass book etc., of the Grama Panchayat and he was working under the direction of the Sarpanch from time to time.

3. Prosecution examined eleven witnesses and proved several documents in support of the case. On behalf of the defence, two witnesses were examined. The learned Magistrate, after considering the evidence on record, found the petitioner guilty under Section 409, IPC, for misappropriating Rs. 3,600/-and sentenced him to undergo R.I. for six months and to pay fine of Rs. 1,000/-, in default R. I. for one month. He, however, exonerated the petitioner from the charge of misappropriating a sum of Rs. 420/-. In appeal before the Additional Sessions Judge, Berhampur, the order of his conviction and sentence was confirmed, Hence this revision.

4. Mr. Das, learned counsel appearing for the petitioner, submitted as follows :

That the petitioner as the Secretary of the Grama Panchayat is a public servant and he cannot be prosecuted without valid sanction from the competent authority as required under Section 197, Cr. P. C. Under Section 138 of the Orissa Grama Panchayat Act (for short the 'Act'), no suit or other legal proceeding shall be instituted against any officer or other employee of the Grama Panchayat or against any person acting under his direction for anything done or purported to have been done under this Act, until the expiration of one month next after notice in writing has been delivered to him or left at his office or place of residence explicitly stating therein the cause of action; the nature of the reliefs sought, the amount of compensation, if any, claimed and other details as specifically mentioned in that section. In this case, this provision has not been complied with. So the prosecution is bad in the eye of law. In support of his contention, he relied on a decision reported. In 1973 Cr. L.J. 962 (Madhab Prasad Misra and Ors. v. State of Orissa and Anr.). Moreover the evidence adduced on behalf of the accused-petitioner that the money was paid to the Sarpanch has not been considered in the proper perspective.

5. It is not disputed that the petitioner as the Secretary of the Grama Panchayat was a public servant. However, the claim of the petitioner that without a valid sanction under Section 197, Cr. P. C., the prosecution is invalid cannot be accepted. It is now well settled that if the acts complained of are so integrally connected with the duties attaching to the office as to be inseparable from them, then sanction under Section 191(1), Cr.P.C., would be necessary; but if there was no necessary connection between them and the performance of those duties, the official status furnishing only the occasion or opportunity for the acts, then no sanction would be required. The result then is that whether sanction is necessary to prosecute a public servant on a charge of criminal misappropriation will depend on whether the acts complained of hinge on his duties as a public servant. If they do, then sanction is requisite. But if they are unconnected with such duties, then no sanction is necessary. The above principle has been laid down in a decision reported in A. I. R. 1955 S.C. 309 (Amrik Singh v. State of Pepsu). In the present case, the clear and categorical finding of both the Courts below is that the

accused-petitioner has withdrawn Rs. 4,000/- on 24.2.1969 as per entry (Ext. 1/3) in the pass book (Ext. 1). The petitioner has not deposited the amount. His plea is that he had handed over the money to the Sarpanch. On 30.6.1969 the petitioner made an entry (Ext. 16/10) in the cash book regarding payment of Rs. 3,600/- towards pisciculture loan which is not supported by any voucher and, in fact, the payment has not been made. Both the Courts below have concurrently held that the petitioner has misappropriated the same. D. Ws. 1 and 2 have stated that the amount was paid to the Sarpanch. It is submitted that this evidence has not been taken into consideration by the Courts below. But I find that the trial Court has considered the evidence of D.Ws. 1 and 2 and has disbelieved them. D.W. 1 was a peon of the Grama Panchayat whose services have been terminated by the Sarpanch (P.W. 3). Moreover, regarding the actual payment, his evidence is not trustworthy. D.W. 2 was a bailor for the accused-petitioner. He has stated that he has not seen the actual payment. I have perused the evidence of these two witnesses and I see no reason to differ from the finding of the Courts below. Admittedly the act of misappropriation of this amount is not in any way connected with the duties, of the petitioner. So the provision of Section 197(1), Cr.P.C., is not attracted. The next contention is that one month's notice should have been served on the petitioner before launching the prosecution as required under Section 138(1) of the Act. Under Section 138, no legal proceeding can be instituted against any officer or other employee of the Grama Panchayat for anything done or purported to have been done under this Act, until the expiration of one month next after notice in writing has been delivered to him or left at his office or place of residence explicitly stating therein the cause of action, the nature of the reliefs sought, the amount of compensation if any claimed and other details as specifically mentioned in that section. But in this case the misappropriation of Rs. 4,000/- by the petitioner cannot be said to have been done or purported to have been done under the Act. So, no notice under Section 138 of the Act was necessary. The decision reported in 1973 Cr.L.J. 962 has no application to the present case as in that case it was held that the act complained of (cutting of the trees and auctioning them) against the Sarpanch could be said to have been done or purported to have been done in performance of his official duty under the Act.

6. After hearing learned counsel for both sides and considering the facts and circumstances of the case I am of the view that the prosecution has been able to prove the case against the accused-petitioner beyond reasonable doubt. So his conviction under Section 409, I.P.C., is justified. Regarding the sentence, learned counsel for the petitioner submitted that the petitioner is a fairly old man and the case is going on since 1970 and fourteen years have elapsed in the mean time. So he may not be sent to jail after so long a period. Considering the facts and circumstances of the case I am of the view that the period of imprisonment already undergone along with a fine of Rs. 4, 000/-, in default to undergo R. I. for three months will meet the ends of justice. Out of the fine, if realised, a sum of Rs. 3, 600/- shall be paid to the Grama Panchayat at an early date

7. In the result, the revision is dismissed subject to the modification in sentence as indicated above.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com