

Minaketan Das Vs. State of Orissa

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Court : Orissa

Decided On : Aug-19-1991

Reported in : 73(1992)CLT312; 1991(II)OLR364

Judge : A. Pasayat, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 405 and 408; [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 387

Appeal No. : CrI. Rev. No. 218 of 1987

Appellant : Minaketan Das

Respondent : State of Orissa

Advocate for Def. : Addl. Standing Counsel

Advocate for Pet/Ap. : S.P. Misra, A.K. Baral, M.R. Khatua and R.R. Mohanty

Judgement :

A. Pasayat, J.

1. Petitioner calls in question his conviction Under Section 408 of the Indian Penal Code, 1860 (in short 'IPO) and sentence of fine of Rs. 5,000/-, in default six months' rigorous imprisonment, in addition to sentence till rising of Court awarded by the learned Additional Chief Judicial Magistrate, Cuttack and affirmed in

appeal by the learned Additional Sessions Judge, Cuttack.

2. Petitioner stood charged for having allegedly committed offences under Secs. 408/467/477-A, IPC. He was serving as Secretary of Narasinghpur Service Co-operative Society since 197Q. The allegations were that he had misappropriated cash, pesticides, fertilisers, valuing Rs. 8,256.37 paise during the period from 1-7-1974 to 30-6-1975. He also forged counterfoils of certain receipts and made false entries in the cash book. On these accusations, investigation was taken up, charge-sheet was submitted and the petitioner faced trial.

3. Prosecution examined 27 witnesses to further its case while petitioner examined one Sukadeb Samal, who was one of the Directors of of the concerned society. His plea was that he was never in charge of the cash or fertilisers, pesticides, cloth etc of the society. The President, the Treasurer and the Assistant Secretary of the society were collecting loans from the loanees and were in charge of the documents and the petitioner was never in charge of any document or article and he did not have exclusive control over the cash of the society.

4. The learned Additional Chief Judicial Magistrate acquitted the petitioner of the charges under Secs. 466 and 477-A. IPC, but convicted him Under Section 408, IPC as aforesaid. The conviction and sentence were affirmed in appeal.

5. According to the petitioner, in order to sustain a conviction under Sec, 408, IPC, entrustment has to be proved and this having not been established the conviction is not maintainable. The specific plea of the petitioner is that the evidence of PWs 1, 2, 3, 21, 25,26 and 27 on which reliance has been placed by the trial Court does not further the case of the prosecution, and on the contrary it goes to show that the petitioner had no exclusive control over the property of the society. It is also submitted that various contentions raised before the lower appellate Court were not considered and by a short cryptic order the matter was disposed of.

The learned counsel for the State, however, submits that the matter has been elaborately dealt with by the learned trial Magistrate and entrustment has been proved. According to him, when conclusions are affirmed elaborate reasoning is not required to be given by the appellate Court.

6. In order to establish an offence Under Section 408, IPC, it has to be proved 'that (i) the accused was employed as a clerk or servant of the person reposing trust in him; (ii) the accused in the said capacity, was entrusted, in any manner with the property in question or with domain over it; and (iii) the accused dishonestly misappropriated that property, or converted it to his own use, or used it, or disposed of it, or wilfully suffered some other person so to do, in violation of any direction of law, prescribing the mode, in which such trust was to be discharged, or any legal contract, express or implied, which he had made, touching the discharge of such trust. This is apparent from Section 405 which defines criminal breach of trust. The onus lies on the prosecution to prove entrustment by adducing cogent evidence. It is not, however, necessary to prove that any specific sum of money, received on particular dates from particular persons, has been dishonestly misappropriated. Once it is proved that the money was entrusted to a person, the burden rests on him to show as to what he did with the money and if he completely denied having received money the presumption is that he misappropriated or converted it to his own use. In a prosecution for criminal breach of trust, direct evidence of dishonest conversion to the accused's own use of the money, entrusted to him, can seldom be found and such dishonest intention and conversion have to be inferred from relevant facts and circumstances. The petitioner has made copious reference to the evidence of several witnesses to show that there was no entrustment as alleged and he had no authority to collect money as alleged. I find that the appellate Court which is for all practical purposes last Court for dealing with factual aspect did not make an elaborate analysis of the various contentions raised and the evidence on record. Entrustment has to be established with reference to facts and if there is denial of entrustment, the Court has a duty to scan the evidence to find out whether entrustment is enfeoffable, being a logical conclusion from the evidence on record. Though much stress was laid by the petitioner on the evidence PWs. 1 to 3, 21, 25, 26 and 27 to combat the plea of the prosecution, the appellate Court only referred to the evidence of PW 26 and came to conclude that the guilt of the petitioner was not ruled out. While exercising revisional jurisdiction, therefore, it has become difficult to come to a definite finding about the guilt or otherwise of the petitioner, I am, therefore, of the opinion that the matter should be re-heard by the appellate Court. He shall deal with the

contentions of the petitioner with reference to evidence on record and pass elaborate and reasoned order.

7. A reference to Section 387 of the Code of Criminal Procedure, 1973 (in short 'the Code') is desirable in this context. The provision enunciaies the general rule that the provisions in Chapter XXVII of the Code relating to judgments shall apply to appellate judgments 'so far as may be practicable'. It must state points for determination, the decision on each of them, with reasons; as required in case of judgments of original Courts in terms of Section 354 of the Code. The judgment must show that the appellate Court has applied its mind to all facts and circumstances from all aspects, It is not enough to set aside mechanically arguments advanced by both sides without setting out the reasons why any of them is accepted or rejected. It must contain a critical appraisal of which evidence and give dear reason for conclusions arrived at. [See (1969) II SCWB 12 ; K. C. Aggarwal v. Delhi Administration], Where the appellate Court agrees with the judgment of the original Court and dismisses the appeal, a lengthy or elaborate judgment may not be passed; nevertheless, it must be independent and self-contained.

8. The appellate order is, therefore, set aside. The matter is remitted back to the appellate Court for fresh disposal in accordance with law. The criminal revision is accordingly disposed of.

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