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Bansidhar Swaln Vs. State

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Court : Orissa

Decided On : Jul-17-1992

Reported in : 1993CriLJ838; 1992(II)OLR206

Judge : D.M. Patnaik, J.

Acts : Indian Penal Code (IPC), 1960 - Sections 409

Appeal No. : Criminal Miscellaneous Case No. 835 of 1990

Appellant : Bansidhar Swain

Respondent : State

Advocate for Def. : J.M. Mohanty, Addl. Standing Counsel

Advocate for Pet/Ap. : S.B. Das, Adv.

Disposition : Case allowed

Judgement :

D.M. Patnaik, J.

1. Aggrieved by the order dated 22-6-1990 of the Sub-Divisional Judicial Magistrate, Anandapur, taking cognizance : an offence Under Section 409 I PC, the petitioner has approached this Court invoking the inherent power of the Court Under Section 482 Cr. P. C.

2. The Executive Engineer, Anandapur Barage Division, lodged an information with the Officer-in-charge, So Police Station in the district of Keonjhar alleging that the present petitioner while working as the Assistant Engineer at the relevant time along with another Executive Engineer and Junior Engineer committed an offence of criminal breach of trust in respect of different amounts mentioned in the FIR dated 19-3-1989.

The FIR discloses that an amount of Rs. 50,00,000/- was allotted to Anandapur Barage Division, Bidyadharpur for utilising the fund for the purpose of the work in the said division during 1987-88. The Executive Engineer in his FIR pointed out that the petitioner in his capacity as an Assistant Engineer executed unauthorised and unidenti fied works in respect of the fund granted for draught work. He made payment without proper instruction, supervision and check-measurement of work in respect of Rs. 1,93,142/- meant for 'Bed Clearance of Anandapur Main Canals', incurred expenditure of work for which there was no estimate, made payment on measurements of the different works and consequent payments thereafter without taking levels. Besides all these, it was alleged that there was an unauthorised and excess expenditure in respect of another sum of Rs. 1,22,946/-. The details of the irregularities in respect of the above amount was mentioned in the FIR which is not necessary for this Court to mention in detail. In respect of the work for Rs. 4,12,291/- on measurement the actual work executed was for only for Rs. 2,30,693/-. Therefore, there was an allegation that the petitioner was responsible for excess expenditure of Rs. 1,93,142/-.

After giving the details of the amount so irregularly and/or unauthorisedly spent, the Executive Engineer in his concluding para of the FIR mentioned that during the execution of the above work, the petitioner misutilised the government money violating Codal Procedures'. The petitioner acted illegally and the above amount entrusted to him was spent illegally i. e. without taking levels, without obtaining necessary sanction of estimates, not following the rules and the guide- lines of the department and not obtaining the signature of the Contractor in the measurement book etc.

3. Mr. S. B. Das, learned counsel appearing for the petitioner, submitted that in the absence of any allegation of entrustment of funds to the petitioner, the question of misappropriation does not arise. Mr. Das drew the attention of this Court to the facts stated in the FIR and submitted that the FIR Itself does not disclose any misappropriation whatsoever.

Mr. J. M. Mohanty, learned Additionai Standing Counsel appearing for the State, on the other hand, submitted that there has been misappropriation of huge government money and taking of cognizance by the Magistrate is not in any way bad in law.

4. I have carefully gone through the FIR and the contents therein.

The petitioner was working as an Assistant Engineer. Obviously, therefore, he was not the person who was in charge of the execution of the work though he could be said to be only a supervising officer. The over all responsibility for the execution of the work, in terms of the contract was on the Executive Engineer. There is not a syllable in the FIR which speaks out that any money was at any time entrusted to the petitioner in his official capacity as the Assistant Engineer for payment to the Contractor or anybody else. The question of entrustment is not prima facie found in the FIR. If there is no entrustment, the question of misappropriation does not arise.

5. It has been authoritatively held that in the absence of any mens rea no criminal liability can be fastened for the purpose of holding someone guilty. For an offence the evidence adduced must establish beyond reasonable doubt mens tea on the part of the accused. I may profitably refer to two decisions on the point as mentioned below in the case reported in 1972 Crl. L. J. 849 Union of India and Anr. v. Major Khanna and Anr., two military officers who were proceeded for having committed an offence of fraud and cheating were found to have purchased articles for Defence on payment of higher prices than what was quoted for articles. The apex Court held that this could be said that there was gross irregularity in not adhering to the official procedure but this alone would not invite criminal liability unless there was something else from which it could be said that an offence of cheating had been committed by them.

The case reported in AIR 1974 SC 1560, Anil Kumar Base and Anr. v. State of Bihar, was one Under Section 420/34 IPC. This was a case of cheating by the Cashier of a Medical College Hospital, in para 1.2 of the judgment their lordships held that the evidence adduced at the highest showed that it was a failure on the part of the Accountant to perform his duties or to observe the rules of procedure laid down in the Duty Chart in a proper manner and might therefore be an administrative lapse on his part about which their. Lordships were not required to pronounce any opinion. There Lordships further observed that in the absence of anything more it would not be correct to impute any guilty intention on the part of the appellant which intention was an essential ingredient of the offence of cheating Under Section 420, IPC.

Relying on the above two decisions, I am satisfied that there is no case of misappropriation disclosed in the FIR. The allegations in the FIR merely show that the petitioner acted without following the official procedure in respect of the execution of the work.

6. For the reasons stated above, the order of the Magistrate taking cognizance is quashed. This Misc. Case is allowed.

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