

Netrananda Sahu Vs. the State of Orissa

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Court : Orissa

Decided On : Oct-28-1992

Reported in : 1993CriLJ1272

Judge : D.M. Patnaik, J.

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

Appeal No. : Criminal Revision No. 128 of 1989

Appellant : Netrananda Sahu

Respondent : The State of Orissa

Advocate for Def. : Dilip Misra, Addl. Standing Counsel

Advocate for Pet/Ap. : Manoj Misra, Adv.

Disposition : Petition allowed

Judgement :

ORDER

D.M. Patnaik, J.

1. The question for decision in this revision is, whether the conviction of the petitioner and sentence to undergo rigorous imprisonment for one year and to pay a fine of Rs. 500/- in default, to undergo R.I. for two months more, as awarded by

the Judicial Magistrate, First Class, Laxmipur, and affirmed by the Additional Sessions Judge, Jeypore, in appeal for an offence punishable under Section 408 of the Indian Penal Code shall be maintained.

2. The petitioner, who was admittedly a salesman in the Kakiriguma Large Size Multipurpose Co-operative Society Limited (for short, the 'Kakiriguma LAMPS') face trial in the court below for misappropriation of a total sum of Rs. 96,510.77 paise (vide F.I.R., Ext. 18) for the period 1978-79, 1980-81, 1981-82 and 1982-83. It was alleged, in his capacity as the Secretary of the said LAMPS, he was entrusted with various consumers articles for the purpose of sale, transaction to different societies, but he could not account for the shortage of the articles worth the above amount.

The trial court, on evidence on record did not find the petitioner guilty for misappropriation of the amount for the years as aforesaid except the year for 1982-83. He was thus found guilty for misappropriation of Rs. 5,162.74 paise relating to the period 1982-83 alone and for this period are the amount concerned, he has been found guilty and has been convicted as mentioned above.

It is to be seen whether the evidence on record bears out any offence in respect of the above amount.

3. The courts below after taking into account the evidence of PWs 3 and 4 accepted the prosecution case of entrustment and the failure on the part of the petitioner not to have accounted for the shortage of the said amount.

I have carefully gone through the evidence of these witnesses.

P.W. 3 is the Auditor, who audited the account of the year in question. The Appellate Court in para 9 of the judgment held that PW3 stated in his evidence that there was balance stock of Rs. 5,162.74 paise with the accused and that the accused could not account for the said stock valued at the above amount. The court further held that the evidence of PW 3 had gone unchallenged. I find, there has been a wrong appreciation of the evidence of PW 3 by the lower appellate court.

No doubt, the petitioner has not challenged the testimony of cross-examination of PW 3 but, that does not necessarily indicate that the prosecution has been able to bring home through this witness the offence of original breach of trust. By not challenging the testimony, he has no doubt admitted the fact of entrustment, but the rest of the ingredients of the offence i.e., the conversion of the articles or value thereof by the petitioner for his own use and secondly that, such conversion was with a dishonest intention has not been established. Admittedly, prosecution has not led any evidence that at any time there was any physical verification of the stock in question. PW 3 did not state anything about the physical verification and in fact, his evidence does not bring out any such verification made by him. Then, again, this witness did not state in his evidence as to when and at what stage the petitioner was asked to explain the shortage of the articles in question and that, on being so asked he failed to explain the shortage. In fact, there is no evidence on record that the petitioner was asked to explain about the shortage. That apart, PW 3 stated in his evidence that from the year 1977 to 1983 he was working as the Co-operative Extension Officer at Lakhpur Block. During his tenure, he admitted that, the petitioner was working as the salesman of the above LAMPS. He no doubt stated to have physically verified the stock but, stated that he did not remember, if he detected any shortage. On the face of such evidence, the question of misappropriation of consumers' articles or the value thereof does not arise and both the courts below have gone totally wrong in appreciating the case in its proper perspective.

Further, the Judicial Magistrate, however, with regard to the period from 1-7-1981 to 30-6-1982 exonerated the petitioner from the liability of Rs. 81,000.74 paise the amount which was alleged to have been misappropriated by the petitioner and this exoneration by the Magistrate was, because the prosecution failed to prove the physical verification of the stock for that period. This method of appreciation of evidence on the basis of which the petitioner was found not guilty for the misappropriation in respect of the said amount, should also have been applied for appreciating the petitioner's case so far as it related to the period in question. Adoption of different standard of appreciation by the Magistrate for the same nature of case has resulted in total miscarriage of justice, and therefore the order is liable to be set aside.

4. In the result, the revision petition is allowed. The orders of conviction and sentence of the courts below are set aside Bail bonds executed, if any, stand discharged.

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