

Dhanpal Singh Vs. the State

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Court : Punjab and Haryana

Decided On : Dec-08-1969

Reported in : AIR1970P& H514; 1970CriLJ1568

Judge : A.D. Koshal, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 21

Appeal No. : Criminal Revn. No. 1087 of 1968

Appellant : Dhanpal Singh

Respondent : The State

Advocate for Def. : H.N. Mehtani, Asst. Adv. General

Advocate for Pet/Ap. : N.C. Jain, Adv.

Disposition : Reference allowed

Judgement :

A.D. Koshal, J.

1. The petitioner was convicted by a Judicial Magistrate at Karnal of an offence under Section 409 of the Indian Penal Code and was sentenced to rigorous imprisonment for a year and a fine of Rs. 50/- or, in default of payment of fine, to further rigorous imprisonment for one month. His appeal having been dismissed by

Shri S. R. Seth. Additional Sessions Judge, Karnal, on the 8th of October, 1968, he has come up in revision to this Court.

2. The facts of this case are now admitted on all hands and are these. The petitioner was attached as a peon to the Tehsil Office at Karnal but was suspended from service. During the period of suspension and between the dates 19th of February, 1965, and 9th of March, 1965, he realised a sum of Rs. 592.47 from five persons named Qabaz, Jit, Thal Singh, Tola Ram and Dhani Ram, all residents of village Pundrak in Tehsil Karnal, from whom various amounts were due to the Government on account of loans received by them earlier for the purchase of fertilisers. In respect of the amounts (totalling Rs. 592.47) the petitioner issued receipts to the loanees abovementioned and the same are Exhibits P. W. 8/F. B. D. C, and E respectively. The petitioner, however, did not deposit the money into the treasury and the embezzlement was detected when the notices were issued to the said loanees and they produced the receipts obtained by them from the petitioner before the Tehsildar, Karnal, whereafter the petitioner paid up the amount of Rs. 592.47 to the Government.

3. Apart from the question of sentence the only point raised by Shri N. C. Jain, learned counsel for the petitioner, is that the offence involved does not fall within the ambit of Section 409 of the Indian Penal Code inasmuch as an offence of that type must be committed by a public servant which the petitioner was not during the relevant period by reason of his suspension from service. Reliance is placed by him on *The Queen v. Dinanath Gangooly*, (1872) 8 Beng LR (App) 58 in which Kemp and Jackson, JJ. quashed the conviction recorded against a police officer under suspension of an offence covered by S. 29 of the Police Act (5 of 1861) on the ground that he had ceased to be a police officer for the purposes of the Act by reason of his suspension at the relevant point of time. That case, however, is of no help to Shri Jain as it proceeded on an interpretation of Section 8 of the Police Act according to which the certificate appointing a person to the police force ceases to have effect whenever the person named therein is suspended or dismissed or otherwise removed from employment. It was in view of the clear provisions of that section that it was held that the offender could not be legally convicted under Section 29 of the Police Act. In the present case we are

not at all concerned with any of the provisions of the Police Act.

The relevant provision is contained in Section 21 of the Indian Penal Code which lays down the definition of a public servant. It is conceded by Shri Jain that the petitioner, earlier to his suspension, was a public servant. He contends that it was his suspension alone which deprived him of that status. Section 21, however, does not say that suspension from office would have any such effect. On the other hand. Explanation 2 appended to the section and reading as follows:

'Wherever the words 'public servant' occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation'

would embrace not only public servants properly so-called but also persons in the employment of the Government who carried defective appointments. The term was, therefore, meant to be used in a wide sense and I am of the opinion that a public servant under suspension would not cease to be a 'public servant' within the meaning of Section 21 of the Code. No infirmity can under the circumstances be said to attach to the conviction of the petitioner.

4. On the question of sentence I am inclined to show leniency in view of the fact that the petitioner paid up the embezzled amount to the Government although it was subsequent to the detection of the commission of the offence by him. He has already undergone about 2 3/4 months' rigorous imprisonment. Accordingly I reduce the sentence to imprisonment already undergone and a fine of Rs. 500/-. The sentence in default of payment of fine shall be rigorous imprisonment for six months.