

Surinder Nath Vs. State and anr.

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Court : Delhi

Decided On : Jul-16-1970

Reported in : 7(1971)DLT377

Judge : Jagjit Singh, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 406

Appeal No. : Criminal Revision Appeal Nos. 447, 457 and 458 of 1967

Appellant : Surinder Nath

Respondent : State and anr.

Advocate for Pet/Ap. : P.C. Khanna,; M.K. Chawla,; Y. Dayal and ;

Judgement :

Jagjit Singh, J.

(1) On August 14, 1967 Shri Kashmir Sindhu, Additional Sessions Judge, Delhi, made three reports recommending that the charges framed

(2) Before the partition of the country Choudhary Bhagat Ram and his five sons, Surinder Nath Rajinder Nath, Narinder Nath, Waseshwar Nath and Joginder Nath, had a joint Hindu family business of stock and share brokers at Rawalpindi. After the death of Bhagat Ram his sons started a partnership firm for doing the same

business at Delhi. Though the partnership business was commenced by them from November 1, 1947 yet a formal partnership deed was executed only on August 27, 1951. No capital was contributed by any partner. Surinder Nath, who is the eldest out of the brothers, was, according to the terms of the partnership deed, to be in charge of the office and was to operate upon the bank accounts in the name of the firm. The other partners were to be 'the field workers'.

(3) Unfortunately differences arose between the brothers, more particularly between Joginder Nath and Surinder Nath. On December 17, 1962 Joginder Nath made a report to the Superintendent of Police, South Delhi, alleging that dealings of Surinder Nath with the funds of the partnership firm had not been 'honest and straight-forward'. In the report alleged instances of criminal breach of trust, cheating and falsification of accounts were given.

(4) A case was registered by the police. After investigation the police submitted three charge sheets. Shri Jag Mohan, Magistrate First Class, New Delhi, on September 27, 1965 framed in each of the case a charge under section 406 of the Indian Penal Code. The relevant portions of those charges were as under:-

'.. .that you on or about 17-11-56 being entrusted with the domain over the bank accounts and the office of Choudhury Bhagat Ram & Sons (by virtue of clause 4 of the partnership Deed) committed criminal breach of trust in respect of 2000 shares, 1000 ordinary shares and 1000 deferred shares of Associated Stone Industries (Kotah) Ltd., which belonged to the said firm by dishonestly disposing these shares by transferring them in the name of your wife Mrs. Vidya Wanti at the rate of Rs. 11.50 nP. Per share whereas the value of each share at that time was Rs. 24.00 per share, and thereby committed an offence punishable under section 406 I.P.C.....'

'.. .that you during the year 1954 being entrusted with the domain over the bank accounts and the office of M/s. Choudhury Bhagat Ram & Sons (by virtue of clause 4 of the Partnership Deed) committed criminal breach of trust in respect of 700 shares of Mysore Gold valued at Rs. 2,625.00 which belonged to the said firm, but were misappropriated by you on the pretext that they had been sold and delivered to Miss L. A. Christy on behalf of the firm for Rs. 2,625.00 and that you

thereby committed an offence punishable under section 406 Indian Penal Code

'...that you during the year 1947 being entrusted with domain over the Bank accounts and the office of M/s. Choudhry Bhagat Ram & Sons (by virtue of clause 4 of the Partnership Deed), committed criminal breach of trust in respect of a sum of Rs. 8,750.00 being the value of 700 shares of Motor General 3rd preference, each share valuing Rs. 12.50nP which belonged to the said firm but were misappropriated by you on the pretext that the shares had been left behind 'at Rawalpindi at the time of partition and that you thereby committed an offence punishable under section 406 I.P.C... ..'

(5) It will thus be seen that the charges related to criminal breach of trust in respect of 2000 shares of Associated Stone Industries (Kotah) Limited, 700 shares of Mysore Gold and 700 shares of Motor General (third preference).

(6) The allegations of Joginder Nath were that Surinder Nath had on behalf of the partnership firm purchased 1000 deferred and 1000 ordinary shares of Associated Stone Industries (Kotah) Limited at the rate of Rs. 11.50 per share and thereafter when the market value of these shares had gone up to Rs.24.00 per share transferred them in the name of his wife, Mrs. Vidya Wanti. It was also stated that 700 shares of Mysore Gold belonging to the partnership firm were agreed to be sold by Surinder Nath to Miss Christy for Rs. 2,625.00 but instead of delivering the share scrips Surinder Nath dishonestly misappropriated them due to which Miss Christy had to file a suit against him and obtained a decree. The decretal amount and the costs amounting to Rs. 3,157.00 were averred to have been paid by Surinder Nath out of the funds of the partnership firm. Another allegation made against Surinder Nath was that while at Rawalpindi he had on behalf of the joint hindu family entered into a contract with Miss Christy for the sale of 700 Motor General third preference shares at the rate of Rs. 12/8/0 but in spite of receiving the sale price in full did not deliver the share scrips to the buyer. Regarding the value of those shares as well Miss Christy was stated to have obtained a decree which was satisfied from the funds of the partnership firm. Those shares were mentioned to have been brought to India by Surinder Nath and to have been got

transferred in his own name.

(7) In *Bhuban Mohan Das v. Surendra Mohan Das* : AIR1951 Cal69 one of the points formulated for decision by a Full Bench was as to whether a charge under section 406 of the Indian Penal Code can be framed against a person who according to the complainant, is a partner with him and is accused of the offence in respect of property belonging to both of them as partners. Chief Justice Harries while delivering the judgment of the Full Bench answered the question in the negative. The following passage from the judgment succinctly sums up the legal position :-

'THE only remedy of a co-partner is an account & until such an account is taken it cannot be said whether the co-partner has any interest at all in the asset or money. As pointed out in the case of *Gopala Chetty v. Vijay- araghavachariar* 1922 1 A.C. 488: Air 1922 P.C.I 15 C) decided by their Lordships of the P.O., even after dissolution a co-partner has no right to sue for his share of an asset. It appears to me that if a co-partner has no right to sue to recover his share it cannot possibly be said that his co-partner is holding that share in trust for him. If the partner holds partnership property in a fiduciary capacity he would be holding it in trust for his co-partners & his co-partners could sue. But it has been laid down beyond all question that the co-partners cannot sue & that their only remedy is an account & to recover only what is ultimately found due on taking the account. It appears to me that in those circumstances it cannot be said that a partner who receives or holds property of a partnership is entrusted with property or dominion over it,*****'

(8) Banerjee J. while agreeing with the view taken by Chief Justice Harries also remarked that unless there is an agreement between the partners that a particular property would be the separate property of a partner, there cannot be an entrustment of it to the other partner or partners and in the absence of such an agreement each partner is interested in the whole of the partnership assets and there cannot be an entrustment of a partnership property as such by one partner to another, because there is no 'property' which can be so entrusted.

(9) The view taken in *Bhuban Mohan Das's* case was noticed by the Supreme Court in *Velji Reghavji atel v. The State of Maharashtra* : 1965 CriLJ431 (') and

was held to be correct. Their Lordships of the Supreme Court observed as follows:-

'UPON the plain reading of S. 405, Indian Penal Code . it is obvious that before a person can be said to have committed criminal breach of trust it must be established that he was either entrusted with or entrusted with dominion over property which he is said to have converted to his own use or disposed of in violation of any direction of law, etc. Every partner has dominion over property by reason of the fact that he is a partner. This is a kind of dominion which every owner of property has over his property. But it is not dominion of this kind which satisfies the requirements of S. 405. In order to establish 'entrustment of dominion' over property to an accused person the mere existence of that person's dominion over property is not enough. It must be further shown that his dominion was the result of entrustment. therefore, as rightly pointed out by Harries C.J., the prosecution must establish that dominion over the assets or a particular asset of the partnership was, by a special agreement between the parties, entrusted to the accused person. If in the absence of such a special agreement a partner receives money belonging to the partnership he cannot be said to have received it in a fiduciary capacity or in other words cannot be held to have been 'entrusted' with dominion over partnership properties.'

(10) It was urged by Shri D. C. Mathur, learned counsel for Joginder Nath, that a special entrustment in favor of Surinder Nath can be inferred as the other partners could not operate upon the bank accounts and had only the right to inspect the account books. Reference was also made to a head-note as appearing in the report of *R. K. Dalmia and others v. The Delhi Administration* : [1963]1SCR253 . The head-note purporting to be based on para 82 of the judgment reads: 'Where one partner is given authority by the other partners to collect moneys or property of the firm he is entrusted with dominion over that property, and if he dishonestly misappropriates it, then he comes within section 405'. The learned Additional Sessions Judge rightly pointed out that the head-note does not follow from the judgment. Para 82 of the judgment did mention the view expressed in *Jagannath Raghunathdas v. Emperor* A.I.R. 1932 Born. 57 but did not say that their Lordships of the Supreme Court agreed with that view. In the latter case of *Velji Raghavji*

Patel, the view taken in Bhuban Mohan Das case having been approved it is unnecessary to discuss the case of Jagannath Raghunathdas.

(11) No special entrustment in favor of Surinder Nath can be inferred. The mere fact that in terms of the partnership deed Surinder Nath was to be in charge of the office and the other partners were to be field workers did not constitute any special entrustment.

(12) Another contention raised by the learned counsel for Joginder Nath was that this Court should not interfere at this stage when possibility for conviction under section 403 cannot be eliminated. A similar submission was made before the Supreme Court in the case of Velji Raghavji Patel but was not accepted. It was remarked that an owner of property, in whichever way he used his property and with whatever intention will not be liable for misappropriation and that would be so even if he is not the exclusive owner thereof.

(13) As a partner Surinder Nath had undefined ownership along with the other partners over all the assets of the partnership. By his use of any of the assets for his own purposes he would be accountable civilly to the other partners but he does not commit any misappropriation. The proceedings for criminal breach of trust against Surinder Nath were an abuse of the process of the Court. The recommendations made by the Additional Sessions Judge are, therefore, accepted and the charges framed against Surinder Nath under section 406 of the Indian Penal Code are set aside and the proceedings are quashed.