Abdul Vs. State

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Court : Kerala

Decided On : Aug-02-1971

Reported in : 1972CriLJ88

Judge : K. Sadasivan, J.

Appellant : Abdul

Respondent : State

Judgement :
ORDER

K. Sadasivan, J.

1. The accused is the revision petitioner. He was clerk-cum-accountant in the Block Development Office (B. D. O's Office) at Anchal. In his capacity as clerk-cum-accountant he received monies from the Gramasevaks of the Block, to be deposited in the Treasury. Three items of such receipts viz.... Rupees 12.19 Ps. Rupees 6.11 Ps. and Rupees 79.80 Ps. he did not deposit but misappropriated to himself. The Gramasevaks sell seeds, pesticides, agricultural implements etc., to peasants in their respective circles and collect the proceeds and it is this money that they entrust periodically to the accused for deposit in the Treasury. They usually bring two copies of their statements of accounts and the practice is to give the money and one copy of the statement to the accountant and take his acknowledgment on the reverse of the last used counterfoil in the receipt book of

the concerned Gramsevak. The appellant will also make an endorsement in the other copy of the statement of account and return it to the Gramasevak, P. W. 1 the Gramasevak of Arrvankavu has deposed that on 3-4-1967 he paid Rupees 12.19 Ps. to the accused with due acknowledgment from him. P. W. 2 the Gramasevak of Anchal entrusted Rupees 6.11 Ps. to the accused on 2-3-1967 and P. W. 5 the Gramasevak of Karavaloor entrusted Rupees 79.80 Ps. to the accused on 3-4-1967- duly acknowledged by the accused. The duty of the accused on receipt of such amounts is to enter them immediately in the cash-book. But the accused, without crediting them in Ext. P 6 cash-book, misappropriated the amounts. The misappropriation was brought to light on an inspection of the accounts of the B. D. O's Office under orders of the Collector of Quilon.

2. The accused, when examined under Section 342. Criminal Procedure Code submitted that he was the U. D. Clerk in the B. D. O's Office, but denied that there was any post of accountant there, or that he was the accountant at the relevant period. But the receipt of the amounts from P. Ws. 1. 2 and 5 was, however, admitted by him. He also admitted that he was himself writing and copying the cash-book and that he had not entered the amounts in Ext. P 6 register. The practice of the Gramasevaks bringing the sale proceeds to the B. D. O's Office with a statement of accounts in duplicate and himself acknowledging one copy and returning the other copy to the concerned Gramasevak was also admitted. He would then keep his copy of the statement and the money in the drawer of his table temporarily, as there was no iron safe in the office. When he goes out for lunch, the office peon Baby, would sometimes open the table with another key and steal the statement and money and leave the table locked without giving room for suspicion. The receipt of the impugned amounts was omitted to be credited in the cash-book. Thus, the defence was that Baby had pilferred the amount. This defence was rejected and conviction has been entered by the learned Magistrate which on anneal was confirmed by the Sessions Judge.

Before this Court the main question argued was, that the prosecution is unsustainable, as no sanction as contemplated in Section 197, Criminal P. C. has been obtained to prosecute the accused. On a former occasion when the accused

came up in revision before this Court, learned Counsel argued on the basis of Ext. D-5, copy of the office order dated 17-3-1967 that the accused need remit the amount coming into his hands only on the last day of the month, if the amount does not exceed Rs. 1,000/- and in that view therefore, the retention of the money with him will not amount to. misappropriation. In deciding the question of sanction the courts below did not advert to Ext. D-5 and so, this Court remanded the case to the lower appellate court for reconsideration of the question in the light of Ext. D-5, The learned Judge, on a re-hearing of the matter, has again come to the conclusion that in this case sanction is unnecessary to render the prosecution valid. I think, the view of the learned Judge is correct in the circumstances of this case. Section 197(1) which is relevant for our purpose reads:

(1) 'When any person who is a Judge within the meaning of Section 19 of the Indian Penal Code, or when any Magistrate, or when any public servant who is not removable from his office save by or with the sanction of a State Government or the Central Government, is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction-

X X X X X X(b) in the case of a person employed in connection with the affairs of a State, of the State Government.X X X X X X

As was held by the Supreme Court in Baijnath v. State of M.P. : 1966 CriLJ179

It is not every offence committed by a public servant that requires sanction for prosecution under Section 197(1) of the Criminal Procedure Code; nor even every act done by him while he is actually engaged in the performance of his official duties : but where the act complained of is directly concerned with his official duties so that, if questioned it could be claimed to have been done by virtue of the office, then sanction would be necessary. What is important is the duality of the act and the protection contemplated by Section 197 of the Criminal Procedure Code will be attracted where the act falls within the scope and range of his official duties. An offence may be entirely unconnected with the official duty as such or it may be committed within the scope of the official duty. If it is unconnected with the official

duty there can be no protection. It is only when it is either within the scope of the official duty or in excess of it that the protection is claimable.

Applying the principle to the case on hand, it has to be held that the misappropriation was committed not within the scope of the due discharge of his official duties. The official duty of the accused in his capacity as clerk-cum-accountant was to credit the amounts in the cash-book Ext. P-6. immediately on receiving them and in doing that if he committed any misfeasance or irregularity, action can be taken against him in a court of justice, only with the sanction of the Government. But without entering the amounts in the cash-book if he misappropriated them, it cannot be said that he does so in the due discharge of his official duties.

3. In Hori Ram Singh v. Emperor 1939 FCR 159 : AIR 1939 FC 43 Justice Varadachariar discussed the scope of Section 197 of the Criminal Procedure Code and after observing that the decisions of that section were not uniform. proceeded to group them under three categories - those which had held that sanction was necessary when the act complained of attached to the official character of the person doing it, those which had held that it was necessary in all cases in which the official character of the person gave him an opportunity for the commission of the crime, and those which had held it necessary when the offence was committed while the accused was actually engaged in the performance of official duties

In one group of cases, it is insisted that there must be something in the nature of the act complained of that attaches it to the official character of the person doing it.... In another group more stress has been laid on the circumstance that the official character or status of the accused eave him the opportunity to commit the offence. It seems to me that the first is the correct view- In the third group of cases, stress is laid almost exclusively on the fact that it was at a time when the accused was engaged in his official duty that the alleged offence was said to have been committed .... The use of the expression 'while acting', etc. in Section 197 of the Criminal Procedure Code (particularly its introduction by way of amendment in 1923) has been held to lend some support to this view. While I do not wish to ignore the significance of the time factor, it does not seem to me right to make it

the test. To take an illustration suggested in the course of the argument, if a medical officer, while on duty in the hospital, is alleged to have committed rape on one of the patients or to have stolen a jewel from the patient's person, it is difficult to believe that it was the intention of the Legislature that he could not be prosecuted for such offences except with, the previous sanction of, the Local Government.

On the authorities as they stand, it is now clearly established that whether an offence was committed in the course of the official duty will depend on the facts of each case. The question whether a criminal breach of trust can be committed while purporting to act in execution of his duty, is not capable of being answered hypothetically in the abstract without any reference to the actual facts of the case. The test may well be whether the public servant, if challenged, can reasonably claim that what he does, he does by virtue of his office. It is difficult to support the contention that the retention of the money in the present case, was in the due discharge or purported discharge of the accused's official duty.

Ext. D-5. I do not think, can be of any help in this matter. That direction happened to be issued, as instances of part remittance and delayed remittances of cash had come to the notice of the authorities. It was issued to guard against future occurrences of such irregularities. Soon it was directed that all money collected will be remitted to the Treasury - (1) when a peon is deputed for encashing the bill; (2) immediately when the amount exceeds Rs. 1000/-; and (3) last working day of all months. Basing on this circular direction the accused would contend that retention of the money with him could not be characterised as penal in the sense that it is a temporary misappropriation. The question therefore is whether in the light of Ext. D-5 could he have reasonably claimed that what he did. he did by virtue of his office. In my view, he could not have successfully raised such a plea because the money was retained by him not in the due discharge of his official duty, as the receipt of the money was not entered in the cash book. It would not have been possible to find out the amount even on a thorough audit as the amount was not entered in the account and that would lead to the con-elusion that the retention of the amount was nothing short of a temporary misappropriation. The accused cannot escape saving that if the amounts are not enter-ed in the accounts

he can be hauled up for falsification of account and not for temporary misappropriation. The question is not that. The question on the other hand is whether he has acted in the due discharge of his official duty. In receiving the money from the Gramasevaks of course, he has acted in the due discharge of his duties. But in refusing to enter them in the accounts it must be held that he has not acted in the due discharge of his duties. In this view therefore. Ext. D-5 cannot help him. Sanction in the circumstances, is not necessary to render the prosecution valid. The revision petition is therefore, dismissed.