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State Vs. Talati Devraj Ruda

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Court : Gujarat

Decided On : Feb-10-1955

Reported in : 1955CriLJ1528

Judge : Shah, C.J. and; Baxi, J.

Appellant : State

Respondent : Talati Devraj Ruda

Judgement :

Baxi, J.

The State has preferred this appeal against the order of the First Class Magistrate, Mangrol, acquitting the respondent of the offence Under Section 409, IPC

2. The respondent was the Talati of the Shepa group of villages under the Mangrol Mamlatdar between 23-7-50 and 19-8-53. According to prosecution between 15-2-52 and 26-4-53 he received from the cultivators and others 8 sums of money on account of pound fees, land revenue and repayment of tagavi loans. He was required by rules to pay the amounts received by him in Government Treasury the end of the month during which it was received by him.

But he did not pay these sums until July 1953 when accounts were audited. Accordingly 8 charge-sheets were submitted by the police against him Under

Sections 409 and 477A, IPC in respect of each of these items after the Collector's sanction was obtained Under Section 197, Cr. P, C and Separate cases were registered in the Magistrate's Court- These cases were criminal cases Nos. 13/54, 34/54, 15/54, 17/54, 18/54, 19/54 and 20/54.

After recording the prosecution evidence and the respondent's statements Under Section 342, Criminal P. C, the learned Magistrate came to the conclusion that the offence Under Section 477A was not made out in any of these cases. The prosecution Under Section 477A was therefore dropped.

Thereafter the learned Magistrate framed a common charge Under Section 222 (1), Cr.PC its respect of 7 items received by him between 31-5-52 and 26-4-53 and charged him with criminal breach of trust in respect of the aggregate sum of Us. 340-15-9 committed between these dates and consolidated cases Nos. 13/54, 14/54, 15/54, 17/54, 18/54, 19/54 and 20/54.

The respondent admitted that he did not pay he amounts in the Government Treasury but his explanation was that he was with the audit f the accounts at Shepa and he paid the amounts either on the eve of the audit or when the mistake was detected during the audit-In the case of two items of Rs, 100/- each received on 16-3-53 and 26-4-53 his further explanation was that as the Rojmel was in Shepa he forgot to credit them.

3. The learned Magistrate held that the ffence Under Section 409, IPC was made out but the Collector's sanction to prosecute the respondent was invalid inasmuch as he did not appear to have applied his mind to the facts of the case before giving the sanction. He therefore acquitted the respondent.

4. The learned Assistant Government Pleader who argued the appeal on behalf of the State submitted that the sanction showed on the face of it that the Collector had before him all the facts constituting the offence and he had applied his mind to them before giving the sanction,

lie submitted in the alternative that no sanction Under Section 197, Cr.PC was necessary for the respondent's prosecution Under Section 409, . P. C., on the

ground that in committing the breach trust by omitting to pay the various amounts into the Treasury the respondent was neither acting nor purporting to act in the discharge of his official duties.

He further argued that' Section 197, Cr.PC applied to the prosecution of public servants who were not removable from office save by or with the sanction of the State Government or some higher authority and as the respondent, who as a Talati, was removable from office by the Collector, Section 197, Cr.PC did not apply to him and on this ground also he submitted that no sanction was necessary.

This last mentioned contention was not raised in the Magistrate's Court nor in the memo of appeal and as it raises the question of fact whether the respondent was not removable from office save by or with the sanction of the State Government, it cannot be allowed- to be urged from die bar at; the time of arguments.

On merits the learned Assistant Government Pleader supported the learned Magistrate's finding that the respondent had committed the breach of trust. The learned Advocate for the respondent argued that the sanction was invalid, that a valid sanction was a prerequisite to the respondent's prosecution and in the absence of a valid sanction the respondent was properly acquitted by the Magistrate.

He also argued that the Collector had no authority to sanction the respondent's prosecution as it was not shown that he was removable from office by the Collector and according to him the. sanction was invalid on this ground also-

But this contention also was not urged in the trial Court and it appears to have been assumed .that the Collector had the authority to sanction the respondent's prosecution, the sanction being challenged on the ground only that the sanctioning authority had not applied his mind to the facts of the case before giving the sanction. This objection therefore cannot be allowed to be argued at this stage as it raises the question of fact whether the Collector had the authority to sanction the respondent's prosecution.

On merits the learned Advocate contended that all that was proved against the respondent was that he had made late payment into the Government Treasury in breach of departmental rules or in other words he was proved to have merely retained the Government money but no overt act of misappropriation was proved ' against him and therefore he could not be convicted on proof of mere retention of money.

5. The questions therefore which arise for determination are: (1) whether the Collector's sanction to prosecute the respondent was a valid sanction, (2) whether having regard to the facts of the case sanction to prosecute him was at all necessary Under Section 197, Cr.PC and (3) whether the learned Magistrate's finding that the respondent had committed criminal breach of trust should be upheld.

6. We think that it is not necessary to go into the question of the validity of the sanction for in our opinion on the facts of the case no sanction to prosecute the respondent is necessary Under Section 197, Cr, P. C., and the question of the validity of the sanction therefore does not arise,

Sanction is necessary where the public servant is alleged to have committed the offence while acting or purporting to act in the discharge of his official duty In the words of the Privy Council in _ 'H. H. B. Gill v. The King' AIR 1948 PC 128 (A):

A public servant can only be said to act or to purport to act in the discharge of his official duty, if his act is such as to lie within the scope of his official duty.

Their Lordships laid down the following test for determining whether the public servant had acted or purported to act in the discharge of his official duty:

The test may well be whether the public servant, if challenged, can reasonably claim that, what] he does, he does in. virtue of his office.

The Privy Council decision was followed in 'Bhanu Chandra Vallabhadas v. The State' AIR 1954 Sau 132 (B). Now on the question whether a public servant can be said to be discharging or purporting to act in the discharge of his official duty, when he commits criminal breach of trust Sulaiman, J. held in 'Hori Ram Singh v.

Emperor' that it was a question of fact in each case. Observed his Lordship:

The question, whether a criminal breach of trust can be committed while purporting to act in execution of duty is not capable of being answered hypotlietically in the abstract, without any reference to the actual facts of the case-Aia attempt to answer the question in a generalised way has been responsible for loose language used in some of the cases cited before us.

It is possible to conceive of a case where a criminal breach of trust may be committed in conspiracy with other servants and payment of money is dishonestly ordered ostensibly in execution of duty.

The question whether the act purported to have been done in execution of duty or not must depend on the special circumstances of each case.

In that case the accused a Government Doctor was charged with embezzlement of medicines by removing them to his house from the hospital on the eve of his transfer. With reference to such type of embezzlement his Lordship observed as under:

When a public servant simply embezzles some property entrusted to him and thereby commits a criminal breach of trust Under Section 409, he is not doing an act, nor even purports to do an act in execution of his duty; when he commits the act, he does not pretend to act im, the official discharge of his duty.

Varadachariar J, who delivered the principal judgment of the Court while explaining the distinction between a charge Under Section 409 and a charge Under Section 477A showed how in a charge Under Section 409, I- P. C. though the official capacity of the accused is material at the stage of entrustment of the money, it may not be material at the subsequent stage of the offence viz. when he dishonestly misappropriated it and sanction may therefore not be necessary for his prosecution of that offence. His Lordship stated the law as follows:

Though a reference to the capacity of the accused as a public servant is involved both in the charge Under Section 409 and in the charge Under Section 477A, there is an important difference between the two cases, when one comes to deal

with the act complained of. In the first, the official capacity is material only in connection with the 'entrustment and does not necessarily enter into die later act of misappropriation or conversion, which is the act complained of

In the charge Under Section 477A, the official capacity is involved in the very act complained of as amounting to a crime, because the gravamen, of the charge is that the accused acted fraudulently in the discharge of his official duty.

Therefore in a charge of simple embezzlement by a public servant Under Section 409 which does not involve the performance or purported performance by him of any official act, no sanction, is necessary. This was the view adopted by this Court in 'Khengarsingh Anandsimgh v. State', Cri Revn. No. 42 of 1951 (Sau) (D). The learned Magistrate relied upon certain observations in 'Nasir Ali Khan v. Government' , to the effect that it cannot dogmatically be said that no sanction was necessary under any circumstances. In this case the embezzlement consisted in sanctioning a false bill. Obviously no bill could be sanctioned by the accused unless he was either acting or purporting to act in the discharge of Ms official duty and therefore as explained in 'Hori Ram's case (C)', sanction was necessary for his prosecution. In the present case the charge is of mere embezzlement of money entrusted to the respondent in his/ official capacity by retaining them for a long time and as such retention does not require the performance of any official duty no sanction to prosecute him is necessary. We therefore hold that the proceedings cannot be vitiated on the ground that the Collector's sanction to prosecute him was not a vaild sanction-

7. The next question for consideration is whether on merits the respondent can be convicted. It is proved that he received several sums of money as follows:

Rs. 2-13-0 On 31-5-52Rs. 4-0-4 date not knownRs. 7-8-11 On 6-6-52Rs. 1-8-6 On 9-6-52Rs. 100-0-0 On 16-3-53Rs. 100-0-0 On 3-4-53Rs. 100-0-0 On 26-4-53

He paid the first two items into Government Treasury on 9-7-53, the next two items on 7-7-53 and the remaining items on 27-7-53. This he retained the first four items for more than a year, the 5th item for more than 4 months and the last two items for more than three months. His stock explanation is that he was busy with the

audit of the accounts. In the case of items of Rs. 100/- received on 16-3-53 and 26-4-53 his further explanation is that the Rojmel was not with him when he received them and he forgot to credit them. We are not prepared to accept this explanation-

The first four amounts are small items and one might hold that they may not have been paid through oversight. But this cannot be said about the last 3 items which are large sums and it is impossible to believe that he was too busy to pay them in the Government Treasury or to credit them in his books-after returning to Shepa. He was under an obligation to pay them into the Government Treasury at the end of the month according to Departmental rules and it was on this understanding that the amounts must be taken to have been paid to him by the respective persons. Ho retained them in clear breach of that obligation.

The retention was for a sufficiently long time-to raise the inference that he dishonestly misappropriated them. The retention is not of one item which can be explained away by forgetfulness or pressure of work. He has consistently omitted to make payments on several occasions and it was only after he realised that discovery was inevitable that he made good these amounts. Under the circumstances we must hold that the retention by him of these amounts for such a long time amounts to dishonest misappropriation-

The learned Advocate for the respondent argued that mere retention did not amount to criminal breach of trust in the absence of some overt act showing that he intended to misappropriate the amount. But illegal omission to pay the amounts in breach of an obligation to do so stands practically on the same footing as their active misappropriation unless the respondent is able to give an explanation for his omission, which the Court can reasonably accept.

In 'Yeshwantrai Durlabhji Trivedi v The-State' AIR 1950 Sau 13 (F), the Division Bench of tins High Court laid down that although the burden of proof of entrustment of money rests in the prosecution if it is proved that he had not paid the amount it is for him to prove satisfactorily that he had not embezzled or misappropriated it. See also

'Akshoy Chandra v. Emperor : AIR1934 Cal532 .

The learned Advocate for the respondent relied on certain observations in : AIR1934 Cal532 , to the effect that mere retention of money would not necessarily raise a presumption of dishonest misappropriation but the actual rule laid down by their Lordships was as is already stated by us that after the prosecution discharges the burden of proving entrustment, it is mot necessary for it to prove in what manner the money alleged to have been misappropriated have been spent by the accused.

If it is shown that money entrusted to the accused for a particular purpose was not returned by him in accordance with his duty, it lay on him to prove his defence. It may well be that the retention may be for a short period and this would be consistent with his innocence. But it cannot be said that the retention can under no circumstances amount to dishonest misappropriation unless the prosecution proves active dishonest conversion. The question is one of fact in each case and unexplained retention of money for a long time might well be sufficient to raise the inference of guilt.

In the present case the prosecution has proved entrustment of the money. It has also proved that the money was not paid in accordance with the purpose for which it was paid. The prosecution therefore discharged its burden. The respondent failed to discharge the burden of showing that he had not dishonestly misappropriated them and he cannot escape conviction.

8. We therefore allow the appeal, set aside the respondent's acquittal and convict him Under Section 409, I. P, C. We sentence him to six month's rigorous imprisonment and a fine of Rs. 100/-. In default of payment of fine he shall undergo further imprisonment for three months,

9. Shah, C.J.

10. I agree.

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