

**Mangilal Vs. State**

**Mangilal Vs. State**

**SooperKanoon Citation :** [sooperkanoon.com/754527](http://sooperkanoon.com/754527)

**Court :** Rajasthan

**Decided On :** Nov-07-1956

**Reported in :** 1957CriLJ1318

**Judge :** Sharma, J.

**Appellant :** Mangilal

**Respondent :** State

**Judgement :**

ORDER

**Sharma, J.**

1. This is an application for revision by Mangilal against the order of the learned Sessions Judge, Alwar dated 1-5-1956 by which he has set aside the order of discharge of the applicant dated 18-3-1952.

2. Two accused, namely, Mangilal and Bhonrial were challaned by the police, Alwar u/s. 409 I, P. C. for criminal breach of trust in respect of a sum of Rs. 2000/- of the office of the Director of Education, Matsya, It was suspected that there was defalcation of the amount of Rs. 2000 /-and the audit officers checked the accounts. The audit report showed that there was defalcation of the sum of Rs. 2,000/- and the responsibility of it was laid on the two accused Bhonrilai and Mangilal.

The case came up before the Extra Magistrate, First Class. Evidence was produced on behalf of the prosecution and the statements of the two accused were recorded. The learned Magistrate found that no offence was made out against Mangilal and he consequently discharged him. He, however, framed, a charge u/s 409 I. P. C. against Bhonrilal. Bhonrilal went in revision against the charge-sheet to the court of the District Magistrate, Alwar but the application for revision was dismissed. The State did not file any application for revision against the order of discharge of Mangilal. After the revision application of Bhonrilal was dismissed, the case came up for trial before another Magistrate and Bhonrilal claimed de novo trial.

At this trial Mangilal was produced as a witness on behalf of the prosecution. The learned Magistrate after recording prosecution evidence committed Bhonrilal to take his trial u/s 409 I. P. C. before the Court of Sessions at Alwar by his order dated 5-2-1956 because he thought that he himself could not adequately punish the accused. At the same time an application for revision dated 25-4-1956 was filed by the Public Prosecutor against the order of discharge dated 18-3-1952 of Mangilal.

A notice was issued to Mangilal to show cause as to why he should not be committed to Sessions Court to stand his trial in the case. Mangilal appeared before the learned Sessions Judge and showed cause but the learned Sessions Judge found that the order of the Magistrate was not only imperfect or perverse but was also foolish. He consequently set aside the order of discharge and ordered fresh inquiry in the case. It is against this order that Mangilal has come in revision to this Court.

3. I have heard Sri J. K. Mathur on behalf of the applicant Mangilal and Sri R. A. Gupta, Deputy Government Advocate on behalf of the State. I have also allowed Sri G. P. Sharma to intervene on behalf of Bhonrilal,

4. It has been argued by Mr. Mathur on behalf of the applicant that there was absolutely no prima facie evidence against the applicant and, therefore, the order of his discharge has been wrongly set aside by the learned Sessions Judge. It was argued that the amount which the applicant is said to have misappropriated is

alleged to have been paid to him on the 8-3-1949 and for this an order of the then Assistant Director of Education Sri Ramnarain Ex. P. E. has been produced and an endorsement of the receipt of Rs. 2,000/- in the hands of the applicant Ex. P.K. has been relied upon.

It was argued that the only witness for the prosecution who has come forward to prove Ex. P. E. and Ex. P. K. is Sri Ramnarain, the then Assistant Director of Education and he has clearly stated that his order Ex. p. E. was not made in the month of March but was made sometime on or about 8-2-1949. The sum of Rs. 2,000/- which was received by Mangilal on or about 8-2-1949 has been fully accounted for by him. There is no evidence whatsoever except an entry in the cash book dated 8-3-1949 to show that the applicant was paid an amount of Rs. 2,000/- by the Cashier Bhonrilal on that date. Mere entry in the account book unless corroborated by independent evidence cannot charge any person with liability and, therefore, there was total absence of legal evidence to prove that the sum of Rs. 2,000/- was paid to the applicant on or about the 8th March, 1949.

There was, therefore, no *prima facie* case and the applicant was rightly discharged. It was argued that the learned Sessions Judge has acted simply on conjectures and suspicions and even for the drawing of a charge-sheet conjectures and suspicions cannot take the place of legal evidence. It was also argued that the learned Sessions Judge was not at all justified in taking into consideration the evidence of the applicant at the *de novo* trial on behalf of the prosecution in the case against Bhonrilal and that in any case there is no admission in that evidence that the applicant received the sum of Rs, 2.000/- in question on or about the 8th March 1949.

5. On behalf of the State it has been argued By Mr. Gupta that there were grounds for believing that either Bhonrilal or Mangilal had embezzled the amount of Rs. 2,000/- in question and, therefore, it was proper that a further inquiry be made against Mangilal and the case be tried against both the accused. Mr. Gupta was not able to point out any evidence which may be legally acted upon against Mangilal on the record of this case, but argued that at further inquiry some evidence might be forthcoming to show *prima facie* that the sum of Rs. 2.000/- in

question was paid by Bhonrilal to Mangilal.

6. Mr. G. P. Sharma, who intervened on behalf of Bhonrilal argued that the order Ex. P. E. of Sri Ramnarain, the then Assistant Director of Education was actually made on or about the 8-3-1949 and that the sum of Rs. 2,000/- was paid under that order to Mangilal who made the endorsement Ex. P. K. about the receipt of that amount. He argued that along with the entries in the cash book, this document Ex. P. E. and Ex. P. X made out a prima facie case against Mangilal.

7. I have considered the arguments of the learned Counsel. I may say at the outset that this Court will not be justified to intervene with an order of discharge where there is no clear error or defect in the proceedings or other illegality which resulted in grave injustice or it is pointed out that some evidence which was forthcoming in the case has been shut out or could not be produced in spite of due diligence.

This court will not at all be justified in interfering with the order of discharge simply upon the ground that probably some further evidence might be coming forward if the order of discharge is set aside & the case is sent back for further inquiry. The party who wants to have the order of discharge set aside should be able to point out definitely as to what is the further evidence which will be helpful in making out a prima facie case against the accused who has been discharged.

Neither Mr. Sharma, who intervened on behalf of Bhonrilal, has been able to point out as to what further evidence would be forthcoming which might make out a prima facie case against the applicant. The order of the learned Sessions Judge also does not show that he was satisfied that some prima facie evidence which would be helpful in framing a charge against the applicant would be forthcoming.

He has simply said that the order of discharge is imperfect, perverse and foolish and the evidence of the applicant as a prosecution witness at the de novo trial against Bhonri Lal showed that he had made a purchase of more than Rs. 13,000/- whereas he had actually received an amount of Rs, 12,000/- and that he had not paid anything for those articles from his own pocket.

The learned Sessions Judge says that this statement of Mangilal has to be explained by him. He has also said in his judgment that there was a document Ex. P. L. dated 9-2-1949 in the hand-writing of Mangilal and endorsed by Sri Ramnarain which purports to show that Mangilal was present at Alwar on 9-2-1949. On these grounds he has set aside the order of discharge.

8. I have gone through the evidence recorded in this case. The only material which can be said to be against the applicant is the entry in the cash book dated 8th March, 1949 and the document Ex. P. E. and Ex.P. K. So far as the entry in the cash book is concerned, no independent evidence has been produced in support of it.

The entry alone is not sufficient to charge Mangilal with liability. The order Ex. P. E. of the Assistant Director of Education, which purports to be dated 8th or 9th March, 1949, has been stated by Sri Ramnarain, the then Assistant Director of Education to be of 8th February, 1949 and he has deposed that the date and month have been tampered with.

The endorsement about the receipt of Rs. 2,000/- Ex. P. K. is not dated. Therefore the only evidence, which has been produced by the prosecution to prove that the amount in question was paid by Bhonrilal to Mangilal under the order of the then Assistant Director of Education dated 8th or 9th March, 1949 goes against the case of the prosecution that this amount was paid to the applicant on or about the 8th March, 1949.

I am unable to find out any prima facie evidence on this record to prove that the applicant made a criminal breach of trust in respect of the amount of Rs. 2,000/- shown to have been paid to him by the entry of the cash book dated 8th March 1949, It has not been revealed to me as to what further evidence would be forthcoming which might prove that the order of Mr. Bamnarain Ex. P. E. dated 8th March 1949 is in fact dated 8th March, 1949 and not dated 8th February 1949 as stated by Mr. Ramnarain.

Therefore this Court cannot allow the prosecution to grope in the dark on the supposition that some evidence not disclosed till now might be forthcoming to

falsify the statement made by Mr. Ramnarain. So far as the evidence of Mangilal at the de novo trial against Bhonrilal is concerned, I do not think how it can be read in evidence against Mangilal in this case as it does not contain any admission on behalf of the applicant that he was paid the amount in question by Bhonrilal. That statement of Mangilal may or may not be true but in either case it will not constitute a prima facie evidence against him. I do not understand why the learned Sessions Judge should have been influenced by the said statement of Mangilal.

9. The challan in this case was filed in the month of November, 1949 and upto the end of the year, 1956, the prosecution has not been able to show as to what further prima facie evidence would be coming forward against the applicant. Under these circumstances it will be simply harassing the applicant to set aside the order of discharge and put him to further inconvenience and expense of an inquiry before the Magistrate.

10. Before parting with this judgment, I may observe that although the order of discharge recorded by Sri Satguru Prasad, the then Extra Magistrate of Alwar is certainly perfunctory inasmuch as he has not discussed as to what evidence was produced in this case and why he considered it to be prima facie insufficient, however, to say that the order was foolish is certainly condemning the learned Magistrate unjustifiably. Such strong remarks should be very rarely used, if at all and the subordinate courts should not be put to unnecessary humiliation by the remarks of the higher courts.

11. The application for revision is allowed, the order of the learned Sessions Judge, Alwar dated 1st May, 1956 setting aside the order of discharge of 18th March, 1952 of the applicant is set aside and the order of discharge dated 18-3-1952 is restored.