

**Bhanwar Lal Vs. Bhanwar Lal**

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**Court :** Rajasthan

**Decided On :** Aug-18-1982

**Reported in :** 1982WLN(UC)245

**Judge :** S.C. Agarwal, J.

**Appeal No. :** S.B. Criminal Revision No. 173/1977

**Appellant :** Bhanwar Lal

**Respondent :** Bhanwar Lal

**Disposition :** Petition dismissed

**Judgement :**

**S.C. Agarwal, J.**

1. This revision petition is directed against the order dated May 19,1977 passed by the Additional Munsif and Judicial Magistrate No. 1, Jodhpur whereby the complaint filed by the petitioner was dismissed.

2. On March 9, 1977 the petitioner filed a complaint in the court of the Additional Munsif and Judicial Magistrate No. 1, Jodhpur against the respondent wherein the petitioner alleged that the petitioner and the respondent along with Shyamsunder son of Udairam and Magraj, Smt. Suadevi wife of Dulichand, Sohanalal and Jatanraj Singhvi are partners in Firm Mahalakshmi Tent Factory in Jodhpur and

that the petitioner and the respondent are the working partners of the said firm. It was further alleged that in 1973 due to certain disputes, the business of the factory was closed and it was agreed that the entire property of the factory would be kept in the godown of the firm and that both the working partners would put their locks on the godown and each would have the keys and the godown should be opened only in the presence of both the partners. It was further alleged that on April 5, 1974 it was further agreed that the goods of the firm shall be disposed of jointly by both the working partners and the sale price would be kept in the partnership account and none of the partners will be entitled to take the money and that in view of the said agreement the godown used to be opened from time to time by both the working partners and the goods removed from the godown were sold by them jointly. That on November 8, 1976 Kaulsingh Chowkidar of the godown informed the petitioner at Balotra that theft had been committed in the godown and thereupon on November 9, 1976 the petitioner came to Jodhpur and there he was informed that when the chowkidar had gone on leave at the time of Deewali festival the locks of the godown were broken in his absence on October 27-28, 1976 by the respondent and goods were removed from the godown. In the said complaint it was stated that goods worth Rs. 50,000/- had been removed & considerable part of the said goods were sold for Rs. 25,000/- to the Bharat Tent House, Jodhpur & the money received by the aforesaid sale instead of being deposited in the bank account of the firm had been utilised by the respondent for his personal use. In the said complaint, it was alleged that the said goods which were removed from the godown were in the joint possession of the petitioner and respondent by dishonest means removed the same in the absence of the chowkidar by breaking open the locks. According to the complaint aforesaid, the respondent was guilty of the offence under Section 380, 454 and 406 I.P.C. and it was prayed that the respondent should be punished for the said offence and that compensation may be awarded to the petitioner. In the said complaint, the petitioner has also stated that a report about the incident had been lodged by him at police station Sastrinagar on November 10, 1976 and another report was lodged in police station Sardarpura on November 16, 1976 but the police did not take any action about the same. After receiving the said complaint, the Judicial Magistrate passed an order under Section 210 Cr. P.C. summoning the report from the S.H

Os, police stations Sastrinagar and Sardarpura but both the police stations intimated that no report had been lodged by the petitioner at the said police stations. Thereafter the statement of the petitioner as well as Kalusingh chowkidar were recorded by the Judicial Magistrate under Section 200 Cr. P.C. The Magistrate after taking into consideration the aforesaid complaint filed by the petitioner and the statements of the complainant and Kalusingh chowkidar passed the order dated May. 19,1977. In the said order the Judicial Magistrate has held that in the complaint as well as in the statement it has been alleged that the goods were kept by both the parties in the godown under care of chowkidar and therefore, both the parties were jointly in possession of the same and it is not alleged that the said property had been specially entrusted to the respondent and that under the circumstance no offence under Section 406 I.P.C. can be said to have been made out With regard to offence under Section 380 and 454 I.P.C. the Judicial Magistrate held that neither petitioner nor Kalusingh chowkidar have staged that the locks were broken in their presence and, therefore, on the basis of the aforesaid evidence it could, not be said that the respondent committed the offence under Sections 380 and 454 I.P.C. In view of the aforesaid findings, the Judicial Magistrate held that there was no sufficient reason for proceeding against the respondent and he, therefore, dismissed the complaint. Being aggrieved by the aforesaid order passed by the Judicial Magistrate, the petitioner has filed this revision.

3. I have heard Shri N.N. Mathur for the petitioner and Shri Vyas learned Counsel for the respondent and have also gone through the record of the case.

4. In my opinion the learned Magistrate has not committed any error in holding that in order to show that the respondent had committed the offence of criminal breach of trust punishable under Section 406 I.P.C. it was necessary for the complainant to show that the property which is said to have been misappropriated had been especially entrusted to the respondent when he held the same because in respect of the property belonging to a partnership the law is well settled that all the partners have dominion over the assets of the partnership and a partner can be held to be guilty of criminal breach of trust in relation to partnership property only if it is shown that the said property had been especially entrusted to that partner by

the other partners. In the present case there is no material either in the complaint or in the statement of the petitioner and the chowkidar on the basis of which it can be said that the goods which were sold had been especially entrusted to the respondent and he had sold dominion over the said goods. On the other hand the allegations of the complainant were that both the petitioner and the respondents had dominion over the said goods. In the circumstances the Judicial Magistrate was right in holding that offence under Section 406 was not disclosed against the defendant.

5. As regards the offence under Sections 380 and 454 I.P.C. are concerned, the Judicial Magistrate has observed that on the basis of the evidence of Kalusingh chowkidar and the petitioner it appears that neither the chowkidar nor the petitioner was present at the time when the locks of the godown were broken open and the goods were removed and, therefore, there is no evidence to show that the respondent was responsible for breaking open the locks and for removal of the goods. Shri Mathur has not been able to assail the defect of the aforesaid finding recorded by the Judicial Magistrate.

6. There is thus no merit in this revision petition and it is accordingly dismissed.

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