

State of Rajasthan Vs. Mohan Lal

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Court : Rajasthan

Decided On : Jan-10-1986

Reported in : 1986(2)WLN438

Judge : Jas Raj Chopra, J.

Appeal No. : S.B. Criminal Appeal No. 126 of 1978

Appellant : State of Rajasthan

Respondent : Mohan Lal

Judgement :

Jas Raj Chopra, J.

1. This appeal is directed against the judgment of the learned Munsif and Judicial Magistrate, Nathdwara dated October 3, 1977 whereby the learned lower court has acquitted the accused Mohanlal of the offence under Section 409 IPC.

2. The facts of this case briefly stated are that accused-respondent Mohanlal was working as a Patwari in Patwar Circle, Nathdwara from August 7, 1972 to January 18, 1973. During this period, he collected a sum of Rs. 688/- on August 21, 1972 vide receipt No. 8, Book No.25300 from one Hiralal Soni. He also collected a sum of Rs. 344/- on October 23, 1972 vide receipt No. 9, Book No. 25300 from one Bhanwarlal Soni. This amount related to Sawankar loan advanced to these

persons. Actually, this was the amount of the third instalment which was due from these two persons. Accused Respondent Mohanlal after collecting the aforesaid sums did not make any entry in the Cash Receipt Register. As per Rule 110(2) of the Rajasthan Land Revenue Rules, 1957, he was required to deposit this amount within a week in the Sub-Treasury as the amount collected was less than Rs. 2,000/-. Had it been a case of Rs. 2,000/- or more the amount should have been deposited on the next day in the Sub-Treasury. However, the accused-respondent Mohanlal retained this amount with him upto August 18, 1975 i.e. for about a period of three years and then deposited it in the Bank vide Treasury Challans Ex. P. 3 to Ex. P6. When this amount was collected, he issued receipts to the depositors and those receipts have been marked Ex. Ps. 1 and 2. It was expected of him that he should have sent one copy of these receipts to the Tehsildar but he did not send any copy of the receipt to the Tehsil for its record. On checking, it was found that actually this amount has been deposited by the depositors and the accused respondent Mohanlal who was Patwari at the relevant time has retained it and, therefore, a notice was issued to him on August 25, 1975. However, the accused-respondent Mohanlal before issuing the notice deposited the aforesaid sums in original without any interest on August 10, 1975. In reply to the notice issued to the accused-respondent, he admitted that due to error, he has not deposited the amount. It may be stated here that when he was relieved from the charge of this Patwar circle he did not hand over this amount even to the Patwari who took over the charge from him. A complaint of the incident was lodged by the Tehsildar at the Police Station, Nathdwara, which has been marked Ex. P. 8 and on the basis of this, a formal FIR Ex. P. 8A was drawn. Receipts Ex. P. 1 and 2 were taken in possession from the concerned depositors. The copies of the challans were also obtained from the Sub-Treasury.

3. After usual investigation, the case against the accused was challaned under section 409 IPC. The accused-respondent Mohanlal did not plead guilty to the charge and claimed trial, whereupon, the prosecution examined 6 witnesses in support of its case. The statement of the accused was recorded under Section 313, Criminal Procedure Code. He admitted that he was working as Patwari at the relevant time. He has also stated that he issued receipts Ex. Ps. 1 & 2 to the concerned depositors and has deposited the amount in the Bank vide challans Ex.

P. 3 to Ex. P. 6. He has admitted that Ex. Ps. 1 to Ex. P. 6 are in his hand. In the end, he has stated that he retained the amount for quite some time because the Sub-Treasury People refused to receive the amount as it was retained by him beyond the prescribed period and after that he was transferred but before he was transferred, he has deposited this amount with interest. He refused to examine any body in defence.

4. After hearing the parties, the learned lower court came to the conclusion that although it is proved that the accused has recovered from Hiralal and Bhanwarlal a sum Rs. 688/- and 344/- respectively on August 21, 1972 and October 23, 1972 but there is no proof that he has utilised this amount for his own use and he has misappropriated it. Relying on State of Rajasthan v. Satya Narain 1968 RLW 601 it was held that mere delay in depositing the amount does not amount to criminal misappropriation of the money and, therefore, the accused was acquitted by giving him the benefit of doubt. Aggrieved against this judgment the State has preferred this appeal.

5. I have heard Mr. B.C. Bbansali, learned Public Prosecutor for the State and Mr. N.N. Mathur, learned Counsel for the accused-respondent. I have also carefully gone through the record of the case.

6. In this case, the facts are almost admitted. The accused has admitted that he recovered Rs. Rs. 688/- from Shri Hiralal Soni and Rs. 344/- from Shri Bhanwarlal Soni. He has admitted that he issued receipts Ex. Ps. 1 and 2 respectively to them. He has further admitted that he deposited this amount of Rs. 1032/- in the Bank vide challans Ex. Ps. 3 to Ex. P.6 on August 18, 1975. The prosecution has examined PW 1 Lalsingh to prove that Ex. Ps. 1 to 7 are in his hand (accused). The accused has not disputed this fact in cross-examination. Thus, it is proved that Ex. Ps. 1 to Ex. P. 7 are written by accused-respondent Mohanlal.

7. PW 2 Gajanand was working as Tehsildar at the relevant time. He has stated that he lodged a report Ex. P 8 in the Police against accused-respondent Mohanlal. In cross-examination, he however stated that he does not know whether this amount has been deposited by the Patwari (accused-respondent Mohanlal) on August 18, 1975. PW 3 Hiralal has stated that on August 21, 1972 he paid a sum

of Rs. 688/- as an instalment against the Sarwankar loan advanced to him. The Patwari issued to him receipt Ex. P 1. This amount was again demanded from him but he showed the relevant receipt. This receipt was seized by the police from him vide memo Ex. P 9, which bears his signatures A to B. To the same effect is the statement of PW 4 Bhanwarlal. He has stated that he paid a sum of Rs. 344/- to accused-respondent Mohanlal on October 23, 1972 against the receipt Ex. P 2. Thereafter, the successor Patwari demanded money from him. He then, showed him the receipt and told him that he has already deposited the amount of the instalment. This receipt was seized from him by the Police vide seizure memo Ex. P 10 which bears his signatures A to B PW 5 Kailashpuri has proved the FJR Ex. P 8 and seizure memos Ex. Ps 9 and 10 PW 6. Shankarlal has stated that he received the challan in the TRAS. and made a report to the Tehsildar that, the amount has been deposited late in the Bank and, therefore, it is a case of embezzlement.

8. From this evidence and the statement of the accused recorded under Section 313 Cr.PC it is clear that the accused-respondent has recovered a sum of Rs. 688/- & Rs. 344/- respectively from Hiralal Soni and Bhanwarlal Soni on August 21, 1972 and October 23, 1972. It was his duty to make entry of this amount in the Cash Receipt Register (Siaha) prescribed under the Rules. He did not do so. He was obliged to send one copy of the receipt to the TRA. Section but he did not do so. As per Rule 110(2) of the Rajasthan Land Revenue Rules, he was obliged to deposit this amount in Tehsil Sub-Treasury within a week from this recovery as it was less than Rs. 2,000/- but he did not do so. Even when he handed over the charge of his post to his successor Patwari, he did not hand over this amount to him. All these facts clearly go to indicate that he had dishonest intention to misappropriate this amount. Otherwise, there is no reason why he did not make any entry in the Cash Receipt Register. His dishonest intention is further corroborated by the fact that he also failed to send the copy of the receipt to the Tehsil Office and lastly, he failed to deposit this amount in the Tehsil within a week as required by law. He was obliged to deposit this amount within a week in the Tehsil. He has not given any explanation why he detained this amount. In Ex. P 7, he has admitted that due to oversight, he failed to deposit this amount, it is not a case of oversight. The absence of entry in the Cash Receipt Register, his failure to

send one copy of the receipts in the Tehsil Office, his failure to deposit the amount in the Tehsil within a week and his failure to handover this amount in charge to this successor Patwari lead to the only inference that he wanted to dishonestly misappropriate this amount. There was no reason why he detained this amount for a period of about 2-1/2 years after the charge was handed over by him to his successor Patwari.

9. Their Lordships of the Supreme Court in *Jaswantrao v. State of Bombay* AIR 1959 SC 575 observed as under:

A deprivation even for a short period is within the meaning of the expression. If the Bank disposes of those securities with the intention of causing wrongful loss to the one and wrongful gain to the other, there can be no question but the appellant had necessary mens rea.

Thus, a temporary retention of the money amounts to criminal misappropriation if the accused was actuated by dishonest intention to retain this money which is clearly manifest in the case.

10. Their Lordships of the Supreme Court in *Krishan Kumar v. Union of India* : 1959 CriLJ1508 have been pleased to lay down that in the case of a servant charged with misappropriating the goods of his master, the elements of criminal offence of misappropriation will be established if the prosecution proves that the servant received the goods, that he was under a duty to account to his master and had not done so. If the failure to account was due to an accident then the facts being within the servant's knowledge, it is for him to explain the loss. It is not the law of this country that the prosecution has to eliminate all possible defences or circumstances which may exonerate him. If these facts are within the knowledge of the accused, then he has to prove them. In the case on hand, it was in the knowledge of the accused respondent that as per the rules, he was required to deposit this amount in the Tehsil and he was also required to make entry in the Cash Receipt Register of the Patwar Circle but why he did not do so is the fact in his knowledge and it was to be proved by him why he retained that money. The retention of money for about 3 years can safely give rise to this inference that the accused-respondent had dishonest intention to criminally misappropriate this

amount. He had all opportunities to deposit this amount in the Tehsil because he was actually posted at the Head Quarters of the Tehsil. He could have handed over this money in charge to his successor Patwari. His retention of money without making any entry in the Cash Receipt Register and his failure to send the copy of the receipts to the Tehsil abundantly show that he nurtured a clear intention to misappropriate this amount so that nobody may know about this misappropriation from the record. PW 3 Hiralal and PW 4 Bhanwarlal have categorically stated that this amount which was deposited by them was again demanded from them for want of its entries in the Patwar Record by the successor Patwari. When they informed the concerned Patwari that the amount has already been deposited and showed their receipts Ex. Ps. 1 and 2, they were saved from depositing this amount twice. In the cases relating to criminal breach of trust, it is not necessary that the prosecution should lead evidence regarding the actual misappropriation of the property. In *Provincial Government v. Shankar Gopal* AIR 1938 Nagpur 445 it was held that where however a Patwari not with standing, a clear rule (para 23 of *Herar Patels and Patwari's Law*) neither credited to the Government the amount received by him in excess on account of land revenue, nor made it over to the Patel, it was held that the presumption under Section 114, Evidence Act would be that he kept the amount with him for his own use with intent to make wrongful. gain for himself and to cause wrongful loss to the rightful owner.

11. Their Lordships of the Supreme Court in *Krishan Kumar's case* (supra) have been pleased to observe that wrongful gain includes wrongful retention and wrongful loss includes being kept out of the property as well as being wrongfully deprived of property. Therefore, when a particular thing has gone into the hands of a servant, he will be guilty of misappropriating the thing in all circumstances which show a malicious intent to deprive the master of it. In the case on hand, the accused has stated in his statement under Section 313 Cr.PC that he deposited this amount with interest when he handed over the charge of Patwar Circle to his successor Patwari where as the fact is that he retained this amount for more than 2-1/2 years after handing over the charge and deposited it without interest on 18-8-1975. Thus, even up to the stage of his statement under Section 313 Cr.PC he has given a false explanation regarding retention of the money as he handed over his charge to his successor on January 18, 1973 and he deposited this amount on

August 18, 1985. In criminal cases, actual criminal misappropriation is not easy to be proved rather it is not necessary to be proved dishonest intention of criminal misappropriation, can be proved. Their Lordships of the Supreme Court in Para 7 of the Krishan Kumar's case (supra) have observed that it is not necessary or possible in every case to prove in what precise manner the accused person has dealt with or appropriated the goods of his master. The question is one of intention and not a matter of direct proof but giving a false account of what he has done with the goods received by him may be treated a strong circumstance against the accused-person. Thus, the learned lower court was totally unjustified in taking the view that because actual misappropriation has not been proved by reliable evidence and, therefore, the presumption of guilt cannot be taken against the accused-respondent. In Krishan Kumar's case (supra), their Lordships of the Supreme Court were pleased to lay down that when a particular thing has gone into the hands of a servant, he will be guilty of misappropriating the thing in all circumstances which show a malicious intent to deprive the master of it. In the case in hand, the accused has retained the amount for about 3 years without accounting it in the Cash Receipt Register and as such, he deprived the State from its revenue and therefore, the accused-respondent is guilty of misappropriating the amount in question. In the case of Krishan Kumar v. Union of India : 1959 CriLJ1508 , their Lordships of the Supreme Court quoted with approval the following observations made by Fazal Ali, J. (as he then was) in Harakrishna Mahtab v. Emperor AIR 1930 Pat. 209:

Now, I do not mean to suggest that it is either necessary or possible in every case of criminal breach of trust to prove in what precise manner the money was spent or appropriated by the accused, because under the law, even temporary retention is an offence, provided that it is dishonest.... I must point out that the essential thing to be proved in case of criminal breach of trust is whether the accused was actuated by dishonest intention or not. As the question of intention is not a matter of direct proof, the Courts have from time to time laid down certain broad tests which would generally afford useful guidance in deciding whether in a particular case the accused had or had not mens rea for the crime. So in cases of criminal breach of trust, the failure to account for the money proved to have been received by the accused or giving a false account of its use is generally considered to be a

strong circumstance against the accused.

State of Rajasthan v. Satya Narain 1969 RLW 601 on which, the learned lower court placed reliance is distinguishable on facts. Actually that was a case of Municipal employee who collected certain amounts and while he was in possession of the amount, his services were dispensed with. A notice was issued to him and as soon as the notice was served on him, he came and deposited the amount in the Municipal Board and also tendered the Account Books relating to the collected amount. The Municipal Board was satisfied with his explanation and, therefore, it did not deem it proper to proceed against him on the criminal side. The case was, however, challaned on the complaint of one private man. In that case, no rules prescribed that the amount collected by him was to be deposited within a particular period. The facts of the case in hand are totally different. Here, the law provided that the amount should be shown in the Cash Receipt Register i.e. Siaha, one of the copy of the Receipt Book was to be sent to the Tehsil Revenue Accountant in the Tehsil and the amount being less than Rs. 2,000/- was required to be deposited within a week in the Sub-Treasury. Much more than that, the accused was transferred and while he handed over the charge he did not hand over the cash to the incoming Patwari and therefore, mens rea in this case on the part of the accused is fully brought home by the prosecution.

12. The upshot of the above discussion made here in above is that even a temporary retention of money by a Government employee is against the Rules and that the requisite mens rea of criminal misappropriation will bring his act under the purview of Section 409 IPC. It is not essential for the prosecution to prove in what way, he utilised that money. The mental act of misappropriation also can be taken into consideration looking to the facts and circumstances of each particular case. The retention of money by the accused for about a period of 3 years and for about a period of 2/1-2 years after he handed over the charge and the other factors discussed by me above clearly go to prove that the accused had a requisite mens rea to misappropriate this money. The retention of money has caused wrongful loss to the State Exchequer and has caused wrongful gain to the accused who has utilised this money for three years. In my opinion, the view taken by the learned lower court that actual misappropriation has not been proved is perverse in law.

and the judgment of the learned lower court deserves to be set aside. The accused respondent Mohanlal is held guilty of the offence under Section 409 IPC as all the ingredients necessary to be proved for this offence stand fully established by the prosecution evidence. The provisions of law need not be proved and other facts stand admitted.

13. The result is that I accept this appeal, set aside the judgment of acquittal recorded by the learned lower court in favour of the accused-respondent. I hold accused-respondent Mohanlal guilty of the offence under Section 409 IPC. However, looking to the fact that almost 9 years have elapsed from the date of the commission of this crime, and so taking a lenient view regarding sentence, I sentence the accused respondent Mohanlal to 6 months rigorous imprisonment together with a fine of Rs. 200/-, in default of payment of fine, he shall further undergo two months rigorous imprisonment. The accused-respondent Mohanlal is on bail. His bail-bonds are cancelled. The learned Munsif and Judicial Magistrate; Nathdwara is directed to effect his arrest to undergo the sentence imposed against him.