

Suresh Tolani Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Jan-30-2001

Reported in : 2001CriLJ1959; 2001(4)WLN317

Judge : Mohd. Yamin, J.

Acts : Indian Penal Code (IPC) - Sections 409 and 477-A; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Cri. Revn. Petn. No. 793 of 2000.

Appellant : Suresh Tolani

Respondent : State of Rajasthan

Advocate for Def. : N.C. Chowdhary, Adv.

Advocate for Pet/Ap. : Biri Singh, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

Mohd. Yamin, J.

1. This is a revision petition against the judgment of learned Additional Sessions Judge, Jaipur District, Jaipur dated 30-11-2000 by which he dismissed the appeal

of the petitioner and maintained the conviction recorded by the learned Additional Chief Judicial Magistrate (Special Police Establishment Cases), Jaipur District, Jaipur who had convicted the petitioner for offences Under Sections 409 and 477-A, IPC and sentenced him to undergo two years rigorous imprisonment with a fine of Rs. 2,000/-, and in default, to undergo two months rigorous imprisonment for offence Under Section 409, IPC and sentenced to one year's rigorous imprisonment with a fine of Rs. 1,000/-, and in default, to undergo one month's rigorous imprisonment for offence Under Section 477-A, IPC. Both the sentences were ordered to run concurrently.

2. I have heard learned counsel for the petitioner and learned counsel for C.B.I.

3. Accused petitioner was working as a higher grade Assistant in the Transport Nagar Branch of the Life Insurance Corporation in the year 1989 to 1991. It is alleged that Shashi Shekhar Dave, Gurdayal Singh and Iqbal Singh obtained LIC policies in the year 1990 and the instalment of those policies with regard to the year 1991 was not deposited in the month of February or March. Necessary notices were sent to them. The case of the prosecution is that Iqbal Singh deposited the amount of premium and obtained receipt Ex. P. 1. However, some receipts pertaining to premia were missing as per the audit report and, therefore, a preliminary enquiry was held. It was alleged that the premium amount was paid by the above said policy holders but the same was not entered in the cash book and other registers and was misappropriated by the accused petitioner. Consequently, a case Under Sections 409 & 477-A, IPC was registered against the petitioner and after investigation, chargesheet was submitted in relation to the policy amount of Shri Iqbal Singh which was Rs. 2546.50 including the penalty and with regard to the rest remaining two policies the receipts could be traced out and consequently their matter was dropped. The learned Magistrate framed charge under the said sections against the petitioner vide order dated 2-1-94 who denied his indictment and then prosecution examined as many as 11 witnesses in support of its case. Then accused petitioner was examined Under Section 313, Cr. P.C.. He did not produce any witness in defence. Learned Magistrate after hearing both the parties convicted and sentenced the accused petitioner as stated above. On appeal, the said conviction and sentences were maintained.

4. The settled law for such cases is found in State of Kerala v. Puttumana Illath Jathavedan Namboodiri, (1999) 1 JT (SC) 456 :1999 Cri LJ 1443 in which it has been held that if some glaring feature appears then the evidence can be further reappreciated by the High Court, otherwise, when there is appreciation of evidence by the trial Court and reappreciation by the appellate Court, the same will not be interfered with.

5. Learned counsel for the petitioner Mr. Biri Singh submitted that the salient feature in his case is that accused peitoner did not obtain the money as such here was no entrustment to him. He also submitted that the accused petitioner has been convicted on the basis of statement of only Iqbal Singh which suffers from infirmities and that the prosecution was not able to prove as to whom money was handed over because the receipt Ex. P. 1 states that the cash amount was received by somebody else and not by petitioner. He stated that accused petitioner was an official whose duty was simply supervisory, and he simply put his signatures on the stamp of the receipt while the amount was received by somebody else which prosecution was not able to prove. He drew my attention to the statement of PW. 6 K.B. Chenani who held deparmental enquiry and stated that during inquiry Gurdoyal Singh stated that he brought the money from Iqbal Singh and deposited it on the cash counter and then handed over the receipt to Iqbal Singh. So, according to him, when there is this type of evidence it appears that injustice has been done with the accused petitioner and, therefore, the whole evidence should be looked into.

6. Learned counsel for C.B.I. rightly did not object to further reappreciation of the evidence in this case when the salient feature was brought to the notice.

7. PW. 1 Satish Chand Jain has stated that he did not see the receipt of the amount of the policy of Iqbal Singh and that according to receipt Ex. P. 1 a sum of Rs. 2527.80 along with penalty of Rs. 19/- is said to have been deposited but the same was not found in the cash book. He has proved Article-1, Branch premium cash book which does not tmention the amount of Ex. P. 1. He admitted in cross-examination that the cash book was prepared by the cashier. Admittedly, there were 3 cashiers in the office wherefrom receipt Ex. P. 1 is said to have been

issued. PW. 2 Trilochan Singh stated that he was an Assistant at the relevant time but Ex. P. 1 does not bear his signature and he was not able to identify the signature of the person. PW. 3 Iqbal Singh is the policy holder who has stated that he knew one Gurdayal Singh and obtained the policy on persuasion of Gurdayal Singh from the accused petitioner. He stated that he paid a sum of Rs. 2527.80 as well as the penalty of Rs. 19/- to the petitioner who gave him the receipt Ex. P.1. Then certain persons of the Insurance Corporation came to his house later on and inquired whether he had deposited the money. Then he inquired from the accused petitioner who told that he had deposited the amount of the policy and showed him receipt Ex. P. 1. He was subjected to a very lengthy cross-examination but he maintained that the amount was paid to the petitioner before Gurdayal Singh and that the amount of penalty was also given to the petitioner. It was alleged that this witness was stating a wrong fact on the persuasion of Trilochan Singh but he denied this suggestion. Learned counsel for the petitioner submitted that this witness is unbelievable but I find from his statement that there was no reason as to why he will tell lie against the petitioner who obtained money of Rs. 2527.80 as premium and Rs. 19/- as penalty. This star witness of the prosecution is worth reliance. Smt. Mahendra Meena, PW. 4 has stated that the accused petitioner was a supervisor and when he used to go on leave, she used to look after his work and has stated that Ex. P. 1 bears signatures of the accused petitioner. She stated in very clear words that at the time of audit, the receipt Ex. P. 1 was not available in the record. From her statement it is proved that Ex. P. 1 bears the signature of the accused petitioner and the accused petitioner also does not deny. P.W. 5 Rajesh Khurana has also stated that the accused petitioner was a supervisor while he was himself a cashier. He has proved that the receipt Ex. P. 1 bears the signature of the accused petitioner but it does not bear the initial of Trilochan Singh in between 'A' to 'B'. Learned counsel for the petitioner submitted that Trilochan Singh has not been produced on behalf of the prosecution while according to the counsel, signature in between 'A' to 'B' might be of Trilochan Singh which mentions that the amount was received in cash by him. Needless to say that the receipt bears the signature of the accused petitioner, it means that it also corroborates the version of PW. 3 Iqbal Singh that the amount was given to the petitioner and that is why he had put his signature on the receipt. PW. 8 P.N. Singh was the Senior Manager

who made audit of the relevant period during which he found that record did not contain the receipt in the name of Iqbal Singh and a letter was sent to Iqbal Singh to bring the receipt which was produced by the father of Iqbal Singh and which bears the signature of the accused petitioner. He does state that the portion 'A' to 'B' marked on Ex. P. 1 bears the signature of somebody but he does not identify them. He categorically denied the names of Rajesh Khurana and Trilochan Singh whose signatures were known to him.

8. In view of what has been stated above, it is proved beyond doubt that the accused petitioner had obtained the money of the premium from Iqbal Singh, put his signatures on Ex. P. 1 but even then the amount was not deposited in the office of the L.I.C.

9. Learned counsel for the petitioner submitted that even if Iqbal Singh is believed, he says that the amount was given to the petitioner at the residence of Iqbal Singh and that would not mean that the amount was deposited with the Life Insurance Corporation. Counsel cited *Mool Singh State of Rajasthan*, (1996) 2 Rajasthan LR 426 in which there was no specific and direct evidence on the point of entrustment of the amount and then it was held that when entrustment was not proved, the accused could not be convicted and benefit of doubt was given to him. This case is very much distinguishable on facts. It has been proved beyond doubt that the entrustment was made to the petitioner. Learned counsel also cited *State v. K.P. Jain*, 1984 Cr LJ 76 in which Allahabad High Court considered as to what is entrustment. There was solitary deposition of the cashier to prove that accused were entrusted with the property in question and they committed the criminal breach of trust in respect thereof. In those circumstances, when the cashier who said to have handed over the money to the accused was not the owner and so was not competent to create a fiduciary relationship between himself and the accused and there was nothing on record to show that the company who was the owner of the cash in the chest entrusted it to the accused. Therefore, it was held that no entrustment was proved. In the case in hand, the facts are different. Here it is very well proved by Iqbal Singh that he handed over the money to the petitioner and thus created fiduciary relationship. The receipt Ex. P. 1 admittedly bears the signature of the petitioner. In the case in hand, two important factors of paramount

importance as held in *Laxman Singh v. The State*, 1986 Cri LR (Raj) 217 are factum of entrustment and the factum of misappropriation. It is very well proved from the evidence that the petitioner did receive the money which was entrusted to him and secondly it is well proved by the witnesses that the same was not deposited with the Life Insurance Corporation. Learned counsel also cited *Sohan Lal v. State of Raj*, (1987) 2 Rajasthan LR 925 but the facts of this case do not apply to the present one. He also cited *Roshan Lal Raina v. State of Jammu and Kashmir*, AIR 1983 SC 631 : 1983 Cri LJ 975; *Satya Narain v. State of Rajasthan*, 1978 Cri LR (Raj) 672; *State of Gujarat v. Chandubhai Ramjibhai Patel*, 1995 Cri LJ 4082 (Gujarat); *Labhshanker Mangalal Shukla v. State of Gujarat*, (1979) 3 SCC 391 : 1979 Cri LJ 890; *Dhulamani Behera v. State of Orissa*, (1988) 1 Crimes 520 : 1988 Cri LJ 1027; *Okila Luha v. State of Orissa*, (1984) 2 Crimes 195 : 1984 Cri LJ 1828 and *Janeshwar Das Aggarwal v. State of U.P.*, 1981 Cr LR (SC) 303 : AIR 1981 SC 1646 in support of his argument that the accused petitioner deserves acquittal. But in these citations, he facts were different. However, a gist of the judgments is that there should be entrustment and then there should be misappropriation. Learned counsel for the petitioner had submitted that the prosecution was not able to prove these two factors but I do not agree. While reappreciating the evidence though it was appreciated and reapreicated by both the Courts below, I find that the prosecution was able to prove the ingredients and, therefore, the Courts below were right in holding that the accused had committed the offences.

10. Consequently, there is no force in this revision petition and the same is hereby dismissed.