

In Re: Ayyadurai Devar and anr.

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Court : Chennai

Decided On : Oct-01-1980

Reported in : 1981CriLJ258

Judge : S. Nainar Sundaram, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 109, 405 and 409

Appeal No. : Criminal R.C. No. 590 of 1978 (Cr.R.P. 587 of 1978)

Appellant : In Re: Ayyadurai Devar and anr.

Advocate for Def. : M. Karpagavinayagam, Govt. Adv.

Advocate for Pet/Ap. : S. Pichai, Adv.

Judgement :

ORDER

1. The accused 1 and 2 in C.C. No. 621 of 1976 on the file of the Chief Judicial Magistrate, Devakottai, are the petitioners in this revision. The first accused was convicted under S. 409 I.P.C., and the second accused was convicted under Section 409 read with with S. 109 I.P.C. and each was sentenced to rigorous imprisonment for nine months there under. They preferred an appeal C.A. No. 238 of 1977 before the Sessions Judge, Ramanathapuram Division at Madurai, and the learned Sessions Judge, on a reappraisal of the materials, found no justification for interference, either with the conviction or the sentence and dismissed the

appeal. The present revision is directed against the judgment of the Sessions Judge.

2. Mr. S. Pichai, learned counsel for the petitioners, did not trouble me with the facts of the case on merits, but was content to put forth an argument that even on the facts pleaded and proved by the prosecution, there is no offence made out within the meaning of Section 409 I.P.C. The appreciation of this contention requires short delineation of the facts of the prosecution case. The first petitioner was the President of Thiruvottiyur Agricultural Co-operative Credit Society and the second petitioner was the Sales Clerk in the said Society hereinafter referred to as the Society. On 3-8-1976 at 3.40 p.m., they took delivery of 21 bags of levy sugar on behalf of the Society, on payment of the sale price therefor, from the Tamil Nadu Civil Supplies Corporation, Devakottai, which had to be distributed only to the ration card holders. Out of the 21 bags, the petitioners herein sold away seven bags to P.Ws. 7 to 10. It is found from the materials placed by the prosecution that on the date of the delivery of 21 bags of sugar by the Tamil Nadu Civil Supplies Corporation, Devakottai, the society did not have the required funds to pay the full consideration therefor. From this, the learned counsel for the petitioners argues the concerned sugar bags had not become the property of the Society, so that it could be stated that the petitioners herein were entrusted with the sugar bags belonging to the society within the meaning of S. 405 I.P.C. In my view, this argument is not sound in view of the facts, which have emerged from the evidence. It is the evidence of P.W. 18, the Secretary of the Society that some times levy sugar used to be obtained by the first petitioner-first accused for and on behalf of the Society by initially advancing the moneys and obviously later getting the same recouped from the Society. Further, the first petitioner-first accused has not put forth a defence that he purchased the sugar on his own account and the sugar belonged to him only. His plea was one of total denial of the prosecution case. To fit in the case within S. 405 I.P.C., either the ownership of the beneficial interest in the property in respect of which criminal breach of trust is alleged to have been committed must be in some person, other than the accused and the latter must hold it on account of some person or in some way for his benefit. The sugar taken delivery of by the petitioners was levy sugar and allotments thereof could be made only to allottees like the Society, for the purpose of distribution to

the Ration card holders. Merely because on the date of delivery of the levy sugar to the petitioners, the funds of the Society could not have been utilised, it cannot be stated that the society was not the beneficial owner thereof. The first petitioner was the President and the second petitioner was the Sales Clerk of the Society. They must be deemed to have obtained delivery of the levy sugar from the Tamil Nadu Civil Supplies Corporation only for and on behalf of the Society and not for themselves. As pointed out earlier, such was not the plea of the petitioners. One other essential condition of the offence of criminal breach of trust is that the property which is the subject matter of the offence must have been entrusted to the accused, and trust of some kind is necessary. When the accused took delivery of the levy sugar from the Tamil Nadu Civil Supplies Corporation, they took it only for and on behalf of the Society and they were entrusted with the property of the Society. As pointed out by the Supreme Court in *Somnath v. State of Rajasthan*, : 1972 CriLJ897 the expression 'entrusted' in Section 409 is used in a wide sense and includes all cases in which property is voluntarily handed over for a specific purpose and is dishonestly disposed of contrary to the terms on which possession has been handed over. This is what has happened in the instant case. In these circumstances, I am not able to appreciate and accept the contention put forth by the learned counsel for the petitioners that no offence under Section 409 I.P.C. has been made out. I do not find any justification for interfering with the order of conviction passed by the first court and confirmed by the lower appellate court.

3. Mr. S. Pichai, learned counsel for the petitioners, then urges that this court should be lenient with reference to the sentence imposed. He submits that the first petitioner is, on date, aged about 52 years and the second petitioner is aged about 30 years and he further submits that both are burdened with family and have already suffered incarceration for a period of 26 days and if they are to undergo further imprisonment, their family members will be put to great hardship and even penury. Considering these representations, I find a warrant for reducing the sentence of imprisonment imposed on each of the petitioners to the period already undergone; But so far as the first accused-first petitioner is concerned, I find a warrant for imposing a fine in lieu of the unexpired portion of the sentence of imprisonment imposed by the courts below. Accordingly, while confirming the conviction on the petitioners, the sentences of imprisonment on each of them will

stand reduced to the period already undergone by them and the first petitioner-first accused shall pay a fine of Rs. 500/- in lieu of the unexpired portion of the sentence of imprisonment imposed by the courts below; in default of which, he shall suffer rigorous imprisonment for three months. Time for payment of fine four weeks. Subject to the above modification in the sentences, this criminal revision case is dismissed.

4. Revision dismissed.

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