

Rajendran Vs. State by Sub-inspector of Police, Thiruvarur

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Court : Chennai

Decided On : Dec-10-1997

Reported in : 1998(1)CTC418

Judge : R. Balasubramanian, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) -- Sections 405, 408 and 409

Appeal No. : Crl.R.C.No. 154/1996

Appellant : Rajendran

Respondent : State by Sub-inspector of Police, Thiruvarur

Advocate for Def. : Mr. R. Karthikeyan, Government Adv.

Advocate for Pet/Ap. : Mr. R. Balakrishnan, Adv.

Disposition : Revision allowed

Judgement :

ORDER

1. The revision petitioner is the accused in C.C.No.1378 of 1989 on the file of the Judicial Magistrate, Thiruvarur and the appellant in C.A.No.86 of 1994 on the file of the Court of Sessions, Nagapattinam. He was charged and tried for an offence under section 409 of the Indian Penal Code and at the end of the trial, he was found guilty for the said offence and sentenced to undergo rigorous imprisonment

for six months together with a fine of Rs.1,000 carrying a default sentence. The appeal filed by him was also dismissed.

2. I heard Mr. R. Balakrishnan learned counsel appearing for the revision petitioner as well as Mr. R. Karthikeyan learned Government Advocate on the criminal side for the respondent. The sum and substance of the arguments advanced by the learned counsel for the revision petitioner is that on the facts and circumstances available in this case, at best it can be said that entrustment of the money is only established and the subsequent essential ingredients of the dishonest intention to appropriate the money for the benefit of the accused is not yet established. The learned counsel would further argue that as the entrustment of the money to the accused is not at all disputed and the fact that the money was accounted for only one week later by itself, would not amount to the accused committing the offence under section 409 of the IPC. In other words, the submission of the learned counsel for the revision petitioner is that the element of dishonest intention on the part of the accused is totally absent in this case. On the contrary, the learned Government Advocate argued that both the courts below on appreciating the evidence placed before it, came to the conclusion that the accused dishonestly misappropriated a portion of the money entrusted to him and therefore there is no scope to interfere in the Judgment of the Courts below.

3. In the light of the arguments advanced by the learned counsel on either sides, I perused the judgments under challenge as well as the records. Certain facts are not in dispute and they are as follows:

The accused is employed as a Junior Assistant in the Project Preparation Cell-Sub-Division I, attached to the Public Works Department. Therefore he is a public servant. P.W.1 was the Executive Engineer; P.W.2 was the Junior Engineer; P.W.3 was the Assistant Engineer; P.W.4 was the Junior Assistant; P.W.5 was the Office Assistant; P.W.6 was the Junior Assistant; P.W.7 was the Surveyor and P.W.8 was the Junior Assistant in that office during the period 1985 to 1987. P.Ws. 9 and 10 are the Police Personnel. A sum of Rs.2,798.20 was entrusted to the accused by P.W.8 is not disputed. This sum represents Dearness Allowance and Travelling Allowance to be disbursed to all the persons, including P.Ws. 1 to 8

working in that Project. The accused disbursed a substantial portion of that amount leaving a balance of Rs. 1,110.90 in his hand is also admitted. 15.2.86 was Saturday and 16.2.86 was a Sunday. The accused, who has to report on 17.2.86, did not report for duty for quite a few days during which time he had the balance of the undisbursed amount referred to above in his custody. P.W.1 admits that as there was no provision in the office to keep the money there, the accused is entitled to have custody of the same. The said balance amount of Rs. 1,110.90 was remitted to the department on 25.2.86 is also not in dispute and the accused was suspended from 28.2.86 also stands proved. The case of the accused is that, as the others who were working in the Project were not available on 15.2.86, he was not able to disburse the entire money, which forced him to keep the same with him when he left the office for his home town namely Kumbakonam. According to him, he fell sick from 17.2.86 and he was hospitalised and that is the reason why he could not remit the money immediately on the next working day. The courts below found that along with his written statement, he had submitted the medical certificate as well as copies of leave letters sent by him to the office.

4. On the face of these materials, the question that falls for consideration is whether the accused had any dishonest intention on his part in retaining the sum of Rs.1,110.90 with him which was established to be the undisbursed money entrusted to him. The learned counsel for the revision petitioner in this context, brought to my notice two Judgments, one is that of the Honourable Supreme Court of India and the other is that of the Bombay High Court, in support of his contention that mere entrustment and delay in accounting for the entrusted property without there being any further dishonest intention cannot be itself amount to an offence under section 409 of the IPC. The first judgment is that of the Honourable Supreme Court of India reported in *Sardar Singh v. State of Haryana*, : 1977 CriLJ1158 wherein it has been held as follows:

'Penal Code (1860), Ss. 409, 405- Scope - Ingredients of offence under - mere failure or omission to return property not sufficient to constitute offence under: The accused who was a patwari was admittedly entrusted with the receipt-book or in any event with dominion over it, but there was no evidence to establish that he dishonestly misappropriated the receipt book or converted it to his own use or

dishonestly used or disposed of the receipt book. Held it was quite possible that the accused might have lost or mislaid the receipt-book and hence he might have been unable to return it to the superior authorities. What the section required was something much more than mere failure or omission to return the receipt-book. The prosecution had to go further and show that the appellant dishonestly misappropriated or converted the receipt book to his own use or dishonestly used or disposed of it. That, the prosecution had not been able to do in the present case and therefore, the accused was wrongly convicted under section 409'.

The next judgment is that of the Bombay High Court reported *Lala Raoji v. Emperor* AIR 1928 Bom. 205 wherein it has been held as follows:

'(a) Penal Code, Section 408 - mere retention of money is not offence.

Ordinarily mere retention of money will not suffice to constitute the offence of criminal mis-appropriation'.

'(b) Penal Code, Section 409 - Head of office negligent in seeing to the observance of rules about remitting money to treasury is not ipso facto guilty - intention of wrong - fully keeping Government out of the money must be found - He is guilty of gross dereliction of duty. Section 409 cannot properly be construed as involving that any head of an office, who is negligent in seeing that the rules about remitting money to the treasury are observed, is ipso facto guilty of the offence of criminal breach of trust, but something more than that is required to bring home the dishonest intention, which is one of the essentials of a conviction under Section 409. There should be some indication which justifies a finding that the accused definitely had the intention of wrongfully keeping Government out of the money; and ordinarily that would be shown by some overt act, which went beyond mere retention of money that should have been remitted to the treasury. He is guilty of gross dereliction of duty in not seeing that the rules are observed.'

5. The Judgment of the Bombay High Court refers to a Judgment of this court reported in *Queen Empress v. Ramakrishna* case ILR 12 Mad. 49.

'In this case, the accused was a Government servant whose duty it was to receive certain moneys and to pay them into the treasury on receipt. . He admitted that he had retained two sums of money in his possession for several months, when fearing detection he paid them into the treasury making a false entry at the time in his books with a view to avert suspicion. His explanation as to his reason for retaining the money was not credited by the Magistrate, who convicted him of criminal mis- appropriation under section 403, IPC and it was held by the High Court that that conviction was right.

Wilkinson, J, says (p.51):

'In my judgment the lower court rightly held that in a case like the present dishonest intention can only be inferred from the circumstances of the case. Looking at all the facts of the case it seems to me that the only conclusion to be drawn is that the intention of the prisoner was dishonest, if not when he put the money in his pocket and carried them home with him, at all events the next day when he omitted to take back the moneys with him to the office and credit them to Government.'

Shephard, J, says (p.52):

'If the petitioner's account of the reasons for not crediting the money in the usual way is put aside, I think there is no doubt the conviction is right. If he did not intend to pay money into the treasury, he must have intended to appropriate it to himself, and it cannot make any difference that one of his reasons for adopting this course, which was clearly a dishonest one, was that he desired to avert the displeasure of his superior.'

6. In the light of the decided case laws brought to my notice, I tried to find out whether there is any direct evidence regarding the dishonest intention or whether at least there are circumstances from which the dishonest intention could be inferred. The explanation offered by the accused for non- disbursing of the entire cash on 15.2.86 itself as referred to earlier, in this judgment, appears to be more probable and in any event there is no evidence contra to show that all the persons working in the Project were available on that day namely on 15.2.86 for receiving

the payment from the accused. The accused in that event is entitled to retain the money with him is spoken to by P.W.1 himself. Therefore the retention of the undisbursed money by the accused is also made legal by the evidence of P.W.1. There is no evidence in this case to show that if the accused could not disburse the entire money on that date itself; namely on 15.2.86, he must remit it back to the officer who entrusted the money to him or any time schedule within which he must disburse the money to all those persons who are entitled to get it. If at least there are some evidence to that effect, then one can understand that the accused is duty bound to return the money to P.W.8 on the next working day. Under these circumstances, from the mere fact of the prolonged retention of the undisbursed money by the accused with him, in this case for a period of roughly one week, could it be inferred that there was any dishonest intention on his part. In this context, the evidence of P.W.1 was brought to my notice, which is to the following effect:

'The accused is responsible for the money entrusted to him; till such time the money entrusted to him is disbursed he has to retain it.'

When this being the position on facts coupled with the other circumstances referred to above by me, it is not possible to hold that the accused had any dishonest intention when he retained the undisbursed money with him from the evening of 15.2.86 till 25.2.86 when he remitted the same. Therefore I am of the opinion that the courts below have committed an illegality in convicting the accused for the offence punishable under section 409 of the IPC and the accused is therefore entitled to an order of acquittal and accordingly he is acquitted. The Judgment dated 04.08.94 in C.C.No.1378 of 1989 on the file of the Judicial Magistrate, Thiruvarur and confirmed by a Judgment dated 11.1.95 in C.A.No.86 of 1994 on the file of the learned Sessions Judge, Nagapattinam convicting the accused for an offence under section 409 IPC are set aside. The accused is acquitted forthwith of the said charge and the fine amount, if any, collected from him shall be refunded to him. The bail bond, if any, executed by the accused shall stand terminated forthwith. Accordingly the above revision is allowed.