In Re: Munusami Nainar

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Court : Chennai

Decided On : Jan-09-1930

Reported in : (1930)58MLJ649

Appellant : In Re: Munusami Nainar

Judgement :
ORDER

Krishnan Pandalai, J.

1. The petitioner was the village headman of Sirukadambur vattam in the District of South Arcot. He was convicted by the Sub-Divisional Magistrate of Tirukoilur of an offence under Section 409, Indian Penal Code, criminal breach of trust by a public servant of a sum of Rs. 17-12-6 and sentenced to simple imprisonment till the rising of the Court and a fine of Rs. 60 or further imprisonment for 15 days in default. At the outset it does strike one that if the conviction is right the sentence is utterly inadequate. The conviction and sentence were, however, upheld by the learned Sessions Judge of South Arcot. The petitioner now applies to this Court to set aside his conviction.

2. The facts are, that on the 19th of June, 1925, P.W. 1, a ryot within the jurisdiction of the village where the petitioner was the headman, paid to the petitioner Rs. 17-12-6 being an instalment of an agricultural loan taken by him and which fell due on the 10th of April, 1925. The petitioner paid this sum into the

treasury on the 20th July, 1925, together with one rupee, in all Rs. 18-12-6. The additional sum was represented by the petitioner to be the interest levied from P.W. 1 according to the rules for takkavi loans for the delay in the payment of the instalment. It is said that the accounts kept by the petitioner show that this additional sum of one rupee was paid by P.W. 1 and it was therewith that the ultimate sum of Rs. 18-12-6 was paid. The charge against the petitioner is that he misappropriated the sum of Rs. 17-12-6 dishonestly 'for his own benefit during the period between the 19th of June and the 20th of July. I have heard the learned Public Prosecutor on this point and I am unable to see that there is any evidence in the case except the delay to show that during the period between the 19th of June and the 20th of July the petitioner did dishonestly use this sum, Rs. 17-12-6. The Lower Court seems to be of the opinion, that the delay is sufficient proof and that because the petitioner did not remit the sum of Rs. 17-12-6 immediately on receipt to the treasury he must be held or presumed to have misappropriated the amount to his own use. I do not think that there is any such presumption which arises on facts like the present. I asked the learned Public Prosecutor to say whether there was any rule under which a sum paid as an instalment of an agricultural loan should be paid into the treasury within a particular period. There appears to be no such rule. This, of course, does not mean that an officer who receives money of that character may retain it for all time with impunity and then say that as he was not required to pay it within a certain time, he is at liberty to do what he likes with it. On the contrary, it does not follow, merely because an instalment of an agricultural loan is not paid the very next day into the treasury, that thereupon and therefrom an inference begins to be drawn against the Village Munsif that he has misappropriated the amount so omitted to be paid. The inference is purely one of fact and I certainly think there are no circumstances in this case from which such an inference could be drawn. What the petitioner himself said was that as the full amount of the instalment due, namely, the amount of the principal and the interest clue, was not paid, he detained the amount till the balance was brought. There is nothing to show that this was not the case. The accounts apparently show that the interest was subsequently paid and when it was paid the total amount was sent to the treasury. P.W. 1 no doubt says that he did not pay the interest subsequently and that it was the petitioner himself, to cover up

his fraud, that supplied the sum of one rupee and paid the total. But obviously the statement of a man like P.W. 1 in this case cannot be acted upon, where it turns the scale between guilt and innocence of the petitioner, because, upon his own statement, he bears some kind of grudge or ill-will to the petitioner. It seems that there was a previous case similar to the present against this petitioner and that the petitioner was acquitted on appeal. The present P.W. 1 has the effrontery to say that upon that acquittal; the petitioner was restored to his office, and that if he were not so restored he would not have preferred this complaint. A man who can acknowledge such a conduct certainly does not deserve to have his words accepted as true, where the intention of it is to incriminate the petitioner whom he wishes to see out of his office. If authority were necessary for the proposition, that mere delay in payment of money entrusted to a person, when there is no particular obligation to pay it at a certain date, does not amount to and does not furnish by itself a sufficient proof of misappropriation, such authority will be found in Gunananda Dhone v. Lala Santi Prakash Nandy : AIR1925 Cal613 where it is stated that

Where there is no time fixed for the payment of the money or where no place is assigned for the keeping thereof, the accused cannot be said to have committed the offence of criminal breach of trust for merely mixing the trust money with his own etc.

3. There is no question here of mixing the money with the petitioner's money, because there is absolutely no proof in the case of any such conduct. As the only fact proved against the petitioner was that he paid the money only 31 days after its receipt and that fact is legally insufficient by itself to prove that the accused committed criminal breach of trust, the conviction must be set aside and the fine, if paid, will be refunded.