

In Re: Baron Von Dincklage

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Court : Chennai

Decided On : Sep-23-1941

Reported in : AIR1942Mad182; (1941)2MLJ748

Appellant : In Re: Baron Von Dincklage

Judgement :

ORDER

Horwill, J.

1. The appellant has been convicted by the Second Presidency Magistrate, Madras under Section 409 of the Indian Penal Code of committing criminal breach of trust with respect to a sum of Rs. 7,643, the sale proceeds of certain enamels sold to one Dwarakadoss Narayanadoss; and he has been sentenced to nine months' rigorous imprisonment.

2. The facts of the case are fairly simple. The appellant, a German Director of a German Company, on the eve of the declaration of War between Britain and Germany, attempted to realise as much money as he could; and so asked his clerk to try to find a purchaser for the enamels that he had in stock. He was brought into touch with Dwarakadoss Narayanadoss, who agreed to pay Rs. 7,643 for the enamels. He came with a cheque for that amount on the morning of the 2nd of September 1939, the day before the war was declared; but the accused refused to take a cheque and said that he must be paid in cash. The cash was paid in the

afternoon of the 2nd September and the accused handed over the money to his wife. The question is whether in doing so. he committed a breach of trust.

3. Mr. V. V. Srinivasa Aiyangar was inclined to argue at first that no breach of trust was committed, even if there had been a dishonest intention; but I think that the wording of Section 407 is wide enough to be attracted by a series of acts of this kind. The argument was not pressed because, as Mr. V.V. Srinivasa Aiyangar points out, it matters very little to the accused whether he is sentenced to nine months' rigorous imprisonment for criminal breach of trust or to some slightly lesser period for an offence under some other section of the Code.

4. The real question is whether the accused acted dishonestly, that is to say, whether he intended to cause wrongful loss or wrongful gain to any person. The accused's explanation was that he received the money after the banks had closed on the second, which was a Saturday, that as he had no safe, he kept the money with him intending to remit it to the bank on the Monday, and that in the meantime he was arrested and interned. This statement is not consistent with the remainder of the accused's statement, from which it seems pretty clear that he was desirous of preventing this money from falling into the hands of the Government of India or whomsoever they might appoint to take charge of the assets of enemy firms. Moreover, the fact that he refused a cheque shows that he was anxious to avoid having the money in the bank. It is not however an offence to do an act in anticipation of a statute or enactment which would make that act an offence. At the time when the accused took this money and handed it over to his wife intending to withhold it from the Government of India, there was nothing in law prohibiting the accused from screening the money; from the Government of India or the Custodian of Enemy Property. If therefore the acts of the accused were done merely to screen the money from the Government of India or the Custodian of Enemy Property and he had no intention to cause wrongful lessor wrongful gain to any other person or persons, he did not commit an offence.

5. There are two interpretations of the acts of the accused which would make him guilty of an offence punishable under Section 407, of the Indian Penal Code. One is that he intended to profit himself at the expense of his firm, of which he was a

partner. Others have shares in the assets of the Company and if he had appropriated money belonging to a number of persons, he would have been guilty of a criminal breach of trust, even though he was entitled to a share of the money. The prosecution has not examined any other partner of the firm; nor is there any evidence, except the fact that he withdrew money, from the partnership and kept it in his own custody, to show that he had any intention of defrauding the Company. The explanation of the accused that he merely intended to protect the money so that in due course it might reach the hands of the shareholders is not unreasonable. That being so, we must give him the benefit of the doubt in this matter.

6. The other interpretation of the appellant's act which would make him guilty of the offence with which he was convicted is that even assuming that he acted from patriotic motives and with the intention of helping his firm, he nevertheless intended to defraud the creditors of the firm, i.e., he did these acts with the intention of causing wrongful loss to the creditors of the firm. If he had attempted to save money for his firm at the expense of his creditors, I think he would have been criminally liable under Section 407 of the Indian Penal Code. There is however no evidence to show that the assets available in India were not sufficient to meet the demands of Indian creditors. The evidence with regard to the amounts due to Indian creditors and the realisable outstandings of the firm is very vague, and it cannot therefore be presumed that the accused acted with an intention to cause wrongful loss to Indian creditors.

7. Whatever way one may view the case, therefore, one is forced to the conclusion that the prosecution has not proved that the accused acted with any dishonest intention. The appeal is therefore allowed and the conviction and sentence set aside.