

In Re: Ch. Venkatasubbayya

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Court : Chennai

Decided On : Jul-31-1953

Reported in : 1956CriLJ1079

Judge : Ramaswami, J.

Appellant : In Re: Ch. Venkatasubbayya

Judgement :

ORDER

Ramaswami, J.

1.This is a criminal revision case which has been filed against the conviction and sentence of the Additional Stationary Sub-Magistrate, El-lore, in C. C. No. 2160 of 1952 which was confirmed by the Sub-Divisional Magistrate of Eluru in C. A. No. 104 of 1953.

2. The facts lie in a brief compass: The criminal revision petitioner before us Venkatasubbayya was working as a godown keeper in Ellore Co-operative Stores. In this case there was a co-accused (second accused) who had been acquitted in the lower Court, He was the manager of the said stores. The stores has seven depots under its control. The criminal revision petitioner was in charge of the main depot. According to the bye-laws of the stores this petitioner should sell the stocks in his custody to the customers, supply stocks to the other depots, write bills for the sales made by him, credit the daily sale amount in chittas maintained by the

manager and obtain a receipt from the manager on the next day after the day's work. Then he should prepare an abstract of the daily sales from the bills and should account for the amounts realised by sale. In other words the actual entrustment was with and remittance was to be made by this petitioner and the over-checking of the same was entrusted to the manager. If this criminal revision petitioner (godown keeper) had been honest and the manager had been careless, nothing would have happened, or if the go-down keeper had been dishonest and the manager had been careful in checking, even then nothing would have happened. But what happened was the godown keeper was dishonest and the manager was careless and did not attend to the work of checking the accounts. The inevitable result happened which will be set out in the next paragraph.

3. During the period from 4-7-1951 to 11-11-1951 this godown keeper effected cash sales to the extent of a total sum of Rs. 20,585-5-8 and remitted to the stores only Rs. 18,272-13-5. He had failed to account for Rs. 2,312-8-3. Exhibit P. 18-a is the list furnished by the Deputy Registrar of Co-operative Stores, Ellore, showing the amounts collected by this petitioner by the sale of the articles of the stores and the amount actually remitted by him, making out the figures mentioned above.

4. The case for this petitioner was that he had remitted even the sum of Rs. 2,312-8-3 to the manager (2nd accused) and that therefore he had not misappropriated the amount and committed criminal breach of trust in regard to this sum which had come into his hands in the normal course of effecting the sales.

5. Both the lower courts declined to accept this explanation and in my opinion for sound and cogent reasons. The bills and bill abstract registers during the period from 4-7-1951 to 11-11-1951 were in the handwriting of the petitioner and the chalans were prepared by this petitioner. The entrustment to this petitioner has not been disputed. In other words, there can be possibly no dispute that this sum with regard to which the charge has been framed had got into the hands of this revision petitioner. He had come to be in possession of this sum of money in the normal course of business and entrusted with the same, it was his duty to have remitted it to the manager of the stores. But this petitioner has not done it and his explanation that he did so cannot be accepted for the following reasons.

First of all, the second accused, the manager, had denied the receipt of the same to which we need not pay much credence, because it is his interested testimony. Secondly we find that if the petitioner had remitted the amount he would have obtained a receipt from the second accused, the manager, on the next day after day's work as was enjoined by the rules and as was the practice. These receipts are not forthcoming. Thirdly there is nothing corroborative to show that actually this money was paid by the godown keeper and the entire statement rested upon his own uncorroborated and untested statement in the dock.

6. In order to make out that these remittances were made, the argument which has been running in all these courts is to the following effect. This second accused must have checked these accounts as enjoined by the rules and if he had done so, he would have detected the non-remittance of these amounts. Because no such discovery has been made by the manager (second accused), the manager must have been receiving the monies from the petitioner. This is on the assumption that the manager was regularly discharging his duties for which there is not the slightest warrant. It has been pointed out by the two Courts below that it was the second accused's inattention to his business that has been responsible for these defaultations.

7. It has been finally argued that it has not been shown that this accused has misappropriated any particular amount on any particular occasion beyond the fact that he has not accounted for a sum of Rs. 2,312-8-3. This argument deserves a separate paragraph.

8. The usual evidence of breach of trust in regard to moneys received for the purpose of payment over is either non-payment, or non-accounting or false accounting. It must be remembered that breach of trust is a definite act, like theft or misappropriation, and that the above circumstance does not constitute it, but merely evidences it. Where it is the duty of the accused to pay over money at once, or any different periods, his non-payment is *prima facie* evidence that he has wrongfully appropriated it to himself 'Reg v. Jackson' (1844) 1 Car and K. 384 (A). But this presumption may be negated by evidence that the delay was caused by forgetfulness or that it was acquiesced in by the person to whom the money was

due 'Watson v. Golabkhan' 10 Suth WR Or 28 (B). Mere failure to account is not misappropriation and mere retention is not equivalent to use or disposal of property or to appropriation within, the meaning of Section 405. Non-payment coupled with a false account either as to the receipt of the money or its disposal is conclusive evidence 'Queen Empress v. Ganpat Tapidas' 10 Bom 256 (C).

But even a correct entry for the receipt does not negative breach of trust if in fact the promisor has converted the money to his own use 'Reg v. Lister' (1856) Dears and B. 118 (D). Nor is it necessary to prove that any specific sum of money, received on particular dates from particular persona have been embezzled. Where money is continually coming in and being paid out, such proof would be impossible. It is sufficient if, when the defendant is called on to account, a general deficiency is found, and if the evidence establishes that the general deficiency has resulted from the fraudulent conduct of the party charged. 'Queen Empress v. Kellie' 17 All 153 (E). A mere failure to render accounts is not itself a criminal breach of trust, unless it appears on the whole facts that the money is dishonestly withheld or has been dishonestly converted to prisoner's use 'Queen Empress v. Murphy' 9 All 666 (P).

9. This criminal revision petitioner has been acquitted of another charge of temporary misappropriation of Rs. 1,400 on the ground that no time has been fixed or prescribed within which the petitioner should purchase articles and return the balance and the mere retention of the moneys is no offence 'under Section 408, I.P.C.

It is obvious that the Assistant Public Prosecutor II grade has not kept himself abreast with the case-law on this subject. If he had been acquainted with the decisions in 'Papi Naidu v. Emperor' 1936 MWN 491 (G), 'Gona Achayya v. Emperor' 1936 MWN 825 (H), 'Karim Sahib v. Emperor' 1936 Mad WN 1019 (I), 'Rama Rac v. Sub-Inspector of Police, Kalahasti Station' 1937 Mad WN 566 (J), 'Mahanandi Reddi v. Emperor' 1937 Mad WN 992 (K), 'Brijkishore v. Chandrika Prasad' 1936 Oudh 329 (L), 'Wazir Singh v. Emperor' 1942 Oudh 89 (M). 'Emueror v. Chathurbhuj Narain' 1936 Pat 350 (N), Chandra Prasad v. Emperor' : AIR1926 Pat299 (O), 'Emperor v. Daya Shankar' AIR 1926 Oudh 398 (P), 'Deivasigamoni

Asari v. Emperor' AIR 1926 Mad 727 (Q), Harakrlshna Mahatab v. Emperor' : AIR1930 Pat209 (R), 'Nurul Hasan v. Emperor' AIR 1920 Pat 158 (S) he would not have advanced that argument. In this connection I must point out hat Courts and Assistant Public Prosecutors are bound to acquaint themselves with the current decisions on this subject of their own High Court at least and failure to do so is as much a dereliction of duty as omission to refer to the sections of the statute. 'Rex v. Ram Dayai : AIR1950 All134 (T), 'Karam Musain v. Md. Kfcalil' AIR 1946 All 529 (U), 'King Emperor v. Deni' 28 All 62 (V) where Stanley C.J. and Burkit J. have considered the genesis of this prn ciple. 'Raghava Mannadia;' v. Theyyunni Mannadiar' AIR 1947 Mad 106 (W) (Som-ayya J.). That is why Magistrates and Policemen and Judges in this State are being supplied with M.W.N., M.L.J, I.L.R., and A.I.R. reports; and they are expected to study' 11.em and apply these decisions correctly. The disregard of these reported decisions highly objectionable and as has been repeatedly pointed out, amounts to an act of insubordination.

Section 403 Expln. I clearly states that a dishonest misappropriation for time. only is a misappropriation within the meaning of this section. The essential thing to be proved in such cases is whether the accused was actuated by dishonest intention or not and which dishonesty has to be inferred from false accounting, absence of bona fides or reasonable explanation for non-accounting. These principles are deducible from the decisions set out above and in future it is to be hoped that in similar circumstances it will be borne in mind.

10. The conviction is, therefore, correct and the sentence, having regard to the large amount swindled and which has not been made good, is by no means excessive. This revision petition is dismissed.

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