

In Re: Vasudevan

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SooperKanoon Citation : sooperkanoon.com/803622

Court : Chennai

Decided On : Nov-11-1970

Reported in : (1971)1MLJ240

Appellant : In Re: Vasudevan

Judgement :

ORDER

B.S. Somasundaram, J.

1. Vasudevan, the petitioner herein was a Manager of the Khadi Sales Depot, Adyar during the year 1968. P.W. 1, Khadi Inspector, who checked this depot on 23rd December, 1968 found a shortage of a sum of Rs. 285.29 P. When questioned the petitioner stated that he would remit the amount on the very same day. But he did not remit it. He remitted it within two days thereafter exhibit P-6 report was given to the police and after investigation the petitioner was put up for trial for an offence under Section 409, Indian Penal Code. When questioned in Court, the petitioner admitted the shortage, but stated that it was due to the selling of soaps, oil, khadi and other village products on credit basis to various persons at their houses and to make collection of the amounts from them during the second or third of every succeeding month. He deposed to these facts as D.W. 1. Disbelieving his version, the learned Magistrate convicted him under Section 409, Indian Penal Code, and sentenced him to pay a fine of Rs. 100. The petitioner contends that this conviction is not correct.

2. That there was a shortage of Rs. 285.29 P. on 23rd December, 1968, the date when P.W. 2 checked the depot, is a fact which the petitioner himself admits. But he explains this shortage by saying that these amounts were due from persons to whom articles were sold without bills in the course of the month to be collected under proper bills on the second or third of the succeeding month. Exhibit D-1 circular dated 26th December, 1967, shows that they had fixed the target for the sale of these products. D.W. 1 says that in view of this circular, they were selling the products like soap etc., to the residents in the city by sending them through the watchman in the tricycle and that they were collecting the amounts on the second or third of the succeeding month. When asked about this tri-cycle, P.W. 2 says that he does not know as to whether there was a tri-cycle used by the watchman. He further says that when he took charge, no tri-cycle was used in the city. Exhibit D-2 the stock register shows that there was a tricycle in the depot. D.W. 2 the watchman has deposed that he had taken and supplied articles to some customers, that he had subsequently collected the amounts and handed them over to D.W. 1. D.W. 3 Dasarathan is the Manager, who succeeded the petitioner. He says in his evidence that as per the office rules, they should not sell the articles on credit on suspense account. But he admits that they used¹ to sell on credit and then collect the sale amounts during the next month and pay the bills. Till then these items will be in suspense account. He also says that after handing over charge the petitioner came to the depot and took the cash bills saying that he would collect the amount and pay. The same evening he came back and paid the collection. Exhibit D-5(a) is an entry on 8th November, 1968, and he says that this represents cash collected for credit sales. Thus, from the evidence of D.W. 3, it will be seen that articles were sold on credit basis, that amounts were collected later and that these items were kept in the suspense account. D.W. 4, who is now working in the District Khadi and Village Industries Office, Kancheepuram, was the sales Assistant in this depot during 1968 under the petitioner. He also admits; that the watchman used to take soaps etc. and sell them to some outsiders and other customers at their houses. He further states that such sales will be noted in a book by the manager and that in 1968, after Deepavali, the watchman was stopped. So the sales of soaps etc. which had been earlier done were collected later in December, 1968. Exhibit D-5 (a) shows that October collections were made on 8th

November, 1968. Thus, the defence of the petitioner stands well established by the evidence given by D.W. 3 and D.W.4.

3. There can be no doubt whatever that as a matter of civil liability persons entrusted, in their official capacities with the stock in a public retail depot, established for supply of goods to customers, might properly be held liable for the value of stock which had disappeared, owing to carelessness or negligence or malpractice of any kind on the part, of any of the officers. But criminal liability is a totally different matter, and the ingredients of the offence punishable under Section 409 of the Penal Code have been laid down in the Penal Code itself and in innumerable decisions. Not only must there be an initial entrustment of the goods, but there should be a subsequent dishonest conversion to the use of the concerned accused; that alone constitutes criminal breach of trust. The bare fact of the disappearance of certain goods with not an iota of evidence about the handling of those goods by the accused persons, or their disposal by them, is not sufficient. Criminal liability has to be strictly proved and cannot be based upon conjecture or probabilities, however reasonable that conjecture might be as the Criminal jurisprudence is clear that convictions cannot be based on mere suspicion or conjecture. Vide the decision in *Kuppuswamy, In re* (1966) M.L.J. 353 : (1966) 1 M.L.J. 409.

4. Thus, the prosecution has not proved that the petitioner had dishonestly appropriated or converted into his own use the goods or the amount covered by them. In any event the matter admits of ample doubt. The conviction and sentence imposed on the petitioner are set aside and he is acquitted of the offence with which he stands convicted. The fine, if collected, will be refunded to the petitioners.

5. The Criminal Revision is allowed.