

In Re: A.K. Ramachandran

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Court : Chennai

Decided On : Aug-31-1971

Reported in : 1972CriLJ698

Judge : Somasundaram, J.

Appellant : In Re: A.K. Ramachandran

Judgement :

ORDER

Somasundaram, J.

1. Chandran, the petitioner herein stands convicted and sentenced to undergo R. I. for two months for an offence under Section 408 I. P. C. He was the salesman in Kaveripatnam Cooperative Stores at Kaveripatnam till 30-6-1967. He was entrusted with mill and handloom cloths. The stock was verified on 31-7-1967. There was shortage in the mill cloth to the value of Rs. 107.29 and in the handloom cloth to the value of Rs. 185-94. There was a verification in the cloth section on 30-6-1967. He was in sole charge of this section. There was shortage of cloths to the value of Rs. 4,806-73. He was charged under Section 408 I, P. C, He contended that he was not . responsible for the shortage in the stock. The Sub Magistrate. Krishnagiri convicted and sentenced him to undergo R. I. for two months. On appeal the District Magistrate confirmed this conviction. The petitioner contends that this conviction is not correct. (2) Ex. P-13 is the rate fixing register

for the year 1966-67. The petitioner has taken the goods on verification. He has admitted the stock by his own writing on 6-1-1967. He has also put his signature in it. Ex. P-16 is the salesman's liability register. He has accepted the opening balance on 6-1-1967. He has also acknowledged the subsequent receipt, of cloth.

On 6-1-1967 the petitioner has acknowledged the liability to the value of the stock that was in the the stores 011 that date. Thus, the prosecution has clearly proved entrustment of the goods to the petitioner. On 30-6-1967 clearly there was a shortage of stock to the value of Rs. 4,992-67. The petitioner himself has admitted this in his statement Ex. P-20. There is no reason to think that the statement was snatched from him by compulsion, coercion or threat. The petitioner himself has paid Rs. 1,400/- on several dates towards the amount thus due. The Courts below have correctly found that the petitioner alone was exclusively dealing with the cloth entrusted to him and that as such he alone is responsible for the shortage. (3) On behalf of the petitioner it is argued that the prosecution has not proved that the petitioner actually converted to his own use the cloths that were found short. Reliance is placed upon the decision in *Kuppuswamy. In Re. .* That case related to the disappearance of certain goods and there was no evidence that the persons indicated were actually handling those goods. But here the evidence is that the petitioner was exclusively handling the cloths that were entrusted to him. He himself has admitted it.

As pointed out by the Supreme Court in *Jaikrishnadas v. State of Bombay* : [1960]3SCR319 even where direct evidence to establish misappropriation of the cloth over which the accused had dominion is lacking, for establishing the charge of criminal breach of trust, the prosecution is not obliged to prove the precise mode of conversion, misappropriation or misapplication by the accused of the property entrusted to him or over which he has dominion. The principal ingredient of the offence being dishonest misappropriation or conversion which may not ordinarily be a matter of direct proof, entrustment of property and failure in breach of an obligation to account for the property entrusted, if proved, may in the light of other circumstances, justifiably lead to an inference of dishonest misappropriation or conversion. Where the accused is unable to account or renders an explanation for his failure to account which is untrue, an inference of misappropriation with

dishonest intent may readily be made.

2. Here in this case, the petitioner admits the shortage. He has also admitted his liability to pay Rs. 4,806-73 the value of the cloths that was found to be short. He has further admitted that he alone was responsible for it. (4) The conviction of the petitioner under Section 408 I. P. C. is correct. The sentence is not excessive. Both are confirmed. The revision fails and the same is dismissed.

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