In Re: Nagi Reddy

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Court : Chennai

Decided On : Apr-26-1929

Reported in : 120Ind.Cas.69

Judge : Wallace, J.

Appellant : In Re: Nagi Reddy

Judgement :
ORDER

Wallace, J.

1. This is a petition against the conviction of the petitioner for criminal misappropriation. It was charged and found against the petitioner that he in his capacity as Village Munsif misappropriated for himself a sum of Rs. 10 collected by him from the complainant in the case. The conviction was confirmed on appeal and the petitioner asks me to interfere in revision.

2. It is necessary to go shortly into the facts alleged. The petitioner admits having passed to the complainant a receipt for Rs. 10, Ex. A-l, on 12th January, 1928. That receipt is on a sheet of paper and appears between two other receipts, Ex. A, for Rs. 10 dated 3rd January, 1928, and Ex. A-2, for Rs. 20 on 5th February, 1928. Exhibits A-l and A-2 are on a piece of paper which has been passed to the sheet on which A appears. The complainant's case was that he paid all three sums. It is admitted by the petitioner that no credit has been given in his accounts to the

complainant for the payment on 12th January, 1928. His explanation is that no payment was made on that date, but that he made the entry as the complainant said to him that he had lost the former sheet with the receipt given on 3rd January, 1928, and so he has given a duplicate. In explanation of the difference of date the petitioner's case was that as the complainant did not remember the date he himself only inserted the year and the month and that the figure 12 is not his. The complainant examined in the witness-box stated that the payment of Rs. 10 on 12th January, 1928, was entered on the same sheet as the receipt Ex. A, and that a new sheet was begun with the receipt Ex. 42 on 5th February, 1928. That is quite obviously not correct. On the other hand, the petitioner has not explained how if the sheet containing A was not with him when he entered A-1, he entered the word 'ditto' in columns 2 and 4, and why the entry A-1 is not stated therein to be a duplicate receipt. I do not further go into these points as I am of opinion that the appeal will have to be re-heard by the lower Court and I do not wish to hamper its decision.

3. I consider that the appeal must be reheard because the lower Court's judgment is vitiated by a confusion of ideas and by a too cursory dismissal of the defence evidence. The defence case was that the complaint which the complainant made to the Tahsildar really was not that he had paid Rs. 10 to the petitioner which has not been credited but that he had paid Rs. 5 in excess of what was due. The petitioner admitted that he had collected a few rupees in excess from the complainant but that excess collection was duly credited and therefore, was not misappropriated. Such small excess collections are very common and almost inevitable during the kist collection season, and so long as they are duly credited no real harm is done. But the lower Appellate Court fixes on the admission of excess collection as an admission that the petitioner had dishonestly collected that amount and as a proof therefore, of embezzlement. That is obviously a wrong view altogether, since the accounts show the excess collection and, therefore, there was nothing dishonest about it. In another part of its judgment the lower Appellate Court seems to think that there was not as a fact any excess collection. I do not follow its argument here. It admits that the actual amount due from the complainant was Rs. 56-3 10. The trial Court puts it at Rs. 55, and that the complainant paid Rs. 30 to the petitioner, and then Rs. 29-11-9 on a distraint. So

obviously there was excess collection, The Sessions Judge thinks D. W. No. 2 in setting out the story of this excess collection 'gives away the appellant completely', and in another passage he speaks of the defence story as being that complainant suspected the petitioner of having misappropriated Rs. 5; but the defence story Was that the complainant suspected the petitioner of having collected Rs. 5 in excess. As a matter of fact this excess collection has no real relevancy to the case of the embezzlement of Rs. 10 and the fact that a few rupees were collected in excess and credited in the petitioner's account is no evidence whatever that he collected and misappropriated Rs. 10.

4. The Sessions Judge again too cursorily dismissed the defence evidence. The strong part of the defence case was the evidence of the Tahsildar and his Revenue Inspector and Duffador that on the 11th February, 1928 the complainant had admitted to them that his only complaint against the petitioner was the matter of the excess collection and not any matter of misappropriation. It happened that the complainant in this case was sent on 20th March, 1928, by the Magistrate to the Tahsildar (as Taluk Magistrate) for enquiry under Section 202, Criminal Procedure Code. He examined the karnam who supported the complainant and returned the complaint with his opinion (Ex G) that the petitioner was criminally responsible. When it was returned again with a direction to examine the petitioner himself the Taluk Magistrate refused to do so quoting a recent Fall Bench decision of this Court in Appa Rao Mudaliar v. Janki Ammal : AIR1927 Mad19 . Now in neither report by him did the Tahsildar mention that at a conversation a few days earlier the complainant had admitted that he had no complaint to make about the misappropriation; nor did he examine the Revenue Inspector and Duffador about this conversation. This is undoubtedly a remarkable circumstance to which due weight has to be given. The Tahsildar's explanation is that at that stage he should not import facts within his personal knowledge, and thought he had no jurisdiction to examine the Revenue Inspector and Duffador. He was not pressed further and asked what provision of law prevented him from examining them or importing his own personal knowledge. It is suggested before me that he might have thought that the Fall Bench decision prevented him from going into the accused's side of the cass. If it were so his view was clearly mistaken. There is nothing in the decision which prohibits a person to whom a complaint is sent for enquiry under

Section 202 from importing his own personal knowledge into it or examining witnesses whom he knows to be able to throw light on the matter. But the lower Appellate Court has jumped, rather hastily, to my mind, to the conclusion that the Tahsildar's explanation is dishonest, and that the story of the admission of the complainant is, therefore, untrue. I think this part of the case requires a more balanced consideration than has been given to it. especially since the lower Court proceeds to infer from the Tahsildar's dishonesty that neither the Revenue Inspector nor the Duffadar can be speaking the truth. I regard the lower Appellate Court's judgment as vitiated by these unsatisfactory features which have prevented a proper decision of the appeal. I consider that the appeal ought to be re-heard because the alleged offence is not a trivial one, and if really committed by the petitioner cannot be allowed to go unpunished. I, therefore, reverse the decision of the lower Appellate Court and remand the appeal for being re-heard. The petitioner will remain on bail pending the re-hearing.