

V. Ramanathan Vs. State

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Court : Chennai

Decided On : Mar-22-1999

Reported in : 1999CriLJ3885

Judge : M. Karpagavinayagam, J.

Acts : Code of Criminal Procedure (CrPC) - Sections 313; [Indian Penal Code \(IPC\), 1860](#) - Sections 409 and 477A; [Prevention of Corruption Act, 1947](#) - Sections 5(1) and 5(2); Evidence Act - Sections 47 and 106

Appeal No. : Criminal Appeal No. 241 of 1989

Appellant : V. Ramanathan

Respondent : State

Advocate for Def. : Jacob R. Daniel, Spl. Public Prosecutor

Advocate for Pet/Ap. : N.T. Vanamamalai, Sr. Counsel

Disposition : Appeal dismissed

Judgement :

M. Karpagavinayagam, J.

1. V. Ramanathan, the appellant herein, was working as Rural Development Officer in the Agricultural Development Branch of State Bank of India, Udumalpet.

He was convicted for the offences under Section 5(1)(c) read with 5(2) of the Prevention of Corruption Act and under Sections 477A and 409, I.P.C. in C.C. No. 4/87 on the file of the learned First Additional Sessions Judge, Coimbatore by the judgment dated 28-2-89.

2. The case of the prosecution is that the appellant, while functioning as Rural Development Officer in the said bank misappropriated a sum of Rs. 4,407-75 received from the borrowers towards repayment of agricultural crop loan and term loan, by abusing his official power as a public servant, dishonestly or fraudulently misappropriated the amounts entrusted to him by illegal means thereby he obtained himself pecuniary advantage by making false entries in the relevant registers kept in the office and thereby he was liable to be convicted under Sections 409 and 477A, I.P.C. and under Sections 5(1)(c) and 5(2) of the Prevention of Corruption Act.

3. The facts leading to the filing of the above appeal could be summarised as follows :-

(a) The appellant functioned as a Rural Development Officer in the Agricultural Development Branch of State Bank of India, Udumalpet from July 1981 till June 1985. He was discharging many duties which included surveying of villages for adoption to determine whether the village is suitable for extending loans, to make assessment of credit requirements of the villages, to formulate suitable schemes for development and allied agricultural activities and to recommend them to the controlling authority. Besides these, he had to process the loan proposals and recommend for sanction of loans and also to verify the progress of work in respect of the term loans. He was to arrange for opening of accounts by borrowers and to see the execution of loan documents and disbursement of loans sanctioned' by the Rural Development Office. He was to arrange for prompt recovery of loans and to collect cash from the villagers wherever necessary, subject to a ceiling of Rs. 5,000/- against issuance of provisional receipts. He was also to collect repayment of loans from borrowers and to check and authenticate control cards, etc.

(b) On 17-4-86, the Inspector of Police, C.B.I. (P.W. 18), on receipt of reliable information from the Department that during the period from July, 1984 to April,

1985, the appellant/accused was authorised to collect money from the borrowers of loan by way of remitting in their borrowal accounts and he received various loan amounts from the agricultural term loan borrowers, but dishonestly misappropriated the amount without remitting the same into the bank, registered a case in crime No, R.C. 25/86 against the appellant/accused for the offences under Sections 409 and 477A I.P.C. and under Section 5(1)(c) r/w 5(2) of the Prevention of Corruption Act.

(c) During the course of investigation, after examination of all the witnesses and scrutiny of the records, it was found out that the appellant committed criminal breach of trust to the tune of Rs. 4,407-75 remitted by the term loan borrowers to the appellant after making false entries in the ledger sheets. Therefore, the Investigating Officer obtained the sanction Ex.P-8 from the Chief General Manager, State Bank of India, who is the competent authority to remove the appellant from his office for initiating prosecution against the appellant. On production of entire materials collected by the Investigating Agency, P.W. 18 filed the charge sheet against the appellant on 13-7-87 before the trial Court.

(d) After framing charges, the prosecution, in order to prove its case, examined P.Ws. 1 to 18 through whom Exs. P-1 to P-56 were filed. On behalf of the defence, Ex.D-1 and Ex.D-2 were filed.

(e) The plea of the accused, when questioned under Section 313, Cr.P.C, is that he was innocent and a false case was foisted against him due to his union activities on behalf of the Officers' Association.

(f) Having considered the materials placed before the trial Court, the learned Additional Sessions Judge concluded that the offences were proved against the appellant and found him guilty for the said offences and sentenced him to undergo R.I. for one year and to pay a fine of Rs.: 1,000/- for the offence under Section 5(1)(c) read with Section 5(2) of the Prevention of Corruption Act and to undergo imprisonment for 6 months and to pay a fine of Rs. 500/- for the offence under Section 477A, I.P.C. However, no sentence was imposed upon him in respect of the offence under Section 409, I.P.C, even though he was convicted for the said offence also.

(g) Being aggrieved over the impugned judgment, the present appeal has been preferred by the appellant.

4. Mr. N.T. Vanamamali, the learned senior counsel appearing for the appellant, while making virulent attack on the judgment of the trial Court, would strenuously contend that the prosecution has miserably failed in proving its case and the trial Court has committed a serious illegality in giving the finding of conviction, as there are no sufficient materials to hold that the appellant had committed these offences.

5. In reply, Mr. Jacob, R. Daniel, the learned Special Public Prosecutor appearing for the respondent, in support of the impugned judgment by way of repelling the submissions made by the learned senior counsel appearing for the appellant, would contend with equal vehemence that the materials available on record, which are acceptable and reliable are more than sufficient to prove the case of the prosecution.

6. I have carefully considered the rival contentions urged on either side.

7. There are three charges framed against the appellant which are as follows :-

(1) From 22-5-84 to 13-5-85 at Udumalpet the appellant being a public servant as a Rural Development Officer in the employment of State Bank of India committed criminal breach of trust in respect of the loan amounts and loan repayment amounts paid by the borrowers to the appellant totalling to Rs. 4,407-75 under Section 409, I.P.C.

(2) During the said period, the appellant being a public servant, fraudulently misappropriated the said loan repayment amount of Rs. 4,407-75 which was entrusted to him and converted the same for his own use thereby committed the offence under Sections 5(1)(c) r/w 5(2) of the Prevention of Corruption Act.

(3) In the same period on various dates, the appellant, being the Officer of the State Bank of India, wilfully falsified the records such as Ledger, Pass Book of the borrowers and Day Book which belongs to the bank and further made false entries in the Ledger on these dates by short crediting the account of the borrowers and thereby committed the offence under Section 477A, I.P.C.

8. There is no dispute in the fact that the appellant was the Rural Development Officer in the said bank at the relevant time. The duties and formalities to be complied with by the appellant which have been spoken to by P.W. 16, have also been not disputed. But the question is whether the 11 instances pointed out by the prosecution in which the appellant was said to have collected the amounts from the agricultural loan borrowers and misappropriated the same would constitute the offences referred to above.

9. With reference to these instances, P.Ws. 1 to 4 and 5 to 15 were examined. It is also the case of the prosecution that the appellant made endorsements in the pass books and credit vouchers, but he did not make corresponding entries in other documents kept in the bank. In order to prove this aspect, P.Ws. 16 and 17 were examined.

10. These materials placed by these witnesses have to be scrutinized in order to find out as to whether these things are credible.

11. P.W. 2 Ammani and P.W. 1 Ramaswamy, son of P.W. 2, would speak about the first instance. P.W. 1 was sanctioned a crop loan of Rs. 15,000/-. On 13-5-85, P.W. 2 along with P.W. 1 went to the bank to repay the part of the loan amount of Rs. 8,000/-. The appellant who received the said amount wrote the credit voucher for Rs. 7,700/- only. However, he made credit entry in Ex.P-2 pass book for Rs. 7,700/- on 13-5-85 and for Rs. 300/- showing the date as 30-3-85. However, no receipt was given and the transaction of Rs. 300/- did not find place in the day book Ex.P-25 and the Cashier's scroll Ex. P-53.

12. The second instance is spoken to by P.W. 3 Srinivasa Naidu. On 22-5-84, he received a loan of Rs. 2,000/-. The same was debited and entered in Ex.P-4 pass book. However, the debit voucher Ex.P-32 dated 22-5-84 was prepared by the appellant for Rs. 3,000/-. On 6-9-84, P.W. 3 paid Rs. 2,067/- to the appellant at the bank in full settlement of the loan amount including interest, The appellant prepared a credit voucher dated 6-9-84 for Rs. 2,067/-. He also made a credit entry for the same amount and show the debit balance as 'Nil' in Ex. P-4 pass book. In order to adjust an amount of Rs. 1,000/-, he made a credit entry for Rs. 1,000/- on 4-9-84 in Ex. P-32 Ledger sheet which was not reflect in Ex. P-33 Day

Book and Ex. P-34 Cashier's scroll, as no voucher was prepared by him.

13. The next instance is spoken to by P.W. 4 Raju. On 15-11-84, he handed over a sum of Rs. 3,190-20 to the appellant, after closure of business hour, towards repayment of crop loan. The appellant after obtaining the signature of P.W. 4 in Ex. P-6 pay-in-slip and intimated him that the amount would be remitted next day and the account would be closed. However, credit voucher for Rs. 2,890-20 only was prepared by the appellant instead of Rs. 3,190-20 and he made credit entry for Rs. 2,890/- only on 15/16-11-84 showing the debit balance as 'Nil'. To counter this an extraneous credit entry for Rs. 300/- was made by him in Ex.P-38 ledger. However, the same was not reflected in Ex.P-33 Day Book.

14. The next instance is spoken to by P.W. 6 Palaniswamy. On 13-12-84, the loan amount to be paid by P.W. 6 to the bank inclusive of interest was worked out to Rs. 6,297-70. The said amount was handed over to the appellant by P.W. 7 requesting him to close the loan account. A credit voucher was prepared by the appellant for Rs. 5,997-70 only instead of Rs. 6,297-70. He also made an endorsement in Ex. P-9 pass book as account closed. But in the day book and cashier's scroll dated 27-7-84 the credit for Rs. 300/- did not find place, as there was no voucher.

15. The next instance is spoken to by P.W. 8 Velusamy. According to him, he handed over a sum of Rs. 4,164-50 to the appellant for crediting and closing the loan account on 12-2-85. The appellant obtained the signature of the borrower in the credit voucher and prepared a voucher for Rs. 4,064-50 only instead of Rs. 4,164-50. The appellant made entry in Ex.P-12 pass book as 'account closed'.

16 P.W. 9 Kumaraswamy speaks about the next instance. He was sanctioned a loan of Rs. 5,000/- in April, 1983. On 26-10-84, to settle the loan amount he paid Rs. 1,304-25 to the appellant in the bank. The appellant prepared a credit voucher dated 26-10-84 for Rs. 1,104-45 as against Rs. 1,304-25 paid by P.W. 9. On 8-8-84, an extraneous credit entry for Rs. 200/- was made by him for which no voucher had been prepared. In the pass book also, similar, entries were made to show that the account was closed. An amount of Rs. 200/- credited on 8-8-84 was not reflected in Ex.P-33 day book and Ex.P-34 cashier's scroll.

17. P.W. 10 Govindaraj is the next witness who stated that he renewed the crop loan of Rs. 4,000/-. On 9-10-84 he gave Rs. 1,200/- to the appellant. But the appellant, on the same day, prepared a credit voucher only for Rs. 900/-. Another credit entry for Rs. 300/- was made by the appellant on 10-10-84 in Ex.P-41 Ledger for which no voucher was prepared. This entry does not find place either in the day book or in the cashier's scroll.

18. The next instance is spoken to by P.W. 11 Vijayammal. She received a crop loan of Rs. 3,000/-. On 21-2-85, her husband P.W. 12 Rs. 3,100/- to the appellant towards repayment of the loan. But the appellant prepared a credit voucher for Rs. 2,792-20 only as against Rs. 3,100/-. The credit entry for Rs. 2,792-25 was made on 21-2-85. He made an extraneous entry on 27-12-84 so as to show debit balance as 'Nil' as on 21-2-85. He also closed the account in Ex. P-42 ledger. A further credit entry for Rs. 300/- was made by the appellant on 27-12-84 in Ex.P-42 ledger. But corresponding entries have not been made in the day book or in the cashier's scroll.

19. P.W. 13 Kaliammal is another borrower. She was sanctioned term loan of Rs. 6,100/- in the year 1984. On 1-4-85, she handed over a sum of Rs. 2,000/- to the appellant for crediting into her loan account. But, the appellant prepared a credit voucher for Rs. 1,500/- only instead of Rs. 2,000/-, after obtaining the left thumb impression of the borrower in the pay in slip. A similar credit entry was also made in Ex. P-47 ledger also. But, no receipt was issued. However, the appellant has made a credit entry for Rs. 2,000/- in Ex. P-19 pass book,

20. P.W. 14 Ramaswamy Gounder received a loan of Rs. 5,000/- in May, 1984. On 15-10-84, he handed over Rs. 5,225-60 to the appellant towards closing of the account. Though the appellant made a credit entry for Rs. 5,225-60 by showing the debit balance as 'Nil' in Ex. P-22 pass book, he prepared Ex. P-23 credit voucher only for Rs. 4,255-60. In this instance also, no receipt was issued. Though he made an extraneous credit entry of Rs, 1,000/- on 10-8-84 in Ex.P-51 ledger, no such entry was made in Ex. P-33 Day book and Ex. P-34 cashier's scroll.

21. P.W. 15 Subramania Gounder was sanctioned a crop loan of Rs. 5,000/- in July, 1984. He paid a sum of Rs. 4,599.35 on 28-3-85 to the appellant towards

settling of the entire, loan. However, the appellant prepared a credit voucher for Rs. 4,499.35 only. The debit balance as on 28-3-85 was also the same amount. He made a similar entry in Ex. P. 50 Ledger for which no receipt was issued. Next day, when the receipt was asked, he handed over Ex. P. 26 counterfoil of the receipt for the credit of Rs. 4,599.35 under this initial. But, the debit balance in the account was only Rs. 4,499.35 as on 28-3-85.

22. A perusal of the pass books and vouchers with the day book and cashier's scroll would clearly show that there were no corresponding entries. These things have been spoken to by P. Ws. 16 and 17. P. W. 17 is the cashier from September, 1983. There was also one other cashier working in the same bank in September, 1984. Though the said cashier had not been examined, P. W. 17 on the basis of the documents by producing Ledger, Day book, Cashier's scroll, would give clear details about the short credits.

23. As a matter of fact, both P. Ws. 16 and 17 are acquainted with the hand writing of the accused. By way of corroborating the evidence of P. Ws. 1 to 4 and 5 to 15, P. Ws. 16 and 17 would refer about the pass books, etc., of the borrowers and identify the handwriting and signature of the appellant.

24. One other significant factor is that P. Ws. 1 and 2 would state that subsequent to their repayment of Rs. 8,000/- to the appellant, the appellant came later to their house and compelled them to tell the officers of the bank, who would likely to come for enquiry to their house, that they paid only Rs. 7,700/- and not Rs. 8,000/-. They would further state that they had told him that they would not give such a statement to the officers.

25. Similarly, P. W. 4 would also speak that subsequent to the repayment of his loan, the accused came to his house, 6 or 7 months later and asked him to pay Rs. 300/-, since there was a shortage in his account. This statement also would go to show that the appellant tried his best by contacting the witnesses, in order to escape from the impending enquiry in relation to the amount of misappropriation.

26. The two sets of evidence, as projected by P. Ws. 1 to 4 and 6 to 15 on the one aspect and the evidence of P. Ws. 16 and 17 on the other aspect, would

clinchingly establish that the appellant being a public servant was entrusted with the loan repayment amounts and he, instead of remitting the same into the bank, made false entries in the pass books as if the entire amounts had been settled.

27. Once it is proved that the amount was entrusted to him as a public servant, then under Section 106 of the Evidence Act, he has to establish as to what happened to the said amount and that fact lies within the knowledge of the appellant and as such, the burden of proving the same fact is upon him.

28. In the instant case, P. Ws. 16 and 17 would categorically say that the relevant entries contained in the pass books of the borrowers and the handwriting relating to the entries made in the records are that of the appellant. On perusal of the deposition of P. Ws. 16 and 17, it is clear that there is no challenge with reference to this evidence relating to the handwriting of the appellant. It cannot be stated that the evidence relating to this has been let in by P. Ws. 16 and 17 projecting this aspect. Taking into consideration of Section 47 of the Evidence Act, when P. Ws. 16 and 17 who stated that they are acquainted with the handwriting of the appellant, especially when the same has not been challenged, there is no difficulty for the court to accept the evidence of that person with reference to the signature and handwriting of the appellant.

29. It is also to be pointed out, in this context, that when it was found out during the course of enquiry that the appellant misappropriated various amounts, he himself paid Rs. 7,000/- for the various activities done by the appellant.

30. In relation to the payment of Rs. 7,000/-, the appellant would himself write a note in the ledger on his own handwriting that the amount paid into the credit of sundry deposit account for various activities done by him. While making the said payment, he put his signature. This is Ex. P. 52. Though when questioned under Section 313, Cr.P.C, the appellant would state that under compulsion, he was made to make a payment of Rs. 7,000/-. But, no such suggestion was put to P.W. 17 in cross-examination through whom Ex. P-52 was marked. Therefore, the entrustment as well as the embezzlement has been clearly proved in this case through the materials placed before the trial Court.

31. It is argued that before launching the prosecution, P.W. 16 and one Damodaran conducted an enquiry and that enquiry report was not submitted before the Court and the said Damodaran was also not examined. It is further pointed out that one other cashier by name Sivasundaram who was working as cashier at the relevant time was also not examined. Though several documents such as Ledgers, Day books, Cashier's scroll, etc., were referred to in the evidence, it is stated that those documents have not been produced.

32. All these submissions made by the learned senior counsel appearing for the appellant, in my view, do not merit acceptance, since the relevant documents which are essential for proving the charges have been placed and marked before the trial court. It is also not necessary to file the enquiry report and to examine one Damodaran who prepared the said enquiry report, as the same would not relate to the investigation of this case conducted by the C. B.I.

33. Similarly, the non-examination of one other cashier Sivasundaram also does not affect the prosecution case, because P.W. 17, was the cashier throughout and through him all the relevant documents have been marked.

34. On similar facts, of the case where the amount of embezzlement was refunded subsequently, as done in this case, the Supreme Court, in *Vishwa Nath v. State of J. & K.* : AIR 1983 SC174 , would hold in the following words (para 6):-

The accused happened to be a public servant of the Police Department and was posted as Naib-Courty. He was entrusted with the amount seized in two cases. In complete violation of the directions of law he had failed to send the amount to Sadar Courty and with criminal intention he had not made any entry of the money in Rehdari Register, while he made its entry in the Malkhana Register so that his misappropriation of the amount might not be detected by anybody. He committed criminal breach of trust with respect to this money over which he had complete dominion by putting the same to his use. The refund of the amount after detection does not absolve him of the offence.

35. In *Som Nath v. State of Rajasthan* : 1972 CriLJ897 , the Apex Court, while dealing with the nature of proof for the offence under Section 409, I. P. C, would

observe as follows :-

The expression 'entrusted' in Section 409 is used in a wide sense and includes all cases in which property is voluntarily handed over for a specific purpose and is dishonestly disposed of contrary to the terms on which possession has been handed over. The accused, a traffic assistant in the office of Indian Airlines Corporation, demanded on behalf of the corporation certain excess amounts for trunk call charges from passengers for reservation of seats. After the amounts were received he passed receipts on behalf of the corporation. He, however, subsequently falsified the counter-foil receipts and fraudulently misappropriated the excess amounts.

36. These observations would also, in a way, help this Court to arrive at a conclusion that the findings rendered by the trial Court convicting the appellant for the offences referred to above are correct.

37. Finally, a faint attempt was made by the learned counsel for the appellant that though the sanction order was marked through P. W. 5, the sanctioning authority, who signed the sanction order, was not examined.

38. P.W. 5, who is acquainted with the signature of the Chief General Manager, State Bank of India, Madras, through whom Ex. P-8 sanction order was marked, would specifically state in the cross-examination that the said officer was not available in India, at that time, as he had gone to Hongkong. He would also give the details as mentioned in Ex. P-8 regarding the details about the various documents placed before the sanctioning authority, who in turn perused all the records and accorded sanction after proper application of mind. Therefore, when those details are there, it is not obligatory on the part of the prosecution to examine the Chief General Manager.

39. From the mere fact that the Officer, who accorded sanction, was not examined as a witness, this Court cannot infer that what is stated in Ex. P-8 that the Chief General Manager carefully examined the materials placed before him with regard to the allegations and thereafter, he having been satisfied, accorded sanction, cannot be correct, or that the sanction was signed mechanically.

40. The perusal of Ex. P-8 and the evidence of P.W. 5 would clearly reveal that the sanctioning authority had applied its mind after careful examination of the materials and accorded sanction. Therefore, the contention that the failure to examine the sanctioning authority would not vitiate the legality of the sanction order. This view of mine is supported by the decision reported in (1995) 1 MLW 48 : 1995 Cri LJ 955 (Rajasingh v. State).

41. In view of the aforesaid discussion, I do not find any merit in this appeal and consequently, the appeal is liable to be dismissed and accordingly, the same is dismissed. The conviction and sentence imposed upon the appellant by the trial Court for the offences referred to above are confirmed. The trial Court is directed to take steps to secure the judicial custody of the appellant in order to undergo the remaining period of sentence. The bail bond, if any, executed by the appellant stands cancelled.

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