

Surendra Nath Basu Vs. Emperor

Surendra Nath Basu Vs. Emperor

SooperKanoon Citation : sooperkanoon.com/855062

Court : Kolkata

Decided On : Feb-09-1938

Reported in : AIR1938Cal451

Appellant : Surendra Nath Basu

Respondent : Emperor

Judgement :

Jack, J.

1. In this case, a rule was issued upon the District Magistrate, Faridpur, to show cause why the conviction of and sentence passed on the petitioner should not be set aside. The main ground urged before us is that in this case there was no dishonest intention. The petitioner Surendra Nath Basu was the Naib of the Narail Zamindars at Mukshudpur. On 3rd Kartik 1343 B. S., he was at the Zamindars' Kachhari there along with the treasurer and an Amin in charge of the property of the estate including an amount of Rs. 2968 in the safe, of which he had one key and the treasurer another key. Admittedly, on this date, having despatched the treasurer to render accounts at the Sadar office, he went off with Rs. 2000 which he took from the safe and Rs. 87 in addition which he got from the treasurer. His defence is that he was entitled to take Rs. 2000 as he had deposited with the Estate Rs. 2000 in Post Office cash certificates as security during his appointment as Naib, and the Rs. 87, he said, was money really due to him as parbani and not

belonging to the estate. The finding however is that this Rs. 87 also belonged to the Estate, and, in support of this, the Magistrate points out that he gave a combined receipt to the treasurer for the whole amount of Rs. 3055 which included this Rs. 87. Both the Courts below have found that this intention was dishonest. It has been urged that the prosecution have failed to show that there was dishonest intention inasmuch as the defence case is that the accounts are completely in order and no money is due from the Naib to the estate; that after the adjustment of accounts, Rs. 2000 would be found due to him in the ordinary course; that the Rs. 87 was his money, and the prosecution have failed to show that any money is due from him to the estate.

2. It is true that the accounts have not yet been adjusted, so that there is no evidence that any money beyond the Rs. 2000 as security and this Rs. 87 is due from him to the Estate. It is clear that as regards the Rs. 2000, there has at least been a temporary misappropriation, inasmuch as the accused was not entitled to this Rupees 2000 under the terms of his agreement until he should have received his discharge after the adjustment of his accounts in the ordinary course. As regards the Rs. 87, both Courts have held that this money belonged to the Estate relying on the entries in a receipt, Ex. 9, which the accused gave to the treasurer on receipt of this money. There may be some doubt however about this sum of Rs. 87 as it is not clear from the receipt that this money was deposited with the treasurer on Estate account, and there is no entry of the amount in the Zamindari accounts. The fact that he did not take the rest of the money in the safe seems to indicate that he thought he was justified in taking the Rs. 2000. However, his conduct was clearly dishonest as he must have known he was not entitled to withdraw his security deposit in this surreptitious manner. We have been referred to a case, *Abdul Majid Mian v. Emperor* : AIR1936 Cal520 , in which it was held that an employee was not guilty under Section 408, I.P.C. in having withdrawn, unknown to his employer, when he resigned, money deposited by him as security. That case is possibly distinguishable from the present case inasmuch as there account papers were submitted by the employee, whereas in this case there was no submission of accounts. The accused merely left a note that this amount had been withdrawn as his security deposit. But, until the accounts had actually been submitted to his employer and adjusted, he was not entitled to take away the

security deposit and whatever justification there may have been in the circumstances of that case, certainly in this case, it is clear that there was a temporary misappropriation of Rs. 2000. In the circumstances however, we think that the sentence was unnecessarily severe and we accordingly reduce it to one week's rigorous imprisonment which, we under-stand, the accused has already undergone, together with a fine of Rs. 400. 'In default of payment of the fine, he will undergo further rigorous imprisonment for four months.

Khundkar, J.

3. I agree. I desire only to add a few words. As regards the sum of Rs. 2000, the accused must have known that he could have no claim to it until the accounts as between himself and his employer had been adjusted. Deposits of this kind are sums which the employer is entitled to retain for, as long as it is necessary to secure him against losses which may be occasioned by the employee's default. This would usually be until accounts between the employer and the employee have been adjusted. During such a period, 'no one, not even the employee who has made the deposit, may deprive the employer of his right to retain the amount deposited. To deprive the employer of this right of retention would, in my judgment, amount to causing wrongful loss. To hold otherwise would be to render security deposits of this kind entirely illusory.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com