

indrajit Singh Kohli Vs. the State

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Court : Kolkata

Decided On : Jul-19-1966

Reported in : AIR1967Cal460,1967CriLJ1136

Judge : R.N. Dutt and ;A.K. Das, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Section 406

Appeal No. : Criminal Revn. No. 349 of 1966

Appellant : indrajit Singh Kohli

Respondent : The State

Advocate for Def. : S.N. Banerjee, D.L.R.

Advocate for Pet/Ap. : N.C. Banerjee and ;Arun Kumar Mukherjee, Advs.

Judgement :

Das, J.

1. This application is directed against an order passed by the learned Additional Sessions Judge, Burdwan, rejecting the application against an order of a learned Magistrate issuing summons for trial of the petitioner under Section 406 of the Indian Penal Code.

2. The facts leading to this application are as follows: The petitioner lodged a complaint on August 13, 1965 at the police station of Asansol alleging that truck no. B. R. F. 3335 purchased by him had been stolen away by me opposite party Niranjan Singh. A case was recorded and the truck was seized from the possession of Niranjan Singh and later, made over to the custody of the petitioner on his executing a bond of Rs. 15,000/- (Rupees fifteen thousand) on condition of producing it on call. The complaint was found on investigation to be false. The petitioner was then prosecuted under Section 211 of the Indian Penal Code and directed to produce the truck in Court. He did not comply with the direction and several attempts to effect production of the truck in Court also failed. The petitioner became untraced and thereafter a case under Section 406 of the Code was started against him. He surrendered in Court and was released on bail. Thereafter he applied to the learned Additional Sessions Judge for quashing the proceedings on the ground that the facts stated did not make out an offence under Section 406 Indian Penal Code. This application was heard by the learned Additional Sessions Judge, Burdwan who however rejected it.

3. The short point raised in this application is whether the petitioner incurred any criminal liability for breach of trust in addition to any civil liability for forfeiture of the bond.

4. Mr. N.C. Banerjee, the learned Advocate for the petitioner, has argued that any liability of the petitioner for production of the truck was on the basis of the bond and the bond was to the effect that the petitioner would produce the truck on call; in default, he would forfeit a sum of Rs. 15,000/- (Rupees fifteen thousand). That was a matter of contract between the petitioner and the Court and therefore, if the petitioner failed to produce the truck in Court in response to the direction of the Magistrate he may be liable to forfeiture of the bond but no criminal liability would follow and the petitioner cannot be prosecuted for criminal breach of trust.

5. Mr. Banerjee, learned Advocate for the petitioner has not disputed the service of notice, nor has he challenged the learned Judges finding that the petitioner had sufficient notice to produce the truck but preferred to challenge the legality of the proceeding under Section 406 Indian Penal Code, instead of producing the truck.

The learned Judge also held that if there is repudiation of the trust by refusal to produce the property, it amounted to criminal breach of trust, no matter whether the property was made over on execution of a bond or in execution of civil decree.

6. Section 405 of the Code defines criminal breach of trust and it reads as follows:

'Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits 'Criminal breach of trust'.

In the present case, after seizure, the lorry was entrusted with the petitioner with a direction to produce it in Court. Due notice for production was served and he has failed to produce it. The ingredients for an offence under Section 400 viz., entrustment followed by misappropriation and conversion in violation of the direction of law are present and prima facie an offence of criminal breach of trust has been committed for trial under Section 406 Indian Penal Code.

7. The question is whether in view of the bond incurring liability for forfeiture of the bond to the extent of Rs. 15,000/- (Rupeesfifteen thousand), he is in addition liable to criminal prosecution or criminal breach of trust under Section 406 of the Code. If on the facts of the case, both civil and criminal liabilities are incurred, it is not understood why the offender shall escape either of the liabilities. The civil and criminal liabilities may very well co-exist and are not mutually exclusive.

8. Mr. N.C. Banerjee, learned Advocate for petitioner has argued that the petitioner's liability is restricted to the four corners of the bond and that at best he is liable to forfeiture of the bond. He has referred to a decision of the Allahabad High Court reported in AIR 1918 All 406 (1), Harnam Singh v. Emperor in support of his contention. In this reported decision however the learned Judge held that the accused persons

'evaded service of the notice on several occasions and the property was not produced. The accused were no doubt entrusted with the attached property, but they would not be guilty of criminal breach of trust unless they dishonestly misappropriated or converted the property to their own use or dishonestly used or disposed of it in violation of any direction of law describing the mode in which the trust they undertook was to be discharged.'

The learned Judge Held that there was no misappropriation or conversion nor was it used contrary to terms of the trust and as such the accused could not be convicted for an offence of criminal breach of trust. The decision is no authority for the proposition that civil and criminal liability under the bond were mutually exclusive. Mr. Banerjee also referred to an unreported decision of this Court in Criminal Revn. No. 622 of 1962 (Cal), Surja Ghosh v. The State. This however arose out of a complaint for theft and the facts have no relation to the present issue before us.

9. A similar question however arose for decision before the Lahore High Court reported in AIR 1935 Lah 31, Chanan Singh v. Emperor. The accused was entrusted with a certain property attached by order of a civil Court and the accused failed to return the property when called upon to do so. It was held that a deliberate refusal of the petitioner to produce the property attached and given to him for safe custody amounted to repudiation of his trust and therefore he was guilty of the offence of criminal breach of trust and was punishable under Section 406 of the Code, The learned Judge while deciding the case referred to a decision of the Allahabad High Court reported in : AIR1926 All302 , Indar Singh v. Emperor, where the learned Judge pointed out as follows :--

'Where attached property is entrusted to a custodian the mere existence in the supurdnama of a stipulation that on failure to produce the property he will be liable to pay a stated sum as price does not necessarily absolve him from criminal liability for misappropriation.'

The decision therefore is authority for the proposition that civil and criminal liability may very well co-exist and are not mutually exclusive. In his well-known treatise on the Indian Penal Code, Sri Hari Singh Gour refers to a Mysore decision at page

2084, volume III, seventh edition and this may also be profitably quoted here;

'A person who executes a bond to the Criminal Court in respect of property entrusted to him pending an enquiry or trial, undertaking to produce the same when called upon by the Court, is not only under a civil liability if he fails to produce the article, when called upon, but is also liable for any criminal offence that he might commit with reference to the property entrusted to his care. The civil and criminal liabilities are not mutually exclusive.'

10. Mr. Banerjee also referred to a decision of this Court reported in : AIR1957 Cal148 , Shashi Bhusan Maity v. The State. That was a case where the accused was prosecuted under Section 406 of the Code for failing to produce the paddy kept in charge of him by virtue of a zimmanama executed by him. It was held that unless the zimmanama is considered to be a valid document validly entrusting the accused with the custody of the paddy, the accused could not be convicted of a breach of undertaking of that trust sought to be created by that zimmanama. Valid entrustment is a pre-requisite for an offence under Section 406 and in its absence, the accused could not be held to be guilty for criminal breach of trust. The decision turns on this point and is no authority for the proposition raised before us.

11. The view consistently held therefore is that civil and criminal liability may very well co-exist and are not mutually exclusive and the accused may well be prosecuted on a charge of criminal breach of trust if other ingredients are present. We, therefore, hold that there is no bar in prosecuting a custodian of the property who has been entrusted with articles on condition that he will produce it when called for and the existence of other remedies by way of forfeiture of the bond or imposition of penalty does not exclude a criminal liability for an offence of criminal breach of trust.

12. In the result, this application for quashing the proceedings must fail and is therefore rejected. The Rule is discharged.

13. Let the records be sent down immediately.

R.N. Dutt, J.

14. I agree.

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