Abdul Motalib Vs. the State

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Court : Kolkata

Decided On : Jun-21-1950

Reported in : AIR1950Cal523

Judge : Harries, C.J. and ;Lahiri, J.

Acts : Indian Penal Code (IPC), 1860 - Sections 405 and 406

Appeal No. : Criminal Revn. No. 260 of 1950

Appellant : Abdul Motalib

Respondent : The State

Advocate for Pet/Ap. : Debabrata Mukherji and ;Sambhu Nath Banerji (Sr.), Advs.

Judgement :

Lahiri, J.

1. This rule is directed against the conviction of the petitioner under Section 406, Penal Code and an order that he be released on probation of good conduct on executing a bond for Rs. 2,000 with two sureties of Rs. 1,000 each for a period of one year, from the date of the order.

2. The prosecution case is that one Hazi Gura Mia need to carry on a business in confectionary and bakery in the town of Darjeeling. He died on 5th September 1946 leaving his confectionary and bakery shop and considerable assets. The prosecution case is that after the death of Guru Mia his widow inherited the assets and used to carry on the confectionary and bakery business. According to the practice followed by this business, the officer in charge of the bakery business used to hold in his hands the sale proceeds of the bakery shop and at the beginning of the next mouth he used to deposit the said sale proceeds in the account of the firm itself. On 1st September 1949, the petitioner who was in charge of the bakery business was entrusted with a sum of Rs. 478 as representing the sale proceeds of the previous month for the purpose of crediting the same in the account of the firm but the petitioner instead of crediting the said amount in the account of the firm credited it in his own private account in the bank of Jaylall Narsingdass. On these allegations, the petitioner was placed on his trial under Section 406, Penal Code.

3. The defence was that after the death of Gura Mia the petitioner inherited part of his assets and became a co-owner of the business and the petitioner was in charge of the management of the shop and the bakery as one of the proprietors. The petitioner further denied that there was any entrustment with him of the sum of Rs. 478 on 1st September 1949 as alleged by the prosecution and upon these facts the petitioner pleaded that he was not guilty.

4. The Courts below have overruled the defence and convicted and sentenced the petitioner as stated above.

5. On behalf of the petitioner, Mr Mukherji appearing in support of the rule has argued that the conviction and sentence are not sustainable because a co-owner cannot be convicted of an offence under Section 406, Penal Code, and he relied upon the decision in Bhupendra Nath v. Giridhari Lal : AIR1933 Cal582 in support of this proposition. This is a case which relates to the position of partners in a partnership business. Mr. Mukherji has relied upon a passage at p. 988 where the learned Judges make the following observation :

'Partners are joint owners or co-owners of the partnership property, that is to say, of the common stock. Each partner is co-owner of the whole of this common stock, though he receives or pays a share only in profits and losses arising therefrom and though his share in the partnership property is only the value of his original contribution, increased or diminished by his share of profit or loss.'

In our judgment, this proposition of law which was laid down with regard to the position of partners does not apply to the case of a Mahomedan co-owner of whom it cannot be said that he is a co-owner of the whole of the stock. The position of a Mahomedan co-owner is that he has a specific share in the property, which is left by the deceased and it is quite clear upon the evidence in this case and also upon the admission of the petitioner that he was an employee of the bakery business left by the deceased Gura Mia, If as an employee the petitioner was entrusted with a specific) sum of money and if instead of crediting the said sum in the account of the firm he deposited it in his own private account, we think that the petitioner is guilty of the offence under Section 406, Penal Code.

6. Mr. Mukherji next contended that the prosecution did not produce the account books of the bakery business to prove that the sum of Rs. 478 was entrusted to the petitioner on 1st September 1949. On this point, it is true that the prosecution did not produce the account books but the prosecution examined a number of witnesses to prove that the amount was actually handed over to the petitioner. Both the Courts below have believed the oral evidence which was adduced by the prosecution on this point. The witnesses for the prosecution who proved the handing over of the amount to the petitioner are P. Ws. Nos. 3, 4 and 5. If the evidence of these witnesses be believed there can be no doubt that the petitioner was actually entrusted with the sum of Rs. 478 on 1st September 1949. On these fasts, there can be no doubt that the prosecution has satisfactorily proved the entrustment.

7. Upon the findings arrived at by the Courts below and upon the evidence adduced in this case it is impossible to interfere with the order of conviction and sentence in this case. The rule is accordingly discharged.

Harries C.J.

I agree.