

Dains Ram and ors. Vs. the State

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Court : Himachal Pradesh

Decided On : Apr-07-1951

Reported in : AIR1951HP56

Judge : Chowdhry, C.J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Section 439

Appeal No. : Cr. Revn. No. 39 of 1950

Appellant : Dains Ram and ors.

Respondent : The State

Advocate for Def. : Bakshi Sita Ram, Adv.

Advocate for Pet/Ap. : Sita Ram, Adv. in person and; Chandu Lal, Adv.

Disposition : Revision dismissed

Judgement :

ORDER

Chowdhry, J.

1. This is an appln. Under Section 439 & 561A, Cr. P. C., by Dains Ram and six others, who are being tried before a learned first class Mag. of Theog for an offence punishable Under Section 408, I. P. C., & the abetment thereof.

2. The total amount in respect of which criminal breach of trust is alleged to have been committed is Rs. 19,444-3 0. The first two accused, Daina Ram & Bati Bam, have been charged as principal offenders in respect of the entire amount, while the third & fourth accused, Thenka Ram & Kalia, have been charged with abetment to the extent of Rs. 9, 801-13 0 & the remaining accused ' Sita Ram, Karmu & Puria with abetment to the extent of Rs. 9,642-6 0 The trial is at the stage of charges having been framed after taking all the evidence mentioned in the charge-sheet & the examination of the accused, but the prosecution witnesses have not yet been cross-examined further, & the accused have not yet been called upon to enter on their defence & produce their evidence.

3. The appcts. have already been before the Ses. J. in revn. but unsuccessfully. Their prayer before me is that the charges be quashed & all the accused discharged.

4. The appln. has been strenuously opposed by the Govt. Advocate, & lengthy arguments were advanced before me on both the sides. The facts leading up to the present revn. are, in brief, as follows.

5. The offence is alleged to have been committed in respect of the purchase & sale of potatoes, which is one of the main cash crops of this State. The present case is concerned with the potato crop of Balsan State for the 1947 48 season. Potato season lasts, roughly, from September to January. The matter thus relates to a period of time prior to 15-4-1948, when this State of Himachal Pradesh was formed by the integration of the former twenty-one Punjab Hill States, including Balsan. It is said that immediately before the potato season in question Eana Ban Bahadur Singh, Baler of Balsan, formed an assocn. called the Balsan Alu Assocn. with the present seven accused, of whom Daina Ram & Eati Bam were Ministers of the State, as its functionaries. This was an annual aSair, & the reason behind its formation was to save the potato grovers of the State from the machinations of the middle-man & the troubles of transport. This Assocn. had two depots, one at Phagu & the other at Theog, & it was to one or the other of these depots that the potato grovers of Balsan State brought their produce. The Assocn. purchased potatoes from the grovers at these depots at a rate fixed by the State, making a

deduction of one anna six pies per rupee, & thereafter it sold the same through a firm of clearing agents of Dhali known as M/s. Hakam Rai Nathu Mal.

6. One anna out of the said deduction of one anna six pies in the rupees, variously described as commission, katouti & octroi, is said to have constituted the share of the State. During the season in question potatoes totalling Rs. 2,50,000, odd in value, the whole of which amount was furnished by the firm of clearing agents, are said to have been purchased, & Rs. 29,000 odd represented the aggregate of the said deductions at one anna six pies per rupee. The last deal consisted of 750 bags of potatoes 1500 maunda in weight, which were despatched by the Asscn. to the clearing agents on 12-1-1948. Nathu Mal, one of the proprietors of the clearing agents firm, who was produced as a prosecution witness, has stated that the Asscn. has accounted for every pie of the aforesaid sum of Rs. 2,50,000, odd, & that they have not yet paid to the Asscn. the value of the said 750 bags of potatoes. This value according to the accused comes at the controlled rate of Rs. 16-8-0 per maund to more than ES. 24,000, but the clearing agents have shown the consignment in their accounts as having been sold on 23-5-1948 for only Rs. 8,650.

7. The last deal, as had been stated above, took place on 12-1-1948. On 20-2-1948, Shri R. P. Bhargava took over the administration of Balasore State on behalf of the Govt. of India. About a week thereafter, he was told that the State's share of the said deductions had not been deposited in the treasury. He made demands for the deposit from the two Minister-accused & from Shri Ram Singh, the Chief Minister, who was examined as a Ct. witness, but neither a deposit was made nor any account furnished. On 14-3-1948 Shri Bhargava made a report to the police against 14 men for defalcation of about BS. 30,000, & on 19-8-1948 the police submitted a charge-sheet Under Sections 409, 109, I. P. C. against the present appcts. & one more, Bija Ram, since deceased, in respect of Rs. 29,166-4-6. Charges against the accused were framed, as mentioned above, on 2-3-1950, prosecution evidence & examination of the accused concluded on 26-6-1950, the appcts. went up in revn. to the Ses. J. on 8-7-1950, he rejected the revn. on 16-8-1950 and on 8-9-1950 the present appln. was filed in this Court.

8. The main grounds of defence are that the entire business was State business, that no specific portion of the said deduction of one anna sis pies in the rupee represented the State's share but the whole of it covered the running expenses of the Assoocn. & loss due to driage, pilferage, etc., as well aa the State's share, that this share of the State could therefore be ascertained only after an adjustment of accounts, that no dishonest misappropriation or conversion of money to their own use has been committed by the appcts. inasmuch as potatoes worth more than the amount for which they are being tried are admittedly lying with the clearing agents, & that Shri Bhar. gava precipitated the appcta. prosecution without a settlement of accounts with them. One other plea taken in defence was that the trial Ct. was debarred from taking cognizance of the offence against the present appcts. except with the previous sanction of the Central Govt., as required by Section 191, Cr. P. C.

9. There can be no doubt with regard to this Ct.'s powers, under either of the two sections 1951 Him./8 under which the present appln. has been filed, to interfere with the proceedings pending in the trial Ct. & that at any stage of those proceedings. The revisional powers of this Ct. can, therefore, be invoked, as has been done by the present appots. at the stage of the trial when a charge has been framed against them: C.S. Joseph v. Emperor, 41 C. W. N. 251. At the same time, invokation of such powers at an interlocutory stage, or during the pendency of the proceedings in the trial Ct., cannot be made a substitute for the exercise of the right of appeal or revn. which an aggrieved party always has after due termination of those proceedings. A High Court is, therefore, reluctant to interfere in a case which has not yet been completed in the trial Ct.: Raghunath Das v. Emperor, A. I. R. (20) 1933 ALL. 211, & it will do so only in exceptional cases such as where a person is being harassed by an illegal prosecution, or where there is some manifest & patent injustice apparent on the face of the proceedings calling for prompt redress, or where the evidence on record for the prosecution clearly does not justify a charge of any offence, or where the trial is on the face of it an abuse of the process of the Ct.: Gulam Sherazee v. King, A. I. R. (29) 1942 Bang. 48. It has, therefore, to be seen as to whether the present is a case of such an exceptional nature.

10. In connection with the question as to whether the State had, or had not, anything to do with the profit & loss of the business, or whether it was only concerned with its one anna in the rupee on the purchase of the potatoes elaborate arguments were advanced before me as to whether the business in question was a State business or the private business of the appcts. In support of the contention that it was a State business reference was made by the learned counsel for the appcts. to the statements of the prosecution witnesses that the As?ocu. was formed by the Rana of Balsan in September 1947. This was controverted by the learned Govt. Advocate arguing that the act on the Rana cannot be described as an act of the State because he had already been deposed in 1946. There is no evidence on record with regard to the deposition, but I was asked to take judicial notice of the fact Under Section 57, Evidence Act. Again, the learned counsel for the appcts. argued that in order to prove that the appcts. had acted in violation of the directions of the State with regard to the mode in which the trust was to be discharged it was incumbent upon the prosecution to file some written order or direction of the State showing that it was obligatory on the appcts. to make a fixed deposit into the State treasury of one anna in the rupee irrespective of whether the remaining six pies in the rupee did or did not suffice to cover their running expenses of the business & losses due to driage, pilferage, etc. It was further contended that it is incredible that such documentary evidence should not be in existence & that the prosecution had, suppressed it. Reference was also made in this connection to the fact that Shri Bhargava had admittedly seized all the documents which were in possession of the appcts. It was, therefore, pressed that a presumption against the prosecution should be drawn that the defence contention that no portion of one anna six pies in the rupee was earmarked as the share of the State, & the State was to be paid on a settlement of accounts only the balance, if any, of the said deductions, after making allowance for the running expenses & the losses of the business, was correct. And reference in this connection was made to the vouchers of purchase in which deductions were not made separately at one anna & at six pies but in a lump sum at one anna six pies in the rupee. On the contrary, the existence of any such order was denied on behalf of the prosecution, & it was urged that if any such directions did in fact exist they must be deemed to be within the special knowledge of the appcts. &

therefore the burden of proving them was upon them Under Section 106, Evidence Act. The learned Govt. Advocate fortified this argument by referring to the statement of at least one of the appcts, Puria, who has clearly admitted that one anna out of the said deductions represented the State octroi & six pies the share of the depots for their expenses. This statement was not made by Puria before the trial Ct. but before a Mag. Pandit Bansidhar, during the police investigation at the instance of Shri Bhargava, & it was a matter of controversy whether such a statement was admissible in evidence. Pandit Bansidhar himself admitted that the statements of the accused recorded by him were not recorded Under Section 164, Cr. P. C.

11. In support of the contention that deposit of the State's share of the said deductions was to be made only after settlement of accounts on the close of the potato season, & that the State was responsible for profit & loss of the business, reference was made by the learned counsel for the appets. to the statements of some of the prosecution witnesses themselves. The Govt. Advocate, however, refd. to the statements of certain other prosecution witnesses as leading to a contrary conclusion, & he argued that there was intrinsic evidence in the statements of the proeecution witnesses reld. upon by appcts. which showed that they had reason either to be hostile to the prosecution or to implicate the State. One of such witnesses was Beli Ram & it was stated by the Govt. Advocate that he was a representative of a firm Bhandari Mal Khusi Ram which had had admittedly filed a suit for recovery of price of potatoes against the State as well as against the present appcts. The Govt. Advocate further argued that even if it be conceded that the determination of the State's share of the deductions was dependent upon a settlement of accounts, the appcts. have had more than enough time for that during the three long years that the present trial has lasted, & that this unconscionable delay on their part in settling the accounts with the State or with the clearing agents & depositing the State's share of the deductions establishes dishonest mis-appropriation.

12. Another argument put forward by the learned counsel for the appcts. was that no misappropriation has in fact taken place since the amount claimed from the appcts. is more than covered by the value of the 750 bags of potatoes, lying with

the clearing agents. It was contended that the appcts. have not been guilty of user of any portion of the amount in question but have invested it in the purchase of potatoes, & it lies in the shape of the said 750 bags of potatoes with the clearing agents. This argument is characterised on behalf of the prosecution as fallacious. It is argued that in the purchase of every maund of potatoes at the controlled rate of Rs. 16-8-0 per maund, the wherewithal for which was supplied by the clearing agents, a deduction of Es. 1-8-9 was made by the appcts. from the price paid to the grower, out of which Rs. 1-0-6 represented the share of the State & 0-8-3 the share of the appcts. At this rate, on a purchase of the total quantity of potatoes worth Rs. 2,50,000 odd, during the season in question, the appcts. had made deductions to the tune of Rs. 29,000 odd, out of which their share comes only to Rs. 9,000 odd & the share of the Govt. to ES. 19,000 odd. This latter sum the appcts. were bound to deposit into the State treasury within at least a reasonable time after the close of the potato season, but they have not done so so far. It was contended that the price of the said 750 bags of potatoes lying still unaccounted for with the clearing agents is over & above the said sum of money due to the State has nothing to do with it. It is contended that irrespective of whatever may be due the appcts. from the clearing agents in respect of the price of the said 750 bags of potatoes, they had misappropriated the State's share of Rs. 19,000' odd out of the aforesaid total deductions of Rs. 29,000 odd, which they had already made. I have tried to set forth both the sides of the case as disclosed in the arguments of the learned counsel for the parties & I have done so without expressing my own opinion on any point & with as great a detachment as possible, so that the future trial of the appcts. may not be prejudiced in any way. This much, however, is clear from, the aforesaid detailed enunciation of the arguments of the learned counsel that this is not one of those exceptional cases reld. to above which justify my interference in revn. during the pendency of the proceedings in the trial Ct. One teet of the case being of the aforesaid exceptional nature is that a bare statement of the facts without any elaborate argument should be sufficient to convince the Ct. that interference during the pendency of the proceedings in the trial Ct. is justified: vide the aforesaid 1942 Rangoon case. This is not a case of that nature. This is, on the contrary, a case in which an inference as to the guilt or innocence of the appcts. will have to be drawn on a careful appraisalment of the

evidence & arguments put forward on behalf of the parties & this must be left to the trial Court.

13. The appln. in revn. is, therefore, rejected.

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