

Prabln Goswami Vs. State of Assam

Prabln Goswami Vs. State of Assam

SooperKanoon Citation : sooperkanoon.com/895799

Court : Guwahati

Decided On : Dec-12-2000

Judge : P.C. Phukan, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 406, 409 and 420;; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Section 313

Appeal No. : Criminal Revision No. 147 of 1993

Appellant : Prabln Goswami

Respondent : State of Assam

Advocate for Def. : Ms. K. Deka, Adv.

Advocate for Pet/Ap. : Mr. D.C. Mahanta, Adv.

Disposition : Revision allowed

Judgement :

1. This Revision is directed against the judgment and order dated 11.3.93 passed by the learned Additional Sessions Judge, Jorhat dismissing the Criminal Appeal No. 32 of 1992 preferred by the accused-petitioner against his conviction and sentence passed in G.R. Case No. 2073/87 by the learned first class Judicial Magistrate U/S 406 IPC.

2. The learned Judicial Magistrate sentenced him under section 406 IPC to 2 years rigorous imprisonment and also to pay fine of Rs. 2,000 in default to further 3 months simple imprisonment.

3. I have heard Mr. D.C. Mahanta, learned senior counsel for the accused-petitioner and also Ms. K Deka, learned Public Prosecutor, Assam appearing for the State respondent. I have also considered the records of the case.

4. The prosecution case in brief is that the accused Prabin Goswami during his tenure as President of Simaluguri Gaon Panchayat Samabai Samitee, collected on behalf of the said society, Tripti Banaspati valued about Rs. 1,84,025.00 from Banaspati Plant of Statcfed, Guwahati without the knowledge of the society and earned personal gain by selling it in black market on 22.10.87. On receipt of the FIR, police started investigation and seized the relevant register of the said society and collected the incriminating documents. On completion of investigation police submitted charge-sheet under section 409/420 IPC. The learned Magistrate framed charge under the said sections of law and the accused pleaded not guilty. In the statement under section 313 Cr. P.C. also the accused pleaded innocence and declined to adduce any evidence.

5. The prosecution examined 5 witnesses. On consideration of the evidence on record and after hearing the prosecution and the defence the learned Magistrate convicted and sentenced the accused-petitioner as stated above. The learned Additional Sessions Judge dismissed the appeal and affirmed the conviction and sentence passed by the learned Magistrate, hence this instant revision in this Court.

6. The learned senior counsel Mr. Mahanta submits that the courts below misdirected in the matter of essential ingredient of the section 406 IPC relating to the offence of breach of trust and since there was no entrustment of the Tripti Vanaspati to the accused petitioner by the Simoluguri Goan Panchayat Samabai Samiti Ltd., as such no offence under section 406 IPC was committed by the petitioner. It is further submitted that since Tripti Vansapti is not an essential commodity controlled by the State for distribution, it was bought and sold at the price fixed by its producers namely Statefed and the alleged transaction was only

a sale and there was no entrustment of the property in question. That the said amount of Rs. 1,84,025 alleged to have been paid for the purchase of the Tripti Vanaspati was ever advanced by the said samabai samity and as such no loss was caused to the said Society because of the alleged transaction. That Tripti Vanaspati is available in the local market and it was not distributed through the agency of the Cooperative Societies and the Simoluguri Gaon Panchayat Samabai Samiti did not deal in Tripti Vanaspati. In support of his argument Mr. Mahanta has referred to a decision in *State of Gujarat v. Jaswantalal Nathala*. AIR 1968 SC 700 wherein it has been held -

'The expression 'entrustment' carries with it the implication that the person handing over any property or on whose behalf that property is handed over to another, continues to be its owner. Further the person handing over the property must have confidence in the person taking the property so as to create a fiduciary relationship between them. A mere transaction of sale cannot amount to an entrustment. Thus, where the Government sells cement to its contractor solely for the purpose of being used in connection with the construction work the circumstance does not make the transaction anything other than sale. After delivery of the cement the Government has neither any right nor dominion over it. If the purchaser or his representative fails to comply with the requirements of any law relating to cement control he should be prosecuted for the same. But it cannot be held that there was any breach of trust.'

7. Mr. Mahanta further refers another decision in *Roshan Lal Raina v. State of Jammu and Kashmir*, AIR 1983 SC 631 wherein it has been held :-

'Without proof of entrustment, there can be no question of the accused being found guilty of the offence under Section 409 of the Code. In the instant case, the accused was a tourist clerk in a Dak Bungalow and it was alleged that a sum of Rs. 70.80 was collected by him from the tourist staying there and was misappropriated by him. However, it was not proved that the money was ever entrusted to him by the Choukidar who used to collect the money. It was held that conviction of accused under section 409 was illegal.

8. In the instant case in view of the evidence adduced by the prosecution it is absolutely clear that the entrustment has not been proved and hence the accused-petitioner could not have been convicted under section 409 IPC or 406 IPC.

9. Mrs. K Deka, learned Public Prosecutor contends that there is sufficient material to convict the accused under section 420 IPC. Further it has been pointed out that a charge under section 420 IPC was framed against the accused-petitioner but he was not convicted under the said section of law. The State has not preferred any appeal against the acquittal under Section 420 IPC.

10. In the result this Criminal Revision is allowed. The conviction and sentence of the accused-petitioner under section 406 IPC are set aside. The accused stands discharged from his bail bond.

11. This Criminal Revision stands disposed of.

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