

Harbans Lal Vs. State

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Court : Jammu and Kashmir

Decided On : May-21-2003

Reported in : 2003(3)JKJ646

Judge : R.C. Gandhi and; B.L. Bhat, JJ.

Acts : Indian Penal Code (IPC) - Section 409

Appeal No. : CR. I.A. No. 25/98 A/W Acquittal Appeal Nos. 14, 15, 16, 17, 18 and 19/99

Appellant : Harbans Lal

Respondent : State

Advocate for Def. : S.C. Gupta, AAG and; Harbans Lal, Adv.

Advocate for Pet/Ap. : Harbans Lal, Adv. in Cr. I.A. 25/98,; S.C. Gupta, AAG in Acq. Appeal Nos. 14, 15, 16, 17, 18 and 19 o

Disposition : Appeal dismissed

Judgement :

B.L. Bhat, J.

1. The aforementioned Criminal Appeals arise out of the judgment and order recorded by the learned Sessions Judge, Udhampur all dated 28.11.1998 in

session File Nos. 12, 13, 14, 15, 16, 17 and 18.

2. In Criminal Appeal No. 25/98, accused came to be convicted by the trial court for commission of offence punishable under Section 409 and 467 RPC and came to sentence him to undergo rigorous imprisonment for a period of three years and also came to impose fine of Rs. 40, 000/- with a direction that in default of payment of fine, he shall undergo further imprisonment of like nature for a period of one year; for offence under Section 467 RPC, he came to be sentenced to undergo rigorous imprisonment for a period of three years and shall pay a fine of Rs. 5000/- with the direction that in default of payment of fine, he shall further undergo further imprisonment for a period of six months. However, both the sentences awarded have been made concurrent. The charge against the accused besides the said offences was also for offence punishable under Sections 409, 420, 467 and 468 RPC and he has been acquitted for these offences.

3. In other appeals detailed above, the accused has been charged for offence punishable for under Sections 409, 420, 467 and 468 RPC and has been acquitted by the trial court by virtue of the judgment impugned therein. The brief facts leading to the charge against the accused are that during the year 1984-87, the accused was serving in the department of Food and Supplies and was posted as salesman at Udhampur. During the audit of the accounts of the Sale Depot by the audit party, it came to be revealed that total amount of Rs. 1,80, 000/- had been embezzled by the accused while working as salesman by making a short deposits of sale proceeds of various food grains such as wheat, flour and sugar etc. into the Government Treasury. Since the embezzlement were claimed to have been made on different occasions, the charges were split so that each challan did not constitute more than three offences of the same nature committed within a period of 12 months, as required under Section 234 of the State Code of Criminal procedure.

This led to filing of different challans against the same accused by the prosecution. In this manner, we have before us on e appeal against the conviction recorded by the trial court against the accused and other six acquitted appeals filed by the State against the order of acquittal recorded in the said challans by the trial court.

4. The audit report made by the Audit Party comprising of S/Shri Gurbachan Lal, Ravinder Singh and Kuldip Kumar is the basis of the challan in question, it reveals that in all an amount of Rs. 180, 000/- has been embezzled, which came to be bifurcated under different challans filed by the prosecution Agency before the competent court. In acquittal appeals, the serious ground taken by the State is that in File No. 12 Sessions of 1999, the accused stood convicted for offence under Section 409 RPC after holding that the prosecution has proved the charge for the said offence against the accused beyond all reasonable doubts but while recording finding in other case, had not been kept in mind by the trial court, which has resulted into miscarriage of justice.

5. Since the main ground taken against the acquittal recorded in other cases in which the accused came to be acquitted is non-consideration of the judgment of conviction in case No. 12 Sessions arising out of the same report, it necessitates that all the appeals are taken up together and disposed of by common judgment, therefore, the appeals detailed above are taken together and shall be disposed of by this common judgment.

6. Heard Mr. Harbans Lal, Advocate, who represents the accused and Mr. S.C. Gupta, AAG, who represent the State.

7. The contention of Mr. Harbans Lal, the learned counsel for accused is that for proving as to whether there are short deposits leading to mis-appropriation of the government money, it was obligatory on the part of the Investigating officer to have investigated that how much food grains had been received in the store by the accused and what was its value and that how much out of it had been sold and what amount of the sale proceeds had been received and out of which, what is the amount deposited into the Government Treasury.

8. We have carefully gone through the entire evidence and find that there is nothing on record or in the audit report to show that as to how much sale proceeds had been received by the accused by the sale of food grains supplied to the depot and whether there was any short deposit. In this regard, It is necessary to point out as to what emerges from the statements of the members of the audit party i.e. to say Gurbachan Lal and other two members of the audit party namely Ravinder

Singh and Kuldip Kumar. During the course of auditing, these witnesses detected some variation with respect to amount of Rs. 1, 80, 000/- between the remittance record and the deposit record of the treasury. Under receipt No. 16/509 dated 3.10.1984, an amount of Rs. 9,533.46 stood reflected as deposit into the Government Treasury whereas only an amount of Rs. 533.46 is deposited; under Receipt No. 30/509 dated 4.8.84, an amount of Rs. 14, 784.61 stood recorded to have been deposited in the Treasury and this amount has also been shown in the Stock Register but in the Cash Book of the Treasury under same Vr. No., an amount of Rs. 4,784.61 has been deposited. Similarly Under Receipt No. 145/509 dated 21.7.84, an amount of Rs. 14,622.40 is shown to have been deposited into the Government Treasury whereas as per Cash Book, an amount of Rs. 4,622.40 stands deposited and in this manner during the period from 1.8.1984 upto 21.11.1984, Rs. 29,000/- was found to have been short deposited i.e. to say embezzled by the accused. This is in the evidence of PW Ravinder Kumar, who was member of the Audit party that cash book of this period did not contain the initials or signatures of any one and the receipts found the account were not verified by the audit party and it is the Remittance Register of the Salesman and the record of the Treasury, which name to be verified by this party. PW Bansi Lal, who was the accounts Assistant in the Government Treasury, Udhampur during the period of alleged occurrence has deposed that he knows the accused, who in the capacity of dealer for the Food and Supplies Department, used to deposit the money into the Treasury .Whenever there used to be no rush of working in the Treasury he (witness) himself used to pass the receipts but in case of rush of work, the accused used to pass the receipts himself. The receipt No. 145/509 dated 21.7.84 bears his signatures. This receipt indicates that an amount of Rs. 14,622.40 which was filled up by the depositor and he (the Witness) after writing this amount in words, affixed the seal of the Treasury and this seal bears his initial. The other two receipts also bear his signature. The challan contains two copies, one is returned to the Department and another copy is retained in the Treasury and the same is sent to the office of the Accountant General. After affixing the seal of Treasury on the deposit voucher, the same is sent to the Bank Manager for receiving the amount. This Treasury seal used to remain in his custody. It is concoction and interpolation of these receipts which led to an embezzlement of

Rs. 29000/-, which has ultimately led to conviction of the accused by the trial court. In this behalf, It is pointed out that it is not understandable as to how PW Bansi Lal Accounts Assistant had initialed the receipt and verified the amount, returned to the accused, who approached him to make deposit and why he could not detect so much of variance in the actual receipts foil of these receipts. Therefore, if at all these were any short deposit, the same could not be without the active connivance of any person in the Treasury at Udhampur, who has issued the counter foil and the bank clerk who has received the short amount. The Investigating Officer has not bothered as to who were the concerned persons in the Treasury and in the Bank responsible for variation of the amount as shown in the counter foil returned to the depositor accused and actual amount received in the Treasury and in the concerned receipt register.

9. Learned counsel appearing for the accused contends that if at all there were any short deposit, this possibility cannot be over-ruled that the accused might have deposited the actual amount because he had been issued duly verified counter foil of the receipts showing actual amount and that the short deposits might have been made by the Accounts Assistant of the Treasury, Bansi Lal and the clerk in The Bank, who might have shown less deposit in the record and retained the amount of Rs. 29, 000/- and mis-appropriated the same. There is force in this connection of the learned counsel for the accused because as indicated in the evidence of Bansi Lal that he affixed the deposit receipts with the Treasury seal, which bears his initial.

10. The law is well settled that when two views are equally possible, one favors the accused, cannot be ignored. We find that the trial court has failed to consider this aspect of the case.

11. From the statement of PW Ravinder Singh, who was one of the members of the Audit Party what emerges is that during the audit, some variations were detected between the remittance record and the deposit record of the Treasury, which amounts to Rs. 9000/- Under Receipt No. 16/509 dated 3.10.84 whereby in the treasury, an amount of Rs. 533.46 had been deposited as per challan in the treasury and Rs. 9,533.46 had been shown in the counter-foil returned to the

accused. Similarly, under Receipt No. 30/509 dated 6.8.1984, an amount of Rs. 4,784.61 is shown to have been deposited but in the counter-foil returned to the accused, an amount of Rs. 14, 784.61 has been reflected. Under Receipt No. 145/509 dated 21.7.1984 an amount of Rs. 4, 622.40 is shown to have been deposited but as per counter-foil returned to the accused, an amount of Rs. 14, 622.40 is shown to have been deposited. In this manner, from the evidence of this witness, there is variation of an amount of Rs. 29, 000/-. This evidence at the most leads inference that there is variation in the maintenance of the account in treasury receipts and counter-foils but in any case, there is no evidence to the effect that as to what amount has been collected by the accused from the sale of food grains and how much is deposited in the Government Treasury. So, It cannot be said that the accused infact had been entrusted a domain over higher amount of money than what actually he had deposited in the bank through treasury receipts. Mere non-mention of the entry in the treasury receipt when the counter-foil issued to the depositor after due verification, witnesses the deposits by itself, is not sufficient to prove that any short deposit has been made. It has further come in the evidence of PW Ravinder Singh that every month, verification used to be carried out by the treasury persons with respect to all remittances and certificate in this behalf is being issued and this certificate is also being sent to the office of the Accountant General. If this is the position, then how it can be held that the accused/appellant is responsible for the alleged short deposit. Statements of PW Gurchan Lal and Kuldip Kumar are also to the same effect, therefore, need not to be discussed.

12. As regards PW Hemant Kumar who was Assistant Director, Food and Supplies Department, It is pointed out that it is nowhere stated by this witness that as to how much stores in the form of ration and of what value was supplied to the accused, who was salesman of the Sales Depot, Udhampur and what value have been received by the accused and how much he has sold and of what value he had actually deposited into the Treasury and whether there were any short deposits. Thus, the important ingredient of Section 409 RPC is that as Public Servant, the accused had been entrusted with property that he in violation of his duty, failed to discharge in terms of trust and thereby he failed to account for the same, is not made out. Therefore, for the reasons as discussed above, we are of the opinion that the trial court has fallen error in holding the accused guilty for

offence under Section 409 RPC.

13. This takes us to consider as to whether offence under Section 467 RPC is proved for which the accused has been convicted by the trial court: In this behalf, it is pointed out that there is absolutely no evidence that any interpolation has been made by the accused in the record i.e. to say the counter-foil of the treasury receipts and the register maintained by him in the office. The prosecution witness examined by the prosecution in this behalf has categorically deposed that entries were not made in their presence nor even they have admitted signatures of the accused nor even they have specifically stated that whether the entries in the deposits had been made by the accused or by the Accounts Assistant of the Treasury namely Bansi Lal. PWs Gurcharan Lal, Ravinder Singh, Bansi Lal and Surjeet Singh, ASI Police have categorically deposed that these entries have neither been made by the accused in their presence nor they are acquainted with his signatures. The Investigating Officer has also admitted that no expert examination of the hand writing of the accused was got conducted to establish that the entries of the higher amount on the counter-foil had been made by the accused. Therefore, from the evidence on the file, it is not established that the documents i.e. to say counter-foil of the receipts are forged nor the accused has forged the same. For offence under Section 467 RPC is not sustainable because the same is not based on any evidence.

14. In view of afore-discussion, the impugned judgment and the order of sentence of the trial court is set-aside and accused is acquitted of both the charges for offence under Sections 409 and 467 RPC. The fine, if any, recovered from the accused, shall be refunded to him forthwith.

15. As regards appeals filed by the State against the judgment of acquittal in the remaining appeals, we do not find any infirmity or legal error. The evidence in all the cases are almost same and for the reasons given in the judgment whereby conviction of the accused has been set-aside, there remains nothing in these appeals for further appreciation and consideration. These acquittal appeals being groundless, are dismissed.

