

ANWAR CHAND SAB NANADIKAR

A

v.

STATE OF KARNATAKA

SEPTEMBER 17, 2003

[DORAISWAMY RAJU AND ARIJIT PASAYAT, JJ.]

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Penal Code, 1860 : Sections 405 and 409.

Criminal breach of trust by public servant—Ingredients of—Accused, who was property clerk in the court of Judicial Magistrate, allegedly misappropriated properties belonging to the court and sold them to four persons—Trial court acquitted the accused as the evidence was not satisfactory regarding entrustment and misappropriation—But the High Court convicted the accused—Correctness of—Held : To sustain conviction under S.409 two ingredients must be proved viz., (i) that the accused was entrusted with property and (ii) that the accused misappropriated it or converted it to his own use to the detriment of the persons who entrusted it—In the instant case, accused had custody as well as domain over the court's property which he had misused—Hence conviction upheld.

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Words and Phrases :

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“Criminal breach of trust”—Meaning of—In the context of Section 405 of the Penal Code, 1860.

According to the prosecution, the appellant, who was the property clerk in the court of the Judicial Magistrate, misappropriated certain properties belonging to the court and sold them to four persons. It was the further case of the prosecution that the properties in question were under the domain of the appellant.

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The appellant-accused was charged with an offence under Section 409 of the Penal Code, 1860. Trial Court acquitted him. However, the High Court convicted the appellant. Hence this appeal.

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Dismissing the appeal, the Court

HELD : 1. The basic requirement to bring home the accusations

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A under Section 405 IPC are the requirements to prove con-jointly (i) entrustment and (ii) whether the accused was actuated by the dishonest intention or not misappropriated it or converted it to his own use to the detriment of the persons who entrusted it. As the question of intention is not a matter of direct proof, certain broad tests are envisaged which **B** would generally afford useful guidance in deciding whether in a particular case the accused had *mens rea* for the crime. [878-G-H]

C 2. The evidence clearly shows that the accused was acting as a property clerk and had custody as well as domain over the courts' properties, which included the articles with which the present case is concerned. [879-A-B]

D 3. In the present case, the position is totally different. No explanation, much less plausible has been given. The High Court is, therefore, right in setting aside the order of acquittal. [880-F-G]

E *Rabindra Kumar v. State of Orissa*, AIR (1977) SC 170, held inapplicable.

F *Jaikrishnadas Manohardas Desai v. State of Bombay*, AIR (1960) SC 889, referred to.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1712 of 1996.

G From the Judgment and Order dated 23.11.95 of the Karnataka High Court in Crl. A. No. 738 of 1989.

K.B. Sinha, G.V. Chandrasekhar and P.P. Singh for the Appellant.

Sanjay R. Hegde for the Respondent.

H The Judgment of the Court was delivered by

ARIJIT PASAYAT, J. : The Court of law is described as a temple of justice. Logically, the Presiding Officer is the "Pujak" and members of staff are the "Sewaks", It is, therefore, a matter of grave concern when a **H** "Sewak" is alleged to have misappropriated funds of the temple.

Appellant who was the property clerk in the Court of Judicial Magistrate, First Class, Chikodi, allegedly misappropriated properties belonging to the Court and sold them to four other persons who were acquitted by the trial Court along with the present appellant. While the appellant stood charged for commission of offence punishable under Section 409 of the Indian Penal Code, 1860 (in short the 'IPC') the rest four stood charged for commission of offence punishable under Section 411 IPC. The prosecution alleged that while the properties in question were under the domain of the appellant, he sold them to accused nos. 2 to 5 during the period 2.3.1979 to 6.6.1985 and, therefore, committed the offence as alleged. After charge was framed all the five persons faced trial before the Principal Civil Judge and Judicial Magistrate, First Class, Chikodi, who by judgment dated 4th July, 1989 held that all the accused persons were not guilty of the charges. He, *inter alia*, observed that the evidence was not satisfactory regarding entrustment and misappropriation.

The State of Karnataka preferred an appeal before the Karnataka High Court and the Division Bench by the impugned judgment held that no interference was called for in the case of the other four accused who were acquitted. So far as the present appellant is concerned, it was held that the accusations were established by the evidence on record. During the pendency of the appeal the Court felt that there were some aspects which were required to be gone into, and, therefore, by exercise of power under Section 391 of the Code of Criminal Procedure, 1973 (for short the 'Code') directed certain materials to be brought on record by the Trial Court. That was done. After that by the impugned judgment, the High Court convicted the appellant for commission of offence under Section 409 IPC and sentenced him to undergo imprisonment for one year.

In support of the appeal, learned counsel for the appellant submitted that the evidence was unreliable and both the trial Court and the High Court did not place reliance on major portion of the evidence. Further the ingredients necessary to bring home accusations under Section 409 were not present. Strong reliance was placed by the appellant on decision of this Court in *Rabindra Kumar Dey v. State of Orissa*, AIR (1977) SC 170 to contend that the High Court's judgment is not tenable. It was submitted that only entries in the books of accounts were made by the accused and there was nothing beyond that to show that accused was acting as a

A property clerk. Additionally, it was submitted that as noticed by this Court in *Rabindra Kumar Dey's* case (supra) mere entrustment without anything else cannot establish accusations under Section 409 IPC.

B Section 409 IPC deals with criminal breach of trust by public servant, or by banker, merchant or agent. In order to bring in application of said provision, entrustment has to be proved. In order to sustain conviction under Section 409, two ingredients are to be proved. They are :

C (1) the accused, a public servant, or banker or agent was entrusted with property of which he is duty bound to account for; and

(2) the accused has committed criminal breach of trust.

D What amounts to criminal breach of trust is provided in Section 405 IPC. Section 409 is in essence criminal breach of trust by a category of persons. The ingredients of the offence of criminal breach of trust are :-

E (1) Entrusting any person with property, or with any dominion over property.

(2) The person entrusted (a) dishonestly misappropriating or converting to his own use that property; or (b) dishonestly using or disposing of that property or willfully suffering any other person so as to do in violation -

F (i) of any direction of law prescribing the mode in which such trust is to be discharged; or

(ii) of any legal contract made touching the discharge of trust.

G The basic requirement to bring home the accusations under Section 405 are the requirements to prove con-jointly (1) entrustment and (2) whether the accused was actuated by the dishonest intention or not misappropriated it or converted it to his own use to the detriment of the persons who entrusted it. As the question of intention is not a matter of direct proof, certain broad tests are envisaged which would generally afford useful guidance in deciding whether in a particular case the accused had *mens rea* for the crime.

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In response, learned counsel for the State of Karnataka has submitted that the High Court analysing the evidence on record noticed fallacies in the conclusions arrived at by the trial Court and, therefore, has rightly held the accused guilty. The evidence of the magistrate who was examined as PW-5 clearly shows that the accused was acting as a property clerk and had custody as well as domain over the courts' properties which included the articles with which the present case is concerned. The High Court has considered the similar stand. It was noticed that cogent and reliable evidence was adduced to show that appellant was working as a property clerk from 2.3.1979 to 6.6.1985 and that he was entrusted with the courts' properties and had domain over them including the articles 1 to 23.

It was the stand of the appellant that he did not work as a property clerk after 2.2.1980. Such a stand has rightly been rejected by the High Court in view of PW1's evidence. It was noticed by the High Court that the properties register was Exhibit P-1. On 10.1.1980 the appellant proceeded on commuted leave for 25 days w.e.f. 4.2.1980 to 28.2.1980 to avail leave travel concession. In the concerned office order there was no direction to the appellant to hand over the charge of properties in the court property room to a witness Harugon. When the appellant admitted that he had gone on leave from 4.2.1980 to 28.2.1980 and as rightly held by the High Court there is no material to show that after returning from leave the accused had not assumed office, this plea is clearly untenable because as a normal consequence after returning from leave the appellant is supposed to have taken over as property clerk. That apart, there was ample material to show that he was only maintaining Ex. P-1 register even thereafter till 6.6.1985 and producing before Court MOS, as and when required.

Essentially the question is whether the analysis of the High Court in view of the evidence on record is sustainable. We find that the factual aspects have been highlighted by the prosecution to show that accused was guilty. The decision in *Rabindra's* case (supra) is of no assistance to the accused-appellant because in that case there was no material to show any *mens rea* apart from the fact that the entrustment itself was not fully established. The accusations were not brought to the notice of the accused. Additionally, his explanation as offered was not examined at all. Factual scenario being different in the present case the conclusions arrived at in the decision sought to be relied have no bearing so far as present case is

A concerned, as the accusations have been fully established. The evidence of PWs 1, 8 and 10 conclusively establish that accused-appellant was in-charge of the properties and he could not either produce those articles or properly account for them when he was asked to do so, as was obligated for him.

B In *Jaikrishnadas Manohardas Desai and Anr. v. State of Bombay*, AIR (1960) SC 889, it was held as follows :

C “To establish a charge of criminal breach of trust, the prosecution is not obliged to prove the precise mode of conversion, misappropriation or misapplication by the accused of the property entrusted to him or over which he has dominion. The principal ingredient of the offence being dishonest misappropriation or conversion which may not ordinarily be a matter of direct proof, entrustment of property and failure, in breach of an obligation, to account for the property entrusted, if proved, may in the light of other circumstances, justifiably lead to an inference of dishonest misappropriation or conversion. Conviction of a person for the offence of criminal breach of trust may not, in all cases, be founded merely on his failure to account for the property entrusted to him, or over which he has dominion, even when a duty to account is imposed upon him but where he is unable to account which is untrue, an inference of misappropriation with dishonest intent may readily be made.”

F This case was considered in *Rabindra Kumar’s* case (supra). It was held that proposition cannot be doubted. But the question is whether the explanation is absolutely false. It is in that background, this Court held that the accusations were not established. In the present case, the position is totally different. No explanation, much less plausible has been given. The High Court is, therefore, right in setting aside the order of acquittal so far as the appellant is concerned. The appeal fails and is dismissed.

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V.S.S.

Appeal dismissed.