

Som Nath Puri

Vs

The State of Rajasthan

Criminal Appeal No. 101 of 1969

(Jaganmohan Reddy, J.)

15.02.1972

JUDGMENT

JAGANMOHAN REDDY, J. -

1. This is an appeal by special leave against the judgment of the Rajasthan High Court. The accused was initially charged on three counts, firstly, under Section 5(2), read with Section 5(1)(c) of the Prevention of Corruption Act, 1947, (hereinafter referred to as 'the Act'), secondly, under Section 409, I.P.C., and thirdly, under Section 477-A, I.P.C. Thereafter on January 15, 1964, another Special Judge charged him on two counts, namely, under Section 5(2), read with Section 5(1)(c) and Section 5(2), read with Section 5(1)(d) of the Act. After the trial, the appellant was, however, convicted under Section 409, I.P.C. and Section 5(2), read with Section 5(1)(c) and (d) of the Act and sentenced to rigorous imprisonment of 18 months and a fine of Rs. 250/- under Section 409, I.P.C. and 18 months' rigorous imprisonment and a fine of Rs. 250/- under Section 5(2), read with Sections 5(1)(c) and 5(1)(d) of the Act. The sentences on both these counts were directed to run concurrently. The High Court, however, thought that the Special Judge had not recorded any conviction under Section 5(1)(d) of the Act and in that view confirmed the conviction and the sentence of the appellant of 18 months' rigorous imprisonment on each of the counts, namely under Section 409, I.P.C. and Section 5(2), read with Section 5(1)(c) of the Act, but reduced the fine for each of the offences from Rs. 250/- to Rs. 150/-.

2. The appellant was employed a Traffic Assistant in the Indian Airlines Corporation's office at Jaipur and his duty was to make reservations of the passengers intending to go by air and issue tickets. As it happens, when the quota of seats allotted to Jaipur is full, intending travellers who request for accommodation would be required to pay trunk telephone charges for enabling the Airlines Corporation to obtain release of seats from quotas allotted to other centres. The practice of the Airlines was to collect the approximate charges and issue a receipt therefor and if a seat was available, the reservation would be confirmed and accommodation given to the passengers if seats could be released from other centres for Jaipur. The appellant who was incharge of these arrangements between February 16, 1962 and August 30, 1962, collected Rs. 184.90 towards trunk telephone charges but actually deposited with the Airlines Corporation a sum of Rs. 44.91 and misappropriated the balance of Rs. 139.99. The modus operandi followed by him, it is alleged, was that he would demand a higher amount for trunk call charges than were likely to be incurred and he would issue a correct receipt for those amounts on behalf of the Airlines Corporation but after making the trunk call, he would alter the counter-foil with the actual amount of trunk call charges. On the same day he would make a daily return showing the actual amounts and deposit them with the Cashier. A typical sample of the receipts given by him on behalf of the Airlines Corporation is Exhibit 40 which is as follows :

"INDIAN AIRLINES CORPORATION, NEW DELHI No. 354577 Station : Jaipur.
Date : 30-8-62.##

Received with thanks from M/s. M/Travels, Jaipur sum of Rupees Twenty-three and forty naya paisa being the amount T/Call charges to Udaipur and AMD for release of seat.

for INDIAN AIRLINES CORPORATION Rs. 23.40 (Sd.) Cashier.###

3. On August 31, 1962, one M. D. Singh of the Mercury Travel Agency, Jaipur complained to B. S. Gupta, Incharge of the Office of the Indian Airlines Corporation at Jaipur that the appellant had collected Rs. 23.40 for proposed trunk call charges from the Agency but made no call and no seat was allotted to the passenger of the Mercury Travel Agency even though one was available and that seat was given by B. S. Gupta to some one else. B. S. Gupta questioned the appellant who then made a confession of his having collected the amount but not having made a call. After making this confession he immediately resigned his job. A preliminary inquiry was conducted by the Area Manager who thereafter lodged the First Information Report. The accused denied having collected the amounts or of having issued the receipts and further stated that whatever amounts were collected by him were paid in the office of the Airlines everyday.

4. Both the Courts found on the evidence that the appellant used to make trunk calls whenever he was on duty from the Indian Airlines Corporation office at Jaipur for the release of seats and that he would call for and receive trunk call charges from intending passengers. It was further held proved that the appellant gave receipts exhibited in the case which were in his own hand-writing and signed by him; and that it was he who realised the total sum of Rs. 185/- which was entrusted to him and over which he had a dominion in his capacity as a public servant. We have already pointed out that the High Court did not confirm the conviction of the appellant under Section 5(2) read with Section 5(1)(d) on the assumption that the said Special Judge had not convicted the accused for that offence, and since there is no appeal by the State against this part of the judgment, the contention on behalf of the State that he was convicted under Section 5(1)(d) has no merits and cannot be sustained.

5. On behalf of the appellant it was urged before the High Court that as the appellant had to face a trial extending over more than 3 years incurring enormous expenses for coming to and for from Chandigarh where he was practising law and was also in Jail for some time, the benefit of the Probation of Offenders Act should be given to him. This contention was rejected because the provisions of that Act were inapplicable in view of his conviction under Section 409, I.P.C. As the offence of criminal breach of trust under Section 409, I.P.C. is punishable with imprisonment for life, the High Court, in our view, was right because the provisions of Section 4 are only applicable to a case of a person found guilty of having committed an offence not punishable with death or imprisonment for life. Apart from this reasoning, Section 18 of the Probation of Offenders Act makes the provisions of that Act inapplicable to an offence under sub-section (2) of Section 5 of the Prevention of Corruption Act.

6. On behalf of the appellant it is submitted by the learned Advocate that the prosecution case as disclosed by the evidence was that the appellant had collected excess charges from the passengers representing them to be the actual charges for trunk calls and not that any excess over the actual charges would be returned to them. In view of this evidence, the appellant could not be convicted either under Section 5(2) read with Section 5(1)(c) of the Act or under Section 409, I.P.C., because the important ingredient which is entrustment of the amounts is absent. In order that any amount can be said to be entrusted it should be lawfully made over, but in this case the appellant obtained the

amount by cheating and by the commission of an offence. If there was no entrustment of the moneys to the appellant, he could not be convicted either under Section 409 or under Section 5(2) read with 5(1)(c) of the Act and is accordingly entitled to an acquittal on both these charges. In support of this contention reliance has been placed on *Surendra Pal Singh v. The State*, [AIR 1957 All 122 : 1957 Cr LJ 170 : 1957 All LJ 147] where a Bench of the Allahabad High Court held that the amounts collected from cultivators by the Canal Amin in excess of the amount actually due from them and misappropriated by him, did not amount to an entrustment as he could not be a trustee of that money on behalf of the cultivators from whom he realised it because when they handed over the money to the accused, they purported to surrender all their rights in that money, nor could it be said that this money had become the property of the Government at any stage for him to be considered a trustee on its behalf. This decision was, however, disapproved in *The State v. Dahyalal Dalpatram*, [AIR 1960 Bom 53 : 1960 Cr LJ 217 : ILR 1959 Bom 1160] by a Bench of the Bombay High Court, a view with which the High Court agreed. In that case the accused who was employed as a Talati in the Revenue Department, was invested with the authority to collect land revenue and fines. He was ordered to recover from the land-holders who had defaulted in paying the moneys but having collected them, he did not pay them into the Government Treasury as required by the rules made under the Land Revenue Code. The accused was convicted under Section 409, I.P.C., on the question that when the accused collected the amount as tax alleged to be due by the land-holder though the liability whereof could not be enforced according to law, could it be said that he was then entrusted with the money, the High Court after noticing that the Allahabad High Court appears to have taken the view that a public servant collecting the money claiming that it was due to the State but which in fact was not due to the State, could not be regarded as entrusted with the money collected by him, held that that was not a necessary ingredient of Section 405. The learned Advocate sought to distinguish this case on the ground that in the Bombay case there was a definite direction to collect a specific amount and when that amount was collected there was entrustment of that money which was lawfully collected, as such the accused was rightly convicted. It was further contended that if looked at from the point of view of the passengers from whom trunk call charges were collected, they had not entrusted the money to the accused because they had parted with the proprietary rights thereon and if viewed from the point of view of the Airlines Corporation, the money collected did not become the property of the Corporation and consequently there was no entrustment of it.

7. There can be no doubt that before a public servant can be convicted of an offence under Section 5(1)(c) or under Section 409, I.P.C., the property which is said to have been misappropriated must be entrusted to him. Section 405 merely provides, whoever being in any manner entrusted with property or with any dominion over the property, as the first ingredient of the criminal breach of trust, the words 'in any manner' in the context are significant. The section does not provide that the entrustment of property should be by someone or the amount received must be the property of the person on whose behalf it is received. As long as the accused is given possession of property for a specific purpose or to deal with it in a particular manner, the ownership being in some person other than the accused, he can be said to be entrusted with that property to be applied in accordance with the terms of entrustment and for the benefit of the owner. The expression 'entrusted' in Section 409 is used in a wide sense and includes all cases in which property is voluntarily handed over for a specific purpose and is dishonestly disposed of contrary to the terms on which possession has been handed over. It may be that a person to whom the property is handed over may be an agent of the person to whom it is entrusted or to whom it may belong, in which case if the agent who comes into possession of it on behalf of his principal, fraudulently misappropriates the property, he is nonetheless guilty of criminal breach of trust because as an agent he is entrusted with it. A person

authorised to collect moneys on behalf of another is entrusted with the money when the amounts are paid to him, and though the person paying may no longer have any proprietary interest nonetheless the person on whose behalf it was collected becomes the owner as soon as the amount is handed over to the person so authorised to collect on his behalf. This view of ours is well supported by decisions of different High Courts in this country for nearly a century, a few of which alone need be examined.

8. In the matter of Ram Soonder Poddar and Others, [(1878) 2 Cal LR 515] a Deputy Magistrate convicted the accused under Section 406, I.P.C., an offence over which he had jurisdiction, instead of under Section 409, I.P.C., which was cognizable only by the Court of Session. On revision the High Court held that the proceedings were contrary to law and the Deputy Magistrate was directed to commit the accused for trial by the Court of Session. It appears that the accused who were charged, were Treasury employees. One of the accused was allowed to write the Treasury Cash Book which was the duty of the Treasurer. Taking advantage of it, he misappropriated Rs. 16/- by scoring off the entry in the account book. In this misappropriation he was assisted by the other accused who was employed to do stamp work. While holding the trial to be without jurisdiction, it was observed that Section 409 does not as supposed by the Deputy Magistrate, require the property in respect of which criminal breach of trust is committed, to be the property of Government, but only requires that it should be entrusted to a public servant in his capacity as such public servant. In re Ramappa, [(1911) 22 MLJ 112] the accused who was the Superintendent of some Coffee Curing Works was convicted of criminal breach of trust by misappropriating a large sum of money made up of amounts which he had received from the Manager on the false pretence that they were required for paying coolies who garbled coffee. One of the arguments urged against the conviction was that the receipt of the money by false representation amounted to an offence of cheating and that the subsequent appropriation of it by the accused to his own use was not a criminal breach of trust as the criminal intent was present at the time of the receipt of the moneys from the Manager. Benson and Sundara Aiyar, JJ., while rejecting that argument, observed :

"When the accused received the money he did so as a servant of the Company for the express purpose of using it for his master's benefit in a particular way. He was, therefore, entrusted with the money and his appropriating it to himself clearly amounts to criminal breach of trust."

9. In Venkata Raghunatha Sastri, [(1923) 45 MLJ 681] Spencer, J., held that where a person who had pledged promissory notes with another as security for a loan dishonestly induced the latter to hand over the same to him by pretending that he required the same for collecting money from his creditors with the aid of which he would pay cash to the complainant, his act constituted an offence of cheating punishable under Section 420, I.P.C. and that when he dishonestly disposed of the notes in violation of his contract with the pledgee to use the money collected in paying off his debt, there was both entrustment and dishonest misappropriation and that the conviction for the offence of criminal breach of trust under Section 406, I.P.C., was legal.

10. Both these cases were referred to in *The Crown Prosecutor v. T. Molver and K. S. Narasimhachari*. [69 MLJ 681]. The facts in this case also were somewhat similar to those in Venkataraghunatha Sastri's case (supra). Mahadvan Nair, J. (as he then was), examined the meaning of the word 'entrusted' in Section 406 and rejected a similar contention as was urged in this case on behalf of the appellant that when the accused by deceiving the complainant fraudulently and dishonestly induced him to part with the property in question, the offence of cheating was complete and that there is no room for further holding that the accused have committed criminal breach of

trust also by their subsequent misappropriation of the property.

11. In the case before us, the practice which was being followed by the Jaipur office of the Indian Airlines Corporation is spoken to by M. U. Menon, P.W. 6, who was a Personal Assistant to the General Manager of the National Engineering Industries Ltd., Jaipur. He says that on February 16, 1962, his General Manager had directed him to issue instructions to the accounts branch for arranging for flight tickets by air for Delhi. He first rang up the Indian Airlines Corporation about the air passage for eight persons and received a reply from that office that eight tickets were not available at Jaipur and they would try from Udaipur and Ahmedabad by trunk calls. After some time the Indian Airlines Corporation people rang up telling him that tickets can be arranged and he should send the money amounting to Rs. 410.50 which included trunk call charges of Rs. 26.50. He thereupon sent a slip, Exhibit P-6 to the accounts department for further necessary action. There was no cross-examination on behalf of the accused. Similarly Ganesh Singh, P.W. 3, who is working for the National Engineering Industries Ltd., Jaipur, said that when his people contacted Indian Airlines Corporation on telephone and enquired about the fare, etc., they would ask for trunk call charges along with the amount for tickets. This would be paid and in fact he pointed out to the accused and said that he might be one of the persons whom he met at the office and after he paid the amounts for the tickets and trunk call charges, he would obtain a receipt and give it to the company. This evidence read with other evidence which has been accepted by both the Courts would show that whatever may have been the criminal intention of the accused, the amounts for trunk call charges were demanded on behalf of the Indian Airlines Corporation and were paid to the Corporation. The receipts in respect of the sums were given on behalf of the Corporation and it would be the Corporation that would be liable directly to the person who had paid this amount, if no trunk calls were made, or any excess over the actual amount of the trunk call charges was charged by it. The amount was not paid by passengers to the accused as such but to the Indian Airlines Corporation and as soon as the receipt for the amount actually received from the passengers was given by the accused on behalf of the Corporation, he was entrusted with that amount. His subsequent conduct in falsifying the counter-foils and fraudulently misappropriating the amounts would make him guilty of criminal breach of trust punishable under Section 409, I.P.C., as also under Section 5(2), read with Section 5(1)(c) of the Act.

12. There is, therefore, no merit in this appeal and it is accordingly dismissed.

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