

Sardar Singh

Vs

State of Haryana

Criminal Appeal No. 313 of 1971

(P.N. Bhagwati, A.C. Gupta JJ)

01.11.1976

JUDGMENT

BHAGWATI, J. –

1. The appellant was posted as patwari in Revenue Circle Raisina, Gurgaon and he took charge of his post on November 6, 1967. When the charge of the post was taken by him, a memo, Ex. PA was prepared, setting out various books, documents and papers which were received by him at the time of taking charge. It appears that within a short time the appellant ran into difficulties and he was suspended in connection with a departmental inquiry which was proposed to be held against him. Though he was directed to hand over charge of the post on account of his suspension, he failed to do so and hence under the orders of the Revenue Assistant, Gurgaon the lock of his room had to be broken open on December 29, 1967 and the charge was taken by his successor Abdul Wahid and a list, Ex. PB was prepared setting out the books, documents and papers which were found in the room and of which possession was taken by Abdul Wahid. Another list Ex. PF was also prepared at this time showing the books, documents and papers which according to the prosecution were missing from the room. This list Ex. PF mentioned inter alia one current receipt-book, one current roznamcha waqiyati and one current register of fee. The case of the prosecution was that the appellant committed criminal breach of trust in respect of these documents as also in respect of an amount of Rs. 26.50 p. which had been received by the appellant in his capacity as Patwari for the purpose of giving certified copies and which he failed to account for at the time when the charge was taken from him. The appellant was accordingly tried before the Judicial Magistrate, First Class for the offence under Section 409 of the Indian Penal Code in respect of the amount of Rs. 26.50 p., roznamcha waqiyati, copying fee register and receipt-book. The learned Judicial Magistrate came to the conclusion that there was nothing to show that the amount of Rs. 26.50 p. was entrusted to the appellant nor was there any definite material to establish that roznamcha waqiyati and copying fee register were in his charge and the learned Magistrate therefore exonerated the appellant in respect of these items. But so far as the receipt-book was concerned, the learned Magistrate found that it was entrusted to the appellant at the time when he took charge and since it was not to be found at the time when the lock of his room was broken open and charge was forcibly taken from him, he must be held to have committed criminal breach of trust in respect of the same and in this view, the learned Magistrate found the appellant guilty under Section 409 of the Indian Penal Code and sentenced him to imprisonment till the rising of the court and Code and sentenced him to imprisonment till the rising of the Court and to pay a fine of Rs. 100. The appellant preferred an appeal to the Sessions Judge, Gurgaon but the learned Sessions Judge also took the same view as the learned Magistrate and rejected the appeal. The appellant then preferred a revision application to the High Court but the revision application also met with the same fate. Hence the present appeal by the appellant with special leave obtained from this Court.

2. The only question which arises for consideration in this appeal is whether the appellant could be said to have committed criminal breach of trust in respect of the receipt-book. There can be no doubt and that is amply proved by the oral evidence on record read with the list Ex. PA, that the receipt-book was entrusted to the appellant in his capacity as patwari on November 6, 1967 when he took charge of his post. It must equally be taken to be established that the receipt-book was not in the room of the appellant when the lock was broken open and charge was forcibly taken from him on December 29, 1967. Vide Ex. PF and PG. The receipt-book was thus not returned by the appellant though he was bound to do so at the time of handing over of charge to his successor. But from this it does not necessarily follow that the appellant committed criminal breach of trust in respect of the receipt-book. Section 409 can be invoked only if it can be shown that the accused being in any manner entrusted with property or with dominion over property in his capacity as public servant committed criminal breach of trust in respect of that property. The offence of criminal breach is defined in Section 405 and an essential ingredient of this offence is that the accused being in any manner entrusted with property or with dominion over property, dishonestly misappropriates or converts to his own use that property or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged or of any legal contract, express or implied, which he has made touching the discharge of such trust. Here, as we have already pointed out, the appellant was admittedly entrusted with the receipt-book or in any event with dominion over it, but there is no evidence to establish that he dishonestly misappropriated the receipt-book or converted it to his own use or dishonestly used or disposed of the receipt-book. It is quite possible that the appellant might have lost or mislaid the receipt-book and hence he might have been unable to return it to the superior authorities. What the section requires is something much more than mere failure or omission to return the receipt-book. The prosecution has to go further and show that the appellant dishonestly misappropriated or converted the receipt-book to his own use or dishonestly used or disposed of it. That we are afraid, the prosecution has not been able to do in the present case. We are, therefore, of the view that the appellant was wrongly convicted under Section 409.

3. We accordingly allow the appeal, set aside the order of conviction and sentence recorded against the appellant and acquit him of the offence under Section 409 of the Indian Penal Code.

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