

Harihar Prasad Dubey

Vs

Tulsi Das Mundhra and Others

Criminal Appeal No. 63 of 1975

(R. S. Sarkaria, A. C. Gupta JJ)

08.08.1980

JUDGMENT

GUPTA, J. –

1. In this appeal by special leave the appellants question the correctness of an order passed by a learned Judge of the Calcutta High Court quashing a charge under Section 406 of the Indian Penal Code framed against respondents 1 and 2. The appellant who is a teacher of a school in Calcutta named Shri Balkrishna Vithal Nath Vidyalaya filed a petition of complaint on January 16, 1970 before the Additional Chief Presidency Magistrate, Calcutta, against the aforesaid respondents who happened to be the Secretary and Headmaster respectively of that school, alleging misappropriation of the provident fund money of the school. The school is recognised by the West Bengal Board of Secondary Education. Following a judicial inquiry into the allegations the Additional Chief Presidency Magistrate, Presidency Magistrate, Calcutta, took cognizance of the case and transferred the case to the Presidency Magistrate, 11th Court, Calcutta, for disposal. The prosecution examined 13 witnesses and proved a number of exhibits. The Presidency Magistrate on a consideration of the material before him framed the following charge against the respondents:

That you jointly being entrusted with the Provident Fund Deposits belonging to the Teachers of Shri Bal Krishna Vithalnath Vidyalaya Higher Secondary Multipurpose School, Calcutta, accumulated to the extent of Rs. 3,44,697.18p. as custodians and having dominion over the said amount of money, disposed of a sum of Rs. 2,49,130.33 p. from the total accumulated amount, in September, 1969, in violation of law prescribing the mode in which the trust was to be discharged, as per law and rules framed by West Bengal Board of Secondary Education and have dishonestly used the said amount illegally for personal benefits and have failed to account for the same when called upon to do so in September, 1969, and have thus committed criminal breach of trust, in respect of Rs. 2,49,130.33 p. and you thereby have committed an offence punishable under Section 406 of the Indian Penal Code and within my cognizance.

On a revision petition made by the respondents to the Calcutta High Court a learned Judge of that court quashed the charge and the proceedings against them. The learned Judge thought that "any further continuance of the proceeding will be an abuse of the process of the court" on two grounds :

(1) as no Provident Fund Committee had yet been formed as required under the law, "necessarily there could not have been any entrustment" of the provident fund contributions of the teachers; and

(2) as there were yet no rules framed under the West Bengal Board of Secondary Education Act, 1963 to guide the "handling or spending" of the provident fund, the respondents could not be said to have committed any offence under Section 406 of the Indian Penal Code.

2. In our opinion neither of them was a valid ground for quashing the proceeding and the learned Judge was in error in thinking that continuance of the proceeding would be an abuse of the process of the court. The two grounds are really one - that in the absence of statutory rules there could be an offence under Section 406 of the Indian Penal Code. This Court in *Jaswantrao Manilal Akhaney v. State of Bombay* (1956 SCR 483 : AIR 1956 SC 575 : 1956 Cri LJ 1116 : 26 Com Cas 340) explained that :

When Section 405 which defines "criminal breach of trust" speaks of a person being in any manner entrusted with property, it does not contemplate the creation of a trust with all the technicalities of the law of trust. It contemplates the creation of a relationship whereby the owner of property makes it over to another person to be retained by him until a certain contingency arises or to be disposed of by him on the happening of a certain event. The person who transfers possession of the property to the second party still remains the legal owner of the property and the person in whose favour possession is so transferred has only the custody of the property to be kept or disposed of by him for the benefit of the other party ...

The appellant also relies on a decision of the Madhya Pradesh High Court : *Akharbhai Nazarali v. Md. Hussain Bhai* (AIR 1961 MP 37 : (1961) 1 Cri LJ 266 : (1960) 2 LLJ 664 : (1960-61) 19 FJR 171). This was a case under the Employees' Provident Funds Act. The following observation occurs on page 39 of the Report :

It may be that the deduction and retention of the employees' contribution is a trust created by virtue of that very fact, or by virtue of a provision in statute or statutory rule. But even apart from the latter, the mere fact of telling the employees that it is their contribution to the provident fund scheme and then making a deduction or recovery and retaining it, constitutes the offence of criminal breach of trust.

3. This, in our opinion, is a correct statement of the position and we also agree with the learned Judge of the Madhya Pradesh High Court that "this is so obvious that nothing more need be said about it". We therefore think that the impugned order quashing the charge against the respondents is obviously wrong. The appeal is allowed, the order complained of is set aside; as this is an old case, the trial shall be expedited.

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