

Vishwa Nath

Vs

State of Jammu & Kashmir

Criminal Appeal No. 429 of 1976

(R.S. Pathak, A.N. Sen JJ)

05.01.1983

JUDGMENT

AMARENDRA NATH SEN J. –

1. The accused who happened to be a Head Constable was tried by the Judicial Magistrate First Class, Ram Nagar on a charge under section 409, R. P. C. The Judicial Magistrate by his judgment dated December 15, 1973 held that the charge against the accused had been established and he convicted the accused under section 409, R. P. C. and sentenced him to under go R. I. for a period of one year and to pay a fine of Rs. 500. Against the judgment and order of the Judicial Magistrate the accused filed an appeal in the court of Sessions Judge, Udhampur. The Session Judge by his judgment and order dated April 26, 1974 upheld the conviction and dismissed the appeal. The accused filed a revision application in the High Court of Jammu & Kashmir and the High Court by its judgment and order dated November 28, 1974 dismissed the said petition. With special leave granted by this Court, the accused has filed this appeal.

2. The brief facts, which are not in dispute, are as follows : The accused the appellant before, us was entrusted as incharge Courty Ram Nagar on February 7, 1972 with government money, the accused was required to deposit the amount forthwith the in accordance with law. The accused did not deposit the money and had used the same for personal purposes. When it was later found out that there had been defalcation of the amount by the accused, he deposited this money through one Dharam Dutta A. S. I. on August 8, 1972 There was thus an embezzlement of the said amount entrusted to the accused by him.

3. The main defence taken by the accused at the trial was that as the had been a case of embezzlement in Udhampur he had been asked by one Anchal Singh not to sent the money. Anchal Singh has been examine a witness and had satisfied the explanation given by the accused. The Judicial Magistrate and also the Sessions Judge have both carefully considered the facts and circumstances and have analysed the evidence on record. They have both come to the conclusion that there had been embezzlement of government money by the accused who had used the government money for his personal use. This finding has been accepted by the High Court.

4. Mr. Mulla, who was good enough to appear as amicus curiae on behalf of the appellant in this appeal before us, could not seriously dispute the findings of the lower courts. He submitted before us that the accused had returned the money and the accused has also already served the term of imprisonment imposed on hi. It is his submission that there had been no intention on the part of the accused to misappropriate any government money but under the force of circumstances the accused and not been in a position to deposit the money earlier. He submitted that taking into consideration

the facts and circumstances under which the appellant had failed to deposit the money forthwith and the fact that he had in fact refunded the entire amount and also undergone the term of imprisonment, the conviction of the accused should be set aside, as otherwise the accused would lose his job and would be utterly ruined.

5. Mr. Altaf Ahmed, appearing on behalf of the state has submitted that there is no ground for any interference with the conviction of the accused by this Court. He has severely commented on the conduct of the accused prior to the discovery of the defalcation of the amount by him. He has argued that if the discovery of the defalcation had not been made, the accused would have misappropriated the said amount. It is his argument that when the fact of embezzlement came to be found out, the accused offered to return that the fact of refund of the amount does not absolve the accused of the offence of embezzlement of the government money entrusted to him. In this connection he has referred to the decision of this Court in the case of Krishan Kumar v. Union of India.

6. We do not consider it necessary to refer to any decision. The facts and circumstances of this case clearly establish that there was embezzlement of the government money by the accused, inasmuch as the accused had out to personal use the government money entrusted to him, instead of depositing the same in the proper place. The fact that the accused refunded the amount when the act of his defalcation came to be discovered, does not absolve him of the offence committed by him. The accused happened to be a public servant of the Police Department and was posted as Naib-Courty. He was entrusted with the amount seized in two cases F. I. R. Nos. 16 and 17. In complete violation of the directions of law he had failed to send the amount to Sadar Courty. Udhampur and with criminal intention he had not made any entry of the money in Rahdari Register, while he made its entry in the Malkhana Register No. 1, so that his misappropriation of the amount might not be detected by anybody. He committed criminal breach of trust with respect to this money over which he had complete dominion by putting the same to his use between February 7, 1972 to August 8, 1972. The refund of the amount after detection does not absolve him of the offence.

7. The appeal fails and is hereby dismissed.

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