

Roshan Lal Raina

Vs

State of Jammu and Kashmir

Criminal Appeal No. 295 of 1976

(Syed M. Fazal Ali, D. Chinnappa Reddy JJ)

23.03.1983

JUDGMENT

CHINNAPPA REDDY, J.-

1. Roshan Lal, Tourist Clerk in the Dak Bungalow, Banihal was tried by the learned First Class Magistrate Ram Ban for offences under Sections 409 and 420, R. P. C. and duly acquitted of the charges. On an appeal by the State of Jammu & Kashmir, he was convicted of an offence under Section 409, R. P. C and sentenced to suffer imprisonment for a period of four months. The acquittal under Section 420, RPC was maintained. Roshan Lal has appealed to this Court under Article 136 of the Constitution.

2. The case against the appellant was that between October 15, 1965 and October 22, 1965, he collected a sum of Rs 70.80 from various tourists, who stayed at the Dak Bungalow and misappropriated the same. We have been taken through the judgments of the learned First Class Magistrate and the High Court and the evidence of all the relevant witnesses. We are satisfied that the case against the appellant has not been established. Shri R. Duchon, Superintendent of police at whose instance it was that the misappropriation of the amount was supposed to have been unearthed, stated in his evidence that he paid the rent of the room to the Chowkidar and made an entry in his own hand, first on October 8, 1965 and again on October 18, 1965. In cross-examination, he stated that the payment was always made to the Chowkidar and it was the Chowkidar that would bring the register to him. He also admitted that he had never made the payment to the accused. Abdul Ahad, Naib Tehsildar and Ghulam Rasool Shaheen also gave evidence and they stated that the Superintendent of Police had made the payment to the Chowkidar. Shri Mohd. Amin, Tourist Officer deposed that the accused worked under him as Tourist Clerk and it was he, who used to deposit the rent in the treasury after the rent was collected by the Chowkidar, who used to receive it from the tourist. There was a register with the Chowkidar for the recovery of the rent from the tourists. There was also a cash book with the clerk (accused). In cross-examination he stated that the Chowkidar would collect the rent and give the rent to the accused. The rent register would generally remain with the Chowkidar. Vasudev, the Chowkidar deposed that it was the accused that used to receive the rent of the Dak Bungalow and that the Superintendent of Police had also paid the rent to the accused and not to him. In cross-examination, he stated that the rent register would always be with the accused. Later in cross-examination, he stated that he had taken the register, as directed by the Tourist Officer, to the Dak Bungalow, to the Superintendent of Police and the Deputy Commissioner and thereafter handed over the rent which they had paid to the Tourist Officer along with the Register. He (the Chowkidar) further stated that it was the Tourist Officer, who checked the rent register and received the rent. He would receive the rent and give it to the Tourist Officer. This is the entire evidence adduced by the prosecution to establish entrustment

of the alleged misappropriated amount to the accused. On this evidence, it is obviously impossible to hold that the money ever came to be entrusted to the accused. Without proof of entrustment, there can be no question of the appellant being found guilty of the offence under Section 409, R. P. C. The only other incriminating circumstance alleged against the appellant was the recovery of four missing pages of the rent register from his house. This circumstance has not been relied upon by the High Court also, as the recovery was found to be suspicious. The High Court noticed that the room of the accused had been searched twice previously and nothing was recovered. It was only on the third occasion that the four missing pages were recovered. We are satisfied that the High Court was in error in convicting the accused under Section 409, R. P. C. The judgment of the High Court is set aside and the appellant is acquitted of the charge under Section 409, R. P. C. The bail-bonds will be cancelled. The appeal is allowed.

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