

**SUPREME COURT OF INDIA**

State of Andhra Pradesh

Vs.

M.C. Venkulu

CrI.A.No.11 of 1998

(Doraiswamy Raju and Arijit Pasayat JJ.)

05.02.2004

**ORDER**

Heard.

1. State of Andhra Pradesh calls in question legality of judgment rendered by a learned Single Judge of the Andhra Pradesh High Court directing acquittal of the respondent.

2. The respondent faced trial for alleged commission of offence punishable under Section 409 of the *Indian Penal Code, 1860* (in short 'the IPC') and accusations against him were to the effect that after having withdrawn an amount of Rs.4952.40, he disbursed only a part of it and misappropriated the balance. At the relevant point of time, the respondent was working as the Head Clerk and PW-9 was working as Lady Medical Officer in Primary Health Centre at Warangal. According to the prosecution, the respondent was entrusted with the task of encashing the bills and collecting the money from the State Bank of Hyderabad Branch at Gajwel, and disburse the amount to the staff for various purposes for which the money was permitted to be withdrawn. Though the money was admittedly withdrawn, according to the prosecution, the same was not utilised for the purpose for which it was withdrawn and on the contrary, the accused misappropriated it. In the statement recorded under Section 313 of the *Code of Criminal Procedure, 1973* (in short 'Cr.P.C. '), the accused accepted withdrawal of the money, but stated that he had disbursed the amount and returned a part of it to PW-9 and had obtained a receipt for it. This part of the accused's claim was disputed by PW-9, who stated that the receipt produced was forged. Be that as it may, the accused was found guilty by the Trial Judge and the conviction and sentence imposed were maintained by the first appellate court. By the impugned judgment, the High Court reversed the conclusions by holding that entrustment was not proved and, therefore, Section 409 IPC was not attracted to the facts of the case.

3. In support of the appeal, learned counsel for the appellant-State submitted that when the appellant had accepted withdrawal of the money, there was no question of proving any further entrustment independently. In the present case, when the accused himself accepted withdrawal of the money, the question of proving any further entrustment does not arise. Per

contra, learned counsel for the accused submitted that though the accused had admitted withdrawal of the money, he had taken a specific stand about refund of the balance amount to PW-9. Certain other points were also urged, which were not considered by the High Court. Section 409 IPC can be invoked if it is shown that the accused being in any manner entrusted with dominion over property in his capacity as public servant committed criminal breach of trust in respect of that property. Criminal breach of trust is defined in Section 405 IPC. Once entrustment is admitted or proved, it would be for the accused to account for the money entrusted.

4. We do not think it necessary to go into the other questions, as raised by learned counsel for the respondent. Since the High Court limited its consideration only to the question of entrustment, we shall deal with that question only. In view of the admitted position, the High Court was patently in error in holding that entrustment was not established. In the fitness of things, the matter should be heard by the High Court. The parties shall be permitted to substantiate their stands on the basis of evidence on record, and the High Court shall consider the matter afresh and dispose it of in accordance with law. We make it clear that we have not expressed any opinion on the various issues raised by the parties, except on the question of entrustment, which we find, the High Court had not correctly decided.

5. The appeal is disposed of accordingly.