SUPREME COURT OF INDIA

State of Himachal Pradesh

Vs

Karanvir

Appeal (Crl.) 1040 of 1998

(S. B. Sinha and P. P. Naolekar, JJ)

12.05.2006

JUDGMENT

S. B. SINHA, J.

The State of Himachal Pradesh is in appeal before us aggrieved by the judgment and order dated 24.9.1997 passed in Criminal Revision No.149/1994, whereby and whereunder the revision application, filed by the respondent herein, against the judgment and order dated 1.12.1994 passed by the Sessions Judge affirming a judgment of conviction and sentence passed by the Chief Judicial Magistrate, Sirmaur District at Nahan, convicting the respondent for commission of an offence punishable under Section 409 of the IPC and sentencing him to undergo simple imprisonment for a period of six months and to pay a fine of Rs.1, 000/-, has been allowed.

The respondent was a Post Master at Chhapang, within the Police Station Pachhad in the District of Sirmaur. One Rajbir Singh (PW-3), uncle of the respondent-accused, was at the relevant time working in the Government High School, Ramadhon. He had deposited a sum of Rs.8, 000/- with the respondent-accused for purchase of National Savings Certificates. Necessary forms were also filled up by said Rajbir Singh and a receipt acknowledging the receipt of the said amount was issued to him. Although more than a month had passed but the said Rajbir Singh was not handed over any National Savings Certificate by the respondent. He, therefore, made enquiries with the postal authorities both at Rajgarh and at Nahan, whereupon he came to learn that no such National Saving Certificates had been issued. He thereafter made a complaint in that behalf, with the postal authorities. The postal authorities entrusted the matter to one Shri Brijpal Thakur (PW-4) for

conducting an enquiry. The respondent having come to learn of initiation of the said enquiry, deposited a sum of Rs.4200/- in the Post Office on 30.11.1989. A further deposit of Rs.4, 000/- was made by him on 11.12.1989. It is not in dispute that the excess amount of Rs.200/- was deposited by the respondent on 30.11.1989 by way of interest.

A First Information Report was lodged on 27.6.1990 at Police Station, Pachhad. During the investigation, specimen and admitted writings of the respondent were taken and sent to the handwriting expert for comparing with his writings and signatures on the receipt. The expert opined that the questioned writing and the signatures on the deposited documents tallied with the admitted signatures and writings of the respondent. The leaned Chief Judicial Magistrate, as noticed hereinbefore, found the respondent guilty of commission of an offence punishable under Section 409 IPC and sentenced him to undergo simple imprisonment for a period of six months. A fine of Rs.1, 000/- was also imposed upon him.

The appeal preferred by the respondent before the learned Sessions Judge, Sirmaur, also came to be dismissed. In the revision application filed by the respondent, the High Court held that as the prosecution had not been able to prove 'misappropriation' on the part of the respondent, the judgment of conviction and sentence was unsustainable.

The short question which arises for consideration in this appeal is as to whether having regard to the facts and circumstances of this case, the prosecution has been able to prove that the respondent misappropriated the said amount.

Section 405 of the IPC reads as under:

"405. Criminal breach of trust.- Whoever, being in any manner entrusted with property, or with any 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, or wilfully suffers any other person so to do, commits 'criminal breach of trust'. ....."

Illustration (e) appended to the said provision in this connection be noticed.

"A, a revenue-officer, is entrusted with public money and is either directed by law, or bound by a contract, express or implied, with the Government, to pay into a certain treasury all the public money which he holds. A dishonestly appropriates the money. A has committed criminal breach of trust."

The respondent was a Post Master. He was holding an office of public trust. The complainant who was a teacher entrusted the amount to the respondent for the purpose of purchasing National

Savings Certificates. As soon as the amount was received by the respondent on behalf of the postal authorities, it became public money. It was required to be utilised for the purpose for which the same was handed over to the respondent.

The High Court opined that the entrustment was proved. The fact that till 29.11.1989, the amount of Rs.8, 000/- deposited by the complainant with the respondent, had not been utilised for the purpose for which the same had been handed over to him also is admitted. When an enquiry came to be made by Shri Brijpal Thakur (PW-4), the respondent deposited the said amount in two installments along with a sum of Rs.200/- by way of interest. The respondent, therefore, being a public officer had the requisite knowledge that the amount carried interest. On 16.7.1989, the postal savings certificates came to be issued. The respondent therefore thought himself liable to pay the said amount with interest, so as to reimburse to the complainant the amount to which was entitled by way of interest for depositing the said amount. Even on 30.11.1989, he did not deposit the entire amount. The entire amount came to be deposited by him on 11.12.1989. We, therefore, fail to understand as to on what basis the learned Judge opined that the second ingredient of Section 405 of the IPC, i.e. misappropriation of the amount by the respondent-accused had not been proved. The High Court, in our considered view, completely misdirected itself in opining that it was obligatory on the part of Rajbir Singh (PW-3) or Brijpal Thakur (PW-4) to state in their complaint that the accused committed criminal misappropriation with intention to utilise the amount for his personal use. The very fact that the respondent retained with him the entrusted amount is not disputed. If he did not utilise the amount for the purpose for which the same had been deposited, an offence must be held to have been committed.

Mrs. K. Sarada Devi, learned counsel appearing on behalf of the respondent would submit that no material was brought on record by the prosecution to show as to how the respondent had utilized the amount. In our opinion, the same was not necessary. In view of the admitted fact, we are of the opinion that it was for the respondent himself to prove the defence raised by him that the entire amount had not been paid to him by the complainant. The learned Judge had rejected the said defence.

The actual manner of misappropriation, it is well settled, is not required to be proved by the prosecution. Once entrustment is proved, it was for the accused to prove as to how the property entrusted to him was dealt with in view of Section 405 of the IPC. If the respondent had failed to produce any material for this purpose, the prosecution should not suffer therefor.

The learned Trial Judge as also the learned Sessions Judge arrived at concurrent findings of fact. The High Court, in our opinion, misdirected itself in passing the impugned judgment while exercising its revision jurisdiction. [See N. Bhargavan Pillai & Anr. vs. State of Kerala, 2004 (13) SCC 217.

A contention has further been raised by Mrs. Sarada Devi, that no question was put to the respondent while he was being examined under Section 313 of the Code of Criminal Procedure, with a view to give him an opportunity to explain whether the amount was given to him for his personal use or he converted the money for his personal use. We are afraid that such contention cannot be accepted. While examining the accused under Section 313 of Cr.P.C., the Trial Court is

merely required to ask such question which has been brought on record as against the respondent. The respondent in fact had admitted the entire prosecution case for all intent and purport. The entire evidence which was adduced on behalf of the prosecution was made known to the accused. In his statement under Section 313 Cr.P.C., he accepted that he had received a sum of Rs.8, 000/- from the complainant and he had deposited the said amount together with interest, in two installments. He has merely reiterated his defence, as noticed hereinbefore, that the complainant had not paid to him the entire sum of Rs.8, 000/-, which has not been accepted by the Trial Court. We are, therefore, of the opinion that the High Court committed a manifest error in arriving at a finding that there has been infraction of the mandatory provisions of Section 313 Cr.P.C.

For the aforesaid reasons, the impugned judgment cannot be sustained and it is set aside accordingly.

The question, however, would now arise as to whether in the facts and circumstances of this case, the respondent should be sent back to jail. The respondent is aged about 60 years. The offence is said to have been committed 15 years back. He was arrested by the police. He might have been in custody for some time.

Having regard to the peculiar facts and circumstances of this case and keeping in view the fact that the respondent had deposited the entire amount before the First Information Report was lodged, we are of the opinion that the interest of justice would be subserved if any substantial punishment is not awarded. Accordingly, we impose a fine of Rs.4, 000/- upon the respondent, which will be apart from the amount of fine of Rs.1, 000/- imposed by the learned Trial Judge. It is directed that in default of the payment of the said amount, the respondent shall undergo simple imprisonment for three months. The appeal is thus allowed.