

SUPREME COURT OF INDIA

Ghanshyam

Vs.

State of Rajasthan

CrI.A.No.2085 of 2013

(Sudhansu Jyoti Mukhopadhaya and V. Gopala Gowda, JJ.)

12.12.2013

JUDGMENT

V.Gopala Gowda J.

1. Leave granted.

2. This appeal is filed by the appellant/accused questioning the correctness of the judgment and final Order dated 04.02.2009 passed by the High Court of Judicature at Rajasthan, Jaipur in S.B. Criminal Misc. Petition No. 1067 of 2005 remanding the matter back to the trial court for fresh decision in the light of the statements of the witnesses and also the material and evidence available on record, urging various facts and legal contentions in justification of his claim.

3. Necessary relevant facts are stated hereunder to appreciate the case of the appellant/accused and also to find out whether he is entitled for the relief as prayed in this appeal.

At the time of filing of this appeal, there were two respondents, respondent no.1 Ram Dayal – the complainant and respondent no.2 – the State of Rajasthan. Name of the complainant-Respondent no.1 has been deleted vide this Court's order dated 13th September, 2010 as the appellant could not take steps of service upon him.

The complainant alleged that on 1.10.1994, he gave three gold chains weighing 6.5 tola to the accused-appellant for making a new design chain after melting the old chains. But according to the complainant, neither the three old chains nor a new gold chain were returned to him. On 2.11.1994, the complainant sent a telegram asking the accused appellant to return the gold chains. He further sent a legal notice through his advocate to the appellant on 6.5.1995 making allegation of taking the gold chains and not returning the same. All the allegations were denied by the appellant. The complainant then filed a complaint under Section 156(3) of the Criminal Procedure Code (in short 'CrPC') for an offence under Section 406 of the Indian Penal Code. Statements of witnesses were taken under Section 161, CrPC by the Additional Chief Judicial Magistrate, Gangapur City. The complainant further filed an application under Section 190 of CrPC before the Additional Metropolitan Magistrate bringing to his notice the commission of the alleged offence. Investigation was conducted by the SHO, PS Gangapur City, District Sawai Madhopur and report was submitted by him who concluded that the FIR was false and the case was without merit. The complainant filed a protest petition against the said report. The Additional Chief Judicial Magistrate, while considering the protest petition, confirmed the negative report. The complainant challenged the said Order of the Additional Chief Judicial Magistrate before the Additional Sessions Judge by filing a protest petition. The Court of Additional Sessions Judge set aside the Order of the Additional Chief Judicial Magistrate and sent the matter back to the Additional Metropolitan Magistrate to rehear the matter after considering the documents on record. The Additional Metropolitan Magistrate considered the entire evidence on record and came to the conclusion that no case was made out and the protest petition filed by the complainant deserved to be dismissed.

4. The complainant being aggrieved by the Order of the Additional Metropolitan Magistrate preferred a criminal revision before the Court of learned Additional Sessions Judge which upheld the Order passed by the Additional Metropolitan Magistrate. The complainant, therefore, preferred a petition under Section 482 of CrPC challenging the Order of the learned Additional Sessions Judge. The Hon'ble High Court exercised its inherent jurisdiction to set aside the findings of the courts below and allowed the petition of the complainant.

5. The High Court, vide its judgment dated 4.2.2009, held that the statement recorded by the ACJM clearly reveals that the complainant handed over three gold chains to the accused-appellant at the time of purchase of cloth by the appellant from the complainant's shop but the same were not returned. Therefore, according to the High Court, a prima facie case of criminal breach of trust was clearly made against the accused-appellant. The trial Court erred in observing that no entry could have been made by the complainant in his record book simultaneously when the clothes were purchased by the accused appellant from the complainant's shop. The High Court further held that trial court erred in proceeding on any presumption when the evidence available on record proved otherwise and there was admission by the accused. In such cases, the burden was on the accused to have rebutted the allegation against him. Therefore, the High Court remanded the matter back to the trial court for fresh decision in the light of the statements of the witnesses and

evidence on record.

6. In the light of the facts and circumstances presented before us on the basis of evidence on record, and also based on the contentions raised by the learned senior counsel on behalf of both the parties, we are inclined to frame the following issue to be answered by us:

1. Whether the High Court was justified in remanding the matter back to trial court for consideration on merit against the concurrent findings of the courts below?

7. It is to be noted here that the case made against the accused in this case is that of criminal breach of trust. Criminal breach of trust is provided under Section 405 of Indian Penal Code which reads as:

“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 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 willfully suffers any other person so to do, commits “Criminal Breach of Trust”.

The punishment for Criminal breach of trust is provided under Sections 406- 409 of IPC.

8. It has been held in the case of *Onkar Nath Mishra and Ors. vs. State (NCT of Delhi) and Anr*¹, that in the commission of the offence of criminal breach of trust, two distinct parts are involved. The first consists of the creation of an obligation in relation to the property over which dominion or control is acquired by the accused. The second is a misappropriation or dealing with the property dishonestly and contrary to the terms of the obligation created.

9. Further, it has been held in the case of *Jaikrishnadas Manohardas Desai and Anr. vs. State of Bombay*², that:

“To establish a charge of criminal breach of trust, the prosecution is not obliged to prove the precise mode of conversion, misappropriation or misapplication by the accused of the property entrusted to him or over which he has dominion. The principal ingredient of the offence being dishonest misappropriation or conversion

which may not ordinarily be a matter of direct proof, entrustment of property and failure, in breach of an obligation, to account for the property entrusted, if proved, may in the light of other circumstances, justifiably lead to an inference of dishonest misappropriation or conversion. Conviction of a person for the offence of criminal breach of trust may not, in all cases, be founded merely on his failure to account for the property entrusted to him, or over which he has dominion, even when a duty to account is imposed upon him but where he is unable to account which is untrue, an inference of misappropriation with dishonest intent may readily be made., the prosecution is not obliged to prove the precise mode of conversion, misappropriation or misapplication by the accused of the property entrusted to him or over which he has dominion. The principal ingredient of the offence being dishonest misappropriation or conversion which may not ordinarily be a matter of direct proof, entrustment of property and failure, in breach of an obligation, to account for the property entrusted, if proved, may in the light of other circumstances, justifiably lead to an inference of dishonest misappropriation or conversion. Conviction of a person for the offence of criminal breach of trust may not, in all cases, be founded merely on his failure to account for the property entrusted to him, or over which he has dominion, even when a duty to account is imposed upon him but where he is unable to account which is untrue, an inference of misappropriation with dishonest intent may readily be made., the prosecution is not obliged to prove the precise mode of conversion, misappropriation or misapplication by the accused of the property entrusted to him or over which he has dominion. The principal ingredient of the offence being dishonest misappropriation or conversion which may not ordinarily be a matter of direct proof, entrustment of property and failure, in breach of an obligation, to account for the property entrusted, if proved, may in the light of other circumstances, justifiably lead to an inference of dishonest misappropriation or conversion. Conviction of a person for the offence of criminal breach of trust may not, in all cases, be founded merely on his failure to account for the property entrusted to him, or over which he has dominion, even when a duty to account is imposed upon him but where he is unable to account which is untrue, an inference of misappropriation with dishonest intent may readily be made.” (Emphasis laid by this Court)

10. In the light of the above legal principle laid down by this Court, the High Court was correct in holding that presumptions have been made by the trial court where it was not necessary in fact situation at hand. The decision reached by the trial court is not sustainable in law and is liable to be quashed. We concur with the decision of the High Court holding that it was correct in redirecting the matter to the trial court for adjudication on merit.

11. For the reasons stated supra, the appeal is dismissed. The stay granted by this Court vide order dated 30th October, 2009 stands vacated.

Judgment referred

¹2008 (2) SCC 0561

²AIR 1960 SC 0889