

ALLAHBAD HIGH COURT

Gopal Das

Vs.

State (Allahabad)

Criminal Trial No. 1 of 1952

(Raghubar Dayal and Asthana, JJ.)

10.08.1953

JUDGMENT

Raghu Bardayal, J.

1. gopal Das Kapoor and another were committed to the Court, of Session at Kanpur for trial of offences under Sections 409 and 120B, Penal Code. The Sessions Judge added a charge under Section 477A, Indian Penal Code, also against them. Both the accused are public servants.

2. On a petition under Article 228 of the Constitution this case was transferred to this Court as it involved a substantial question of law as to the interpretation of the Constitution. We have heard the learned counsel for the petitioner and the learned Advocate General on the point and dispose of the constitutional point alone. Further proceedings in the case will be taken in the Court of the Sessions Judge.

3. Section 409, Indian Penal Code, which punishes "criminal breach of trust" is in these words:

"Whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

4. Section 405. Indian Penal Code, which defines "criminal breach of trust" is as follows :

"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 willfully suffers any other person so to do, commits "criminal breach of trust".

5. Section 5 (1) (c), Prevention of Corruption Act, 1947 (Act No. 2 of 1947) is

"A public servant is said to commit the offence of criminal misconduct in the discharge of his duty if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person so to do."

6. It would appear from the different provisions of the various sections quoted above that the act of a public servant in dishonestly misappropriating or otherwise converting for his own use any property entrusted to him or under his control as a public servant or in allowing any other person so to do will be an offence both under Section 5 (1) (c) of Act 2 of 1947 and also under Section 409, Penal Code.

7. The offence under Section 5 (1) (c) of Act 2 of 1947 is punishable under Section 5 (2) of the same Act with imprisonment for a term which may extend to seven years, or with fine, or with both while the offence under Section 409, Indian Penal Code, is punishable with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and the offender shall also be liable to fine.

8. In view of the absence of any provision in either of the two Acts laying the circumstances in which a public servant committing such an act would be triable under one Act or the other, it has been contended that the public servant prosecuted for an offence under Section 409, Indian Penal Code, is in a worse position than another public servant who may just, according to the fancy of the authorities, be prosecuted for the offence under Section 5 (1) (c) of Act 2 of 1947, that therefore Section 409, Indian Penal Code, denies equality before the law to such persons who are prosecuted for an offence under Section 409, Indian Penal Code, and not for an offence under Section 5 (1) (c) of Act 2 of 1947, and that, therefore, the provisions of Section 409 in this respect violate the provisions of Article 14 of the Constitution and should, therefore, be held void in view of Article 13 (1) of the Constitution. The differentiation in the punishment provided for the same conduct in either of the two provisions of law is immaterial in view of Section 71, Penal Code, which provides that where anything which is an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the offender shall not be punished with a more severe punishment than the court which tries him could award for any one of such offences. For such conduct which could lead to a charge both under Section 409, Indian Penal Code, and under Section 5 (1) (c) of Act 2 of 1947 the offender will be punished within the lower limit provided for either of the two offences. A person cannot be convicted twice for the same act in view of Section 26, General Clauses Act, and also Article 20, Clause (2) of the Constitution.

9. In this view of the matter there is no occasion for holding that there is any discrimination against an accused who is proceeded against for an offence under Section 409, Indian Penal Code, and not for an offence under Section 5 (1) (c) of Act 2 of 1947. The provisions of Section 409, Indian Penal Code, therefore, do not go against Article 14 of the Constitution and are not void in view of Article 13 (1) of the Constitution.

10. No other point requiring interpretation of the Constitution has been urged before us.

11. Having decided the constitutional point raised before us, we order that the case be returned to the court concerned for further proceedings in view of Article 228 (b).

Case returned.