
(2006) 01 MP CK 0039

In the Madhya Pradesh High Court

Case No : Criminal Revision No. 43 of 2000

Badrilal Gupta

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 03-01-2006

Acts Referred:

Penal Code, 1860 (IPC) — Section 405, 409

Citation : (2006) CriLJ 1375 : (2006) 1 MPLJ 425

Hon'ble Judges : Subhash Chandra Vyas, J

Bench : Single Bench

Advocate : T.N. Singh and Hemlata Gupta, for the Appellant; Ajay Kakani, G.A., for the Respondent

Final Decision : Allowed

Judgement

S.C. Vyas, J.

This revision is directed against the judgment and order of conviction dated 25-1-2000, passed in Criminal Appeal No. 46 of 1999 by the IInd Additional Sessions Judge, Barwani, whereby confirming the conviction and sentence passed by Judicial Magistrate First Class, Anjad in Criminal Case No. 905 of 1988 vide judgment dated 31-3-1999 by which the applicant-accused has been convicted for commission of an offence u/s 409 of the Penal Code and sentenced to undergo R.I. for one year and to pay a fine of Rs. 500/-. Feeling aggrieved by the said judgment and order of conviction, this revision has been filed by the applicant-accused.

Brief facts of the prosecution case are that the applicant Badrilal Gupta was posted and working as Naib Nazir in the Court of Judicial Magistrate First Class, Anjad. On 23-5-1984 one bicycle bearing frame No. 143066 was deposited as criminal property in Criminal Case No. 281 of 1984 by the Station Officer of Police Station, Anjad. The said bicycle was obtained by applicant-accused and entry in this regard was made in Muddemal Register at No. 70 of 1984. In the

month of December, 1987 the applicant accused was transferred and posted in the same Court on the post of Asstt. Record Keeper. He handed over the charge to Mr. M.Z. Sufi who was posted as Naib Nazir on 31-12-1987 including all the criminal case property.

On 28-4-1988 the Criminal Case No. 281 of 1984 came up for hearing before the Court and the case property bicycle in question was required and Naib Nazir was directed to produce it. On that day Mr. M.Z. Sufi who was working as Naib Nazir informed the Court that the bicycle in question was not given to him in charge by the applicant accused. Thereafter the matter was reported to the Police by Judicial Magistrate First Class, Anjad vide report dated 5-5-1988 and a written first information report (Ex.P9) was lodged at police station, Anjad.

An offence was registered against the applicant-accused and after completion of investigation, a charge-sheet was filed against him for commission of an offence u/s 409 of the IPC.

The trial Magistrate has framed the charge for offence u/s 409 of the Penal Code against the applicant-accused and after trial he was convicted and sentenced. In appeal the learned Addl. Sessions Judge has also confirmed the conviction and sentence passed by the trial Magistrate and dismissed the appeal of the applicant. Hence, this revision before this Court.

Shri T.N. Singh, learned Sr. Counsel has raised the following threefold contentions, challenging the impugned judgments of both the Courts:

1. That on 31-12-1987 the complete charge of the post including criminal case properties was handed over by the applicant-accused to Mr. M.Z. Sufi and in that charge report there is no mention of the fact that the bicycle in question was not handed over to him. After four months of handing over the charge, on 28-4-1988 when the bicycle in question was directed to be produced before the Court the said Nazir Mr. Sufi has given a report for the first time that bicycle in question was not handedover to him by the applicant-accused.

That if the bicycle in question was not handed over to him in the charge, it was expected from him to have reported the matter immediately to the Presiding Officer of the Court in writing. But no such report was made by him till 28-4-1988.

That later on Mr. M.Z. Sufi to save himself, made an entry in the Malkhana Register of the Court that the bicycle in question was not handed over to him. Since the matter was not reported by him to the Presiding Officer and against the said entry, the signature of the accused was not obtained by him, thus the said entry cannot be used against the applicant-accused.

That Mr. M.Z. Sufi has concealed the fact of having one extra bicycle available in Malkhana from the Presiding Officer and he did not inform about the said extra bicycle. The availability of an extra bicycle in Malkhana was an indication of some mistake on the part of Nazir. One Mansharam who has been examined by the

prosecution, was given a bicycle from Nazarat Section by the applicant-accused according to the entry made in the Malkhana Register and there is a possibility of committing a bona fide mistake while in returning the bicycle to Mansharam. In such a situation, it cannot be said that accused-applicant on account of dishonest intention has committed the alleged act.

That as per the provision of Section 405 of the Penal Code while establishing the charge of criminal breach of trust, it is required to be proved that the property entrusted must be dishonestly misappropriated or converted into his own use that property, or at least it should be proved that the accused has used that property dishonestly or dispose of the property in violation of any direction of law prescribing the mode in which such trust is to be discharged.

On the basis of the aforesaid submissions, learned Counsel has argued that both the Courts below have committed a grave mistake of arriving at a conclusion that the accused-applicant has committed breach of trust, dishonestly misappropriates or converts to his own use that property or dishonestly uses or disposed of that property. He has further submitted that both the Courts below without properly appreciating the evidence, documentary as well as oral, available on record, have wrongly convicted the accused-applicant. Therefore, the revision "deserves to be allowed and the applicant be acquitted of the charge.

Shri Ajay Kakani, G.A., Per contra, supported the judgments passed by both the Courts and submitted that both the Courts have considered all aspects of the matter raised by learned Counsel for applicant and rightly convicted the accused-applicant.

Section 405 of the Penal Code defines the offence of criminal breach of trust which reads as under :

Section 405.- 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.

Mere reading of this section shows that the dishonest intention of the accused can only be inferred from the evidence established in a given case by the prosecution. In the present case admittedly the accused was entrusted the criminal case property, that is the bicycle in a criminal case and an entry in this regard was made. In defence the accused has stated that all the properties of criminal case including the cycle in question was handed over to Mr. M.Z. Sufi and a complete charge report (Ex.P. 1) was prepared and signed by both of them. Though original charge report has not been filed before the trial Court by the prosecution, but the copy of the said charge report relied upon by both the parties. On perusal of this document it appeared that it is clearly mentioned that

all the criminal case property of the Court of Anjad and Rajpur have been handedover by Shri B. L. Gupta and received by M.Z. Sufi, the then Nazir posted as per property registers of both the Courts and signed by both the employees mentioning the date 31-12-87. It also bears the seal of the Court. From the aforesaid endorsement it can very well be presumed and inferred that each and every criminal property entered in the Muddemal register have been handedover to Mr. M.Z. Sufi, Naib Nazir. If the cycle in question would not have been handed over to Mr. Sufi, then there must have been entry with regard to missing of the said bicycle and this fact could have been brought to the knowledge of the Presiding Officer of that Court. In absence of the entry in this regard shows that full and complete charge of criminal property was handedover to Mr. Sufi. It was obligatory duty of Mr. Sufi to make an endorsement of missing of the cycle in question and to report the matter immediately to the Presiding Officer and also to the Head of Department. But surprisingly, the matter was reported after lapse of four months on 28-4-1988 when the the cycle in question was required to be produced before the Court in criminal case No. 281 of 84.

Ex. P.8 is a copy of the property register and at Item No. 70 an entry regarding deposit of a cycle was made. In column No. 6 there is a typed endorsement to the effect that Cycle in question is not received and it bears the signature of M.Z. Sufi mentioning the date 31-12-1987. On that day (31-12-1987) the applicant was present, but this endorsement does not contain the signature of Badrilal Gupta, the applicant. It shows that Mr. Sufi himself had made this false endorsement later on and signed on it.

Mr. M.D. Mahilkar, Presiding Officer of the Court of Anjad examined by prosecution as PW-5 has admitted in para-7 of his cross-examination that for the first time the fact of non-availability of the cycle in question was brought to his knowledge on 28-4-1988 which falsify the statement given by Mr. Sufi that he had brought this fact in the knowledge of Presiding Officer on 31-12-1987 itself. No such report was brought on record and proved by the prosecution that report was made by Mr. M.Z. Sufi on 31-12-1987 itself. Mr. Mahilkar has categorically stated that Mr. Sufi had brought this fact to his knowledge only in the month of April, 1988. The charge report Ex.P.I and the admission made by Mr. Mahilkar PW-5 clearly established that the cycle in question was handedover to Mr. M.Z. Sufi and later on to save himself, Mr. Sufi made a false endorsement in the register and signed himself on it. He did not obtain the counter signature of the Presiding Officer of the Court.

Considering the entire documentary and oral evidence, it can safely be arrived at the conclusion that both the Courts below have grossly erred in holding the applicant accused guilty of the alleged offence. Both the Courts below have overlooked the effect of charge report Ex.P. 1 and the false entry made in Malkhana register by Mr. M.Z. Sufi.

Consequently, the revision is allowed. The impugned judgment and order of conviction and sentence awarded to the applicant by both the Courts below are

set aside. The applicant accused is acquitted of the charge levelled against him u/s 409 of the Penal Code. His bail bonds shall stand discharged.