
(1975) 05 SHI CK 0013
In the High Court Of Himachal Pradesh

Kundan Lal

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 08-05-1975

Acts Referred:

Penal Code, 1860 (IPC) — Section 408

Citation : (1976) CriLJ 587

Hon'ble Judges : D.B. Lal, J

Bench : Single Bench

Judgement

D.B. Lal, J.—This revision is brought from the decision of the Additional Sessions Judge, Mandi, in a case u/s 408 of the I. P. Code whereby agreeing with the Magistrate First Class, the petitioner Kundan Lai has been convicted under that section and has been sentenced to rigorous imprisonment for eight months and to pay a fine of Rupees 1,000/-,

2. The prosecution case was that Kundan Lal was Secretary-cum-Salesman of Kunt Bheo Go-operative Society and as such used to be entrusted with the amount belonging to that Society. He was also maintaining the cash-book of the Society. One Hem Raj Gupta checked the accounts, and found that a sum of Rupees 5,490.62 was short. The accused was given a week's time to make up the balance. He did not do so and was relieved of his duties on 23-8-1967. Subsequently a report was instituted against the accused and he was prosecuted for the offence u/s 408 of the Indian Penal Code.

3. The accused pleaded not guilty and asserted that he had not committed criminal breach of trust and that the President Todar as well as a few others were responsible for the shortage in the account. The learned Magistrate, however, convicted him and sentenced him to one year's rigorous imprisonment and to pay a fine of Rs. 1,000/-. The accused came in appeal before the learned Additional Sessions Judge, but did not succeed; However, the sentence was reduced to eight months rigorous imprisonment and to a fine of Rs. 1,000/-. He has now come up in revision before this Court.

4. The learned Counsel for the petitioner submitted that in view of the statement of Todar (P.W. 1), a sum of Rs. 2,500/- was retained by him.. This Todar was President of the Society and according to his statement he used to take money from the petitioner, to which he was not entitled. He has not yet returned back Rs. 2,500/-. One Datt "Ram (P.W. 2) another member of the Society was produced. He significantly stated that a complete truckload of wheat was received by him which belonged to the Society and he has not paid for that wheat. The learned Counsel further argued that no criminal intention to misappropriate existed and so the offence of criminal breach of trust was not made out. He has relied on Kapildeo Narain Vs. Emperor, It is admitted on all hands that the accused was entrusted with the amount and he did maintain such account. As per accounts showed by him, the sum of Rs. 5,490.62 was short. It was then the duty of the accused to have explained this shortage. He was given several opportunities to make good the loss. If he had given Rs. 2,500/- to Todar (P.W. 1); or if he purchased one truck, load of wheat for Datt Ram, he actually willfully suffered them to commit dishonest misappropriation of conversion of the Society's money to their own use. Therefore, u/s 405 the accused dishonestly misappropriated and willfully suffered these persons to convert to their own use the property of the Society. As such he was guilty of criminal breach of trust. As such the intention to misappropriate the money belonging to his principal was there and - the aforesaid Patna case is not applicable. In A.J.E.G. Caspersz v. The King AIR 1949 PC 22 : (1949) 50 Cri LJ 25 an executive engineer was held to be guilty of dishonest misappropriation even though he prepared false bills and made false entries in order to construct a military road which was rather essential to construct for military purposes. Even then the action of the executive engineer was held as amounting, to "criminal breach of trust Therefore, howsoever laudable an object may be, one is guilty of criminal breach of", trust if he wilfully suffers somebody to make a wrongful gain for himself so as to cause wrongful loss, to his principal. Therefore, the money advanced to Todar (P.W. 1) or to Datt Ram (P.W. 2) will not absolve the accused. He was therefore, rightly convicted by the two Courts below for the offence of criminal breach of trust.

5. As to the sentence, a lenient view must be taken. Todar (P.W. 1) and Datt Ram (P.W. 2) were as much liable to the Society as the accused could be. They have somehow escaped and in fact the accused obliged them to his detriment. In the circumstances, the sentence of rigorous imprisonment need not be awarded to the accused. However, the sentence of fine is retained.

6. The revision is dismissed, with this modification that the substantive sentence of rigorous imprisonment is set aside. However, the conviction of the petitioner-accused u/s 408, Indian Penal Code, is maintained, but he is sentenced to pay a fine of Rs. 1,000/-. In default, he shall undergo rigorous imprisonment for six months, The direction as to payment of compensation to the complainant-Society is also maintained.