
(1961) 04 GAU CK 0003
In the Gauhati High Court

Mahabir Prasad Garodia

APPELLANT

Vs

The State of Assam

RESPONDENT

Date of Decision : 19-04-1961

Acts Referred:

Penal Code, 1860 (IPC) — Section 403, 411

Citation : AIR 1961 Guw 132 : (1961) CriLJ 457

Hon'ble Judges : Haliram Deka, C.J.;G. Mehrotra, J

Bench : Division Bench

Judgement

G. Mehrotra, J.—The petitioner has been convicted by the learned Sessions Judge u/s 403 Indian Penal Code and sentenced to six months" rigorous imprisonment and a fine of Rs. 250/- in default rigorous imprisonment for four months more.

2. The petitioner was tried by the Magistrate u/s 411 Indian Penal Code and convicted and sentenced by the Magistrate under the said section. On appeal, the learned Sessions Judge found that the accused could not be convicted u/s 411 Indian Penal Code and thus alter-ed the conviction to one u/s 403 Indian Penal Code and reduced the sentence.

3. Briefly the prosecution case is that certain bales of cloth were stolen from Barge No. 9 at Amingaon. They were found unloaded and kept in the godown of the petitioner from the lorry. There were a large number of persons who were suspected of being responsible for the theft including the coolies and some of the Railway employees, but we are not concerned with them, as some of them have been acquitted and others were discharged at an earlier stage. The learned Sessions Judge has categorically found that the theft of twenty-three bales of cloth has not been proved.

The prosecution case was that out of these twenty-three bales, twelve bales were removed from the lorry and kept in the godown of the petitioner and were seized by the Police therefrom. After having found that the theft in respect of these bales of cloth has not been established, the learned Sessions Judge rightly held

that the petitioner could not be convicted u/s 411 Indian Penal Code. But having said that he has altered the conviction to one u/s 403 Indian Penal Code.

4. There are two things necessary before an offence u/s 403 Indian Penal Code can be established. Firstly, that the property must be misappropriated or converted to the use of the accused, and, secondly, that he must misappropriate or convert it dishonestly. In the present case, the finding of the learned Sessions Judge is that these bales of cloth were in the custody of the Railway and on a certain date they were seized from the godown of the petitioner.

The Police evidence is that on the date of the seizure, the lorry was standing near the godown of the petitioner and thereafter the labourers were seen removing the bales of cloth at the instance of the petitioner, when Kobad Ali, Officer-in-charge of the Gauhati Police Station entered the godown, stopped the labourers from removing the bales of cloth and seized twelve bales of the cloth from the godown. He caught three labourers and the driver and handy-man and in the meantime the petitioner slipped away.

From that conduct of the petitioner, the learned Sessions Judge has concluded that the petitioner must have had a dishonest intention. Before this intention can be established, the prosecution must prove something more than the mere fact that the goods were found in possession of the petitioner. He was not actually present at the time when the goods were seized. The mere fact that the property was once in the custody of the Railway and was subsequently found in the godown of the petitioner does not, in our opinion, make out a case u/s 403 against the petitioner.

The prosecution having failed to establish that the property was a stolen property, particularly when they came with the definite case that the property was stolen from the barge, they cannot bring home a charge u/s 403 Indian Penal Code merely on the proof of the fact that it was ultimately recovered from the godown of the petitioner. No misappropriation or conversion of the property has been proved in this case; nor can we say that necessarily a dishonest intention follows from the evidence on the record. In any view of the matter on the facts found, in our opinion, no offence u/s 403 Indian Penal Code is made out beyond any reasonable doubt.

5. We accordingly allow this revision petition, set aside the conviction and sentence passed against the petitioner.

6. The rule for enhancement of the sentence is also discharged. The petitioner is on bail and his bail bond may be cancelled,

H. Deka, C.J.

7. I agree with my learned brother completely. I would only like to add that the learned Sessions Judge was not correct in assuming that the articles or the goods in question were the lost property of the Railway on which hypothesis he convicted the accused u/s 403 Indian Penal Code. If a theory of loss could be

assumed, a theory of sale or transfer by the Railway employees involved also could be assumed,- but none of these was the prosecution case. Therefore, when the learned Sessions Judge held the view that no theft was established in respect of these bales of cloth as seized, - he ought not to have proceeded further with the theory of loss and misappropriation of the same by the accused in the matter of stacking or storing in his godown.

For a conviction u/s 403 Indian Penal Code mens rea had to be established by the prosecution for which there was no attempt made. The evidence as to any active part taken by the accused either in the matter of receiving or removing the articles from the truck is to a great extent doubtful. Therefore, no clear case was made out against the accused-petitioner justifying his conviction.