

(1988) 04 MAD CK 0042

In the Madras High Court

Case No : Criminal M.P. No"s. 5387 and 5389 of 1985

M.V. Baby

APPELLANT

Vs

State
J. Elodh Vs State, Central Branch Egmore,
Madras-8

RESPONDENT

Date of Decision : 01-04-1988

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 34, 405, 408

Citation : (1988) 04 MAD CK 0042

Hon'ble Judges : S.A. Kader, J

Bench : Single Bench

Advocate : P. Srinivasan, for the Appellant; R.M. Kannappa Rajendaran,
Government Advocate (Crl. side) for State, for the Respondent

Final Decision : Allowed

Judgement

S.A. Kader, J.—These two criminal petitions are filed under S. 482, CrI.P.C., to quash the proceedings in C.C. No. 3664/85, on the file of the II Metropolitan Magistrate, Madras. The first accused is the petitioner in CrI.M.P. No. 5389 of 1985 while the second accused is the petitioner in CrI. M.P. No. 5387 of 1985.

2. The brief facts of the case are these: The second accused, M.V. Baby (petitioner in CrI. M.P. No. 5387 of 1985), M.C. Kuria-kose and Lalu Alex joined together and constituted a firm by and under the name of Kopanhagan Pharmaceuticals with its registered office at Pushpa Nagar, Madras- 34. On a complaint given by M.C. Kuriakose, one of the partners, the respondent-Sub-Inspector, Central Crime Branch, has filed a charge-sheet against these two petitioners for offences under Ss. 408 and 408 read with S. 34 , I.P.C. The allegation is that these two accused in furtherance of their common intention the first accused (petitioner in CrI. M.P. No. 5389 of 1985) being a clerk employed in the partnership firm, and the second accused (petitioner in CrI.M.P. No. 5387 of 1985) being the managing partner of the said firm, dishonestly converted the

properties entrusted with them for their personal gain by lifting the goods without the knowledge of the other partners to the shop of the second accused at Piravam, Ernakulam District, Kerala by booking the consignments in their names and made themselves liable for offences punishable under S. 408, I.P.C., by the first accused and S. 408 read with S. 34, I.P.C., by the second accused. The charge sheet has been taken on file by the II Metropolitan Magistrate, Madras and numbered as C.C. 3664 of 1985. It is to quash these proceedings the two accused have filed these petitions.

3. The second accused (petitioner in Crl. M.P. No. 5387 of 1985) is admittedly the managing partner of the firm Kopanhagan Pharmaceuticals. It is his case that the other two partners, viz., M.C. Kuriakose and Lalu Alex did not bring in sufficient funds for the running of the business and it was the second accused, who invested large funds from his own resources and that the two other partners did not take any interest in the aforesaid partnership firm and virtually abandoned the business. The second accused, therefore, decided to close down the business. At his request the first accused, who was an employee of the firm, disposed of some of the stock and the unsold stock was invoiced to the second accused's pharmacy at Piravam. In or about April, 1983, all the three partners met and looked into the accounts and it was found that the other two partners, M.C. Kuriakose and Lalu Alex were liable to pay to the second accused Rs. 16,000 each. Instead of paying the amount Mr. M.C. Kuriakose has given the criminal complaint. It is also averred by the second accused that the two other partners have also filed suits on the file of the Sub-Court, Ernakulam in O.S. Nos. 614 and 615 of 1983 for rendition of accounts against the second accused. The car of the second accused has also been attached before judgment and on furnishing bank guarantee the second accused has taken delivery of the vehicle. It is therefore contended by both the accused that there is no case for criminal breach of trust.

4. In order to bring home the guilt of criminal breach of trust to the accused it must first be established that the accused was entrusted with property or with any dominion over the property and that the accused dishonestly misappropriated or converted to his own use that property in violation of any direction of law or any legal contract. The question, which arises for consideration, is, whether the second accused who was the managing partner of the partnership firm Kopanhagan Pharmaceuticals was entrusted with the assets of the partnership firm.

5. It is well settled that a partner, who receives partnership property has dominion over that property as a partner quite apart from any arrangement with his other partners. The fact that he is a partner gives him dominion over the property and he does not hold that property in a fiduciary capacity. It may be that by special arrangement between the parties one partner could be regarded as being entrusted with property. But, apart from such special arrangement it cannot be said that a partner who receives partnership property on behalf of his

partners has been given dominion over that property by his co-partners or has been given dominion over the share of his copartners by the latter. In ordinary cases where a partner receives moneys or an asset belonging to a partnership, or holds money or assets of a partnership, he does not hold that money in a fiduciary capacity. Where there is no averment in the complaint that under a special agreement or special arrangement between the partners, the accused partners were solely entrusted with dominion over the property of the partnership firm, these persons, who were doing their work in their capacity as partners of the firm cannot be held to have committed any offence of criminal breach of trust. Excepting the case where by special arrangement or agreement fiduciary obligations have been cast, a partner cannot be charged under S. 408, I.P.C., in respect of the partnership property jointly belonging to him and the complainant partner. Where a partner holds the property belonging to a partnership he holds it as one of the partners entitled to hold it and he cannot be said to hold the property in a fiduciary capacity. In other words, in the absence of any agreement to the contrary, all the partners held, use and have interest in the whole of the property. They have community of interest and hence their rights in the property are not mutually exclusive. Such being the incidents of ordinary partnership, no entrustment of property within the meaning of S. 405, I.P.C. is possible. The case would be different if there was an agreement among the partners by and under which the managing partner is to hold the properties of the partnership in a fiduciary capacity.

6. Neither in the complaint given by Mr. M.C. Kuriakose nor in the statements recorded is there anything to show that there was any such special agreement among the partners entrusting the properties to the second accused-partner. In the absence of any such special agreement no question of entrustment of the assets, of the partnership to the second accused arises and the criminal prosecution for breach of trust cannot stand.

7. The first accused is only an employee of the partnership firm and he has been acting under the directions of the second accused-managing partner. By no figment of imagination can it be said that the first accused was entrusted with or with any dominion over the assets of the partnership firm. The prosecution cannot also stand against the first accused.

8. In the result, the petitions are allowed and the proceedings in C.C. No. 3664 of 1985 are quashed.