(1971) 03 CAL CK 0005

In the Calcutta High Court

Case No : Criminal Revision No. 287 of 1970

P.C. Naskar APPELLANT

Vs

Salil Kumar Chakravorty RESPONDENT

Date of Decision : 25-03-1971

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 181(2), 439
Employees State Insurance Act, 1948 — Section 40(2)
Penal Code, 1860 (IPC) — Section 403, 405, 406

Citation : (1971) 2 ILR (Cal) 294

Hon'ble Judges : R.N. Dutt, J

Bench : Single Bench

Advocate : Durgapada Dutta, for the Appellant;Debesh Chandra Mukherjee, for Opposite Party No. 1, Harasit Kumar Ghosh, for State and Ajit Kumar Dutt, Amicus Curie, for the Respondent

Judgement

R.N. Dutt, J.—On the complaint of the Employees'' State Insurance Corporation the Petitioners were summoned under Sections 403 and 406 of the Indian Penal Code. The complainant''s case is as follows:

2. The Petitioners are the partners of M/s. Howrah Machinery Industries having its factory at 326 Belilious Road, Howrah. Between December 1966 and December 1968 the Petitioners had deducted large sums of money from the wages of their employees for payment to the Employees'' State Insurance Corporation as employees'' contribution, but the Petitioners had misappropriated the same. The petition of complaint was filed before the Chief Presidency Magistrate, Calcutta. He took cognizance and transferred the case to Sri R. P. Roy Chowdhury for trial. On February 23, 1970, Sri Roy Chowdhury considered the question of charge to be framed when the Petitioners took an objection that the Presidency Magistrate had no jurisdiction to try the case. Sri Roy Chowdhury does not appear to have decided either way on this question, but he was of the view that a charge u/s 406 of the Indian Penal Code should be framed. The Petitioners have thereafter obtained this Rule on the question whether the

Presidency Magistrate has jurisdiction to try the instant case.

3. I have said that the Petitioners are said to be the partners of Howrah Machinery Industries which has its factory at 326 Belilious Road, Howrah. The workmen from whose wages deductions have been made u/s 40(2) of the Employees State Insurance Act were the workmen in the factory. Wages are paid to them in the factory arid so the deductions made were received by the partners at Howrah. The Employees'' State Insurance Corporation has its office in Calcutta and the employees'' contribution has to be paid by the Petitioners to the Corporation at Calcutta. The allegation is that the Petitioners had not made the payment. But then Section 181(2) of the Code of Criminal Procedure says that the offence of criminal misappropriation or of criminal breach of trust may be inquired into or tried by a Court within the local limits of whose jurisdiction any part of the property which is the subject of the offence was received or retained by the accused person or the offence was committed. I have said that the employees'' contribution was in the instant case received by the partners at Howrah and, since the factory has its office also there, was also retained there. So, no part of the money so deducted from the workmen''s wages was either received or retained within the local limits of the jurisdiction of the Presidency Magistrate. Mr. Mukherjee submits that the criminal breach or trust must be taken to have been committed Within the jurisdiction of the Presidency Magistrate''s Court as payment which was to be made at the Corporation office in Calcutta was not made. True, payment was to be made at Calcutta but no payment was made. But, non-payment does not amount to dishonest misappropriation or conversion to one''s own use. There is no allegation that such misappropriation or conversion to one''s own use took place within the jurisdiction of the Presidency Magistrate''s Court. It is almost impossible for the prosecution in such cases to say that the misappropriation or conversion took place at a particular place and, since no such allegation is made that the misappropriation or conversion took place within the limits of the Presidency Magistrate''s Court, I think that the Presidency Magistrate has no jurisdiction to try the instant case u/s 181(2 of the Code. The Sub-divisional Magistrate, Howrah, has jurisdiction to try the case and not the Presidency Magistrate, Calcutta. The instant proceeding should therefore be quashed.

4. When this matter was heard, a further question was argued that such deduction of the employees'' contribution from their wages does not amount to ''entrustment'' within the meaning of Section 405 of the Indian Penal Code. This point was not taken before the Magistrate nor in the application u/s 439 of the Code. Since I find that the Presidency Magistrate''s Court has no jurisdiction and the instant criminal proceeding is being quashed on that ground, it is not necessary in this proceeding to consider the other question. It is true that N. C. Talukdar J. has in Nathmull Poddar Vs. Salil Kumar Chakraborty, held that such deduction does not amount to entrustment within the meaning of Section 405 of the Indian Penal Code. But, since I am quashing the instant proceeding on the ground of jurisdiction, I do not consider this further question which is left open.

5. In the result, the Rule is made absolute. The proceedings now pending in the Court of Sri R.P. Roy Chowdhury, Presidency Magistrate, against the Petitioners is quashed for want of jurisdiction. The complainant will be free to file a fresh complaint against the Petitioners before the appropriate Court at Howrah.