

(1997) 06 CAL CK 0003

In the Calcutta High Court

Case No : Criminal Revision No. 1788 of 1991

Rajendra Singh Lodha and Another

APPELLANT

Vs

Arabindo Dey and Another

RESPONDENT

Date of Decision : 24-06-1997

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 405, 409

Citation : (1998) 1 RCR(Criminal) 630

Hon'ble Judges : Dibyendu Bhusan Dutta, J

Bench : Single Bench

Advocate : Balai Roy, Amit Talukdar and S.L. Sharma, for the Appellant;

Judgement

Dibyendu Bhusan Dutta, J.—In the instant application u/s 482 Cr.PC, the accused petitioners Nos. 1 and 2 of the complaint case No. C-860 of 1991 pending before the Court of Chief Metropolitan Magistrate, Calcutta, have prayed for quashing the said proceeding. Mr. Balai Chandra Roy, Learned Counsel appearing for the petitioners contended that the petition of complaint that has given rise to the impugned proceeding does not in essence disclose any offence u/s 409 of I.P.C. The subject matter of this alleged entrustment is said to be fund of Alfred Herbert Executive Staff Superannuation Fund created by the Alfred Herbert (India) Ltd, a Company under which the complainant worked as an Executive Director, Sales and Marketing. According to the petition of complaint, the complainant became entitled to have the benefit of that fund amounting to the tune of Rs. 3 lacs on his resignation from the Company which the company, accepted by his letter dated 22-1-87. It is the complainant's own case that the said fund was solely constituted by the contributions that were made by the company itself from time to time in accordance with the rules framed by the Company itself. It is also the complainant's case that the said money would become payable to the complainant only on the happening of certain contingencies. There is a controversy between the parties with regard to the question as to whether contingencies on the happening for which the money

would become payable to the complainant did actually happen or not.

2. Mr. Roy assailed the legality of the prosecution solely on the ground that the essential element of an offence punishable u/s 409 I.P.C., namely, entrustment is lacking in the instant case. From the petition of complainant it does not transpire that the concerned fund did ever vest in the complainant himself. Rather it is clear from the petition of complaint that it was the company which continued to be the owner of the said fund. The exact connotation of the expression "entrustment" as used in sections. 405 to 409 of the I.P.C. has been settled by the several decisions of the Supreme Court in *Jaswantrao Manilal Akhaney Vs. The State of Bombay*, and *State of Gujarat v. Jaswantlal Nathalal*, AIR 1968 SC 708. According to the said decisions, "entrustment" contemplates the creation of a relationship whereby the owner of the property makes it over to another person to be retained by him until a certain contingency arises or to be disposed of by him on the happening of a certain event. The person who transfers possession of the property to the second party still remains the legal owner of the property and the person in whose favour possession is so transferred has only the custody of the property to be kept or disposed of by him for the benefit of the other party. The expression "entrustment" also carries with it the implication that the person handing over any property or on whose behalf that property is handed over to another, continues to be its owner. Applying the tests for determining whether there is "entrustment" as laid down by the aforesaid decisions to the facts and circumstances of this case as made out in the petition of complaint, I am unable to persuade myself to hold that there was any entrustment within the meaning of Section 405 I.P.C. in the instant case. Evidently, there is also no scope for any entrustment by fiction of law as introduced by Explanations 1 and 2 to Section 405. That being so, no offence u/s 409 I.P.C. can be said to have been made out by the averments made in the application. It will, therefore, be sheer abuse of the process of the Court in case the criminal prosecution is allowed to be proceeded with against the petitioners. Let the criminal proceeding pending before the Court below be accordingly quashed as against the present petitioners.

The revisional application is disposed of.

Let this order be communicated to the Court below.