
(2005) 08 GAU CK 0031

In the Gauhati High Court

Case No : Criminal Revision No. 651 of 2001

Rameswar Hazarika

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 26-08-2005

Acts Referred:

Penal Code, 1860 (IPC) — Section 405, 406, 409

Citation : (2006) 2 GLR 360 : (2005) 4 GLT 191 : (2004) 4 GLT 191

Hon'ble Judges : P.G. Agarwal, J

Bench : Single Bench

Advocate : D. Mazumdar and S. Saikia, for the Appellant; A. Begum, for the Respondent

Final Decision : Allowed

Judgement

P.G. Agarwal, J.—Heard Mr. D. Mazumdar, learned Counsel for the petitioner and Ms. A. Begum, learned Public Prosecutor, Assam.

2. The complainant, Smt. Mayuri Baruah, was a Junior Sales Officer at the Jakhlabandha Branch of JVG Finance Ltd., hereinafter referred to as the "Company" and she had filed a written complaint on 25.7.1998 stating, inter alia, that she was appointed in the said Company on 7.10.1996 on commission basis and she had enrolled about 16 nos. of customers under the 13 months Recurring Deposit Account Scheme of the Company. The petitioner-Rameswar Hazarika, was the Branch Manager of the said Branch. She used to collect money from those customers on monthly basis and used to deposit at the Branch. The Company was required to refund the amount along with interests on the expiry of the term but when the time for repayment came, the company failed to pay back the money and the Manager of the Company, Rameswar Hazarika was hiding himself. Police registered G.R. Case No. 247/98 and after usual investigation submitted charge-sheet against the petitioner-accused Rameswar Hazarika. The trial was conducted by the learned Sub-divisional Judicial Magistrate, Kahabar, Nagaon in which, prosecution examined as many as seven

witnesses and the defence examined two witnesses. The trial Court vide the judgment dated 30.7.2001 ;found the accused-petitioner guilty of offence u/s 406 IPC. He was sentenced to undergo R.I. for six months and pay a fine of Rs. 1,000, in default to further R.L for one month.

3. The petitioner preferred Criminal Appeal No. 25(N)/2001 and vide the impugned judgment dismissed the appeal, affirming the order of conviction and sentence. Hence, the present revision.

4. In the present case, we find that the broad facts of the case are not in dispute. The informant has deposed that she used to collect money from the customers under the Scheme and deposit it at the Branch Office but when the time came for repayment, the Company failed to make the payments in spite of promises made. The evidence on record also shows that the said JVG Finance Ltd. was closed down at the instance of the Reserve Bank of India as the licence granted to the said Company was cancelled and at present the said Company is no more in existence. There is also no dispute at the bar that the Head Office of the Company was at Delhi with Zonal Office at Guwahati and Regional Office at Nagaon. The Company had Branches at Jakhlabandha and the petitioner accused was also an employee of the said Company, like P.W.-1 and others.

5. Learned Counsel for the petitioner has submitted that there was no entrustment of any money to the petitioner accused and, as such, no case for conviction is made out. The informant, P.W.-1 has himself deposed that after collection of the amount from the policy holders she used to handover the same to the Accountant, who after making necessary endorsement in the Register used to issue receipts to her. The Accountant used to remit the money to the Head Office and a maximum amount of Rs. 10,000 was allowed to be kept at the Branch Office for meeting day-to-day expenses of the Branch. P.W.-2, P.W.-3, P.W.-4, P.W.-5 and P.W.-6 are all customers who used to make deposit in the said Company through P.W.-1 or other Sales Officers and this part of the evidence is not under challenge.

6. Sri Nilamani Barthakur, D.W.-1 was serving as an Account Assistant in the said Company at the Jakhlabandha Branch at the relevant point of time. He has deposed that it was a registered Company having a Head Office at Delhi. The collectors used to collect money from the customers against the Pass Book and used to deposit the same with him. He was allowed to retain a maximum amount of Rs. 10,000 at the Branch Office of the Company and the balance amount used to be sent to the Delhi Head Office by way of draft of UCO Bank. On maturity, the cheques were issued from Delhi and it used to be distributed to the policy holders by the Branch Manager. Sri Pradip Chakrabarty, D.W.-2, was the Senior Branch Manager at the Regional Office of the said Company at Nagaon and he has deposed that he was also an employee of the said Company and accused Rameswar Hazarika was also an employee of the Company serving as Branch Manager at Jakhlabandha Branch. The witness fully supports and fully corroborated the statement of D.W.1 regarding the system of collection of money

and remittance of the same to the Head Office of the Company.

7. In the case of *The State of Gujarat Vs. Jaswantlal Nathalal*, the Apex Court observed:

The expression "entrustment" carries with it the implication that the person handing over any property or on whose behalf that property is handed over to mother, continues to be its owner. Further the person handing over the property must have confidence in the person taking the property so as to create a fiduciary relationship between them. A mere transaction of sale cannot amount to an entrustment.

8. The matter was further explained by the Apex Court in the case of *Som Nath Puri Vs. The State of Rajasthan*,

Section 405 merely provides, whoever being in any manner entrusted with property or with any dominion over the property, as the first ingredient of the criminal breach of trust. The words "in any manner" in the context are significant. The section does not provide that the entrustment of the property should be by someone or the amount received must be the property of the person on whose behalf it is received. As long as the accused is given possession of property for a specific purpose or to deal with it in a particular manner, the ownership being in some person other than the accused, he can be said to be entrusted, with that property is to be applied in accordance with the terms of entrustment and for the benefit of the owner. The expression "entrusted" in Section 409 is used in wide sense and includes all cases in which property is voluntarily handed over for a specific purpose and is dishonestly disposed of contrary to the terms on which possession has been handed over. It may be that a person to whom the property is handed over may be an agent of the person to whom it is entrusted, or to whom it may belong, in which case if the agent who comes into possession of it on behalf of his principal, fraudulently misappropriates the property, he is nonetheless guilty of criminal breach of trust because as an agent he is entrusted with it. A person authorized, to collect moneys on behalf of another is entrusted with the money when the amounts are paid to him, and though the person paying may no longer have any proprietary interest nonetheless the person on whose behalf it was collected, becomes the owner as soon as the amount is handed over to the person so authorized to collect on his behalf. This view of ours is well supported by decisions of different High Courts in this country for nearly a century, a few of which alone need be examined.

9. The facts in the case of *Sat Narain and Others Vs. The State of Punjab*, are more or less identical and the Hon'ble Punjab High Court held:

Where the money deposited by members under a Chit Fund Scheme started by the accused Company, was to be utilised by the Company as its own and the depositor-members could get the equivalent amount back after certain period along with interest, that cannot be called "entrustment" within the meaning of Section 405. If the company did not return the deposits of some of the members,

only civil action would, lie against the Company and not an action for criminal breach of trust State Vs. Tirath Das, Rel. on.

10. The law is well settled that in order to record a conviction u/s 406 IPC, the prosecution is bound to establish two essential ingredients - (i) the act of entrustment; (ii) act of misappropriation of the entrusted articles.

11. In the present case, from the evidence of the prosecution witnesses itself, it is crystal clear that the amount used to be collected by the Junior Sales Officers, who used to deposit it to the Accounts Officer/Accountant and in turn the Accountant was to remit the money to the Head Office at Delhi. The present petitioner accused never handled the money physically or in other Words, kept the money under him. Thus, the petitioner never came in to possession of the money in question and/or he had no dominion over the said amount. The amount was to be received by the Accountant and through Bank those were sent to the Head Office. So far the repayment is concerned, the system was very specific : cheque, in the name of the beneficiary, used to be issued from Delhi and these were handed over to the persons concerned. In the present case, there is absolutely no evidence or material to show that this accused person was entrusted or handed over any money collected by the Junior Sales Officer and instead of remitting the same to the Head Office, he had misappropriated the same or converted the same to his own use. There is also no material to show that the cheques received from the Head Office were dishonestly encashed by the petitioner and thereby he misappropriated the amount by depriving the actual beneficiary. It is seen that the trial Court as well as the appellate Court did not consider this aspect of the matter and recorded the order of conviction on the assumption that being the Branch Manager of the said Company at Jakhlabandha, he was responsible for making the proper refund and failure to repay the amount by the Company, he would be responsible. We find that the accused stands on the same footing with that of the informant.

12. In the result, the revision petition is allowed. The order of conviction and sentence entered into by the trial Court and affirmed by the Appellate Court is set aside. The accused is acquitted and be set at liberty forthwith. Send down the records. As the accused person is on bail, he need not surrender to his bail bond.