(2014) 05 TP CK 0026

In the Tripura High Court

Case No : Crl. Rev. P. No. 79 of 2004

Shri Dayal Sundar Das VsThe State of Tripura

Date of Decision : 27-05-2014

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) — Section 293, 313, 360
Evidence Act, 1872 — Section 45, 47
Penal Code, 1860 (IPC) — Section 403, 409

Citation : (2014) 05 TP CK 0026

Hon'ble Judges : S. Talapatra, J

Bench : Single Bench

Advocate : Somik Deb, Advocate for the Appellant; A. Ghosh, P.P, Advocate for the Respondent

Final Decision : Dismissed

Judgement

S. Talapatra, J.—The petitioner has been convicted by the judgment dated 14.03.2000 delivered in G.R. case No. 2080/1983 by the Chief Judicial Magistrate, West Tripura, Agartala u/s 409 of the I.P.C. for a misappropriating a sum of Rs. 5,00,000/- (Rupees Five lakhs) and sentenced to suffer rigorous imprisonment (R.I.) for 5 (five) years with fine of Rs. 2,00,000/-, in default to suffer further R.I. for 2(two) years by the order dated 16.03.2000.

2. Being aggrieved, the petitioner had filed an appeal against the said judgment of conviction dated 14.03.2000 and sentence dated 16.03.2000 in the court of the Sessions Judge, West Tripura, Agartala being Crl. Appl. No. 21(1)/2000. On transfer, the said appeal was heard by the Additional Sessions Judge, West Tripura, Agartala, Court No. 2 and dismissed by the judgment and order dated 23.06.2004. This revision is directed against the said judgment and order dated 23.06.2004.

3. It is apparent from the judgment that initially the case was tried by the Additional Chief Judicial Magistrate, West Tripura, Agartala and by the judgment dated 18.05.1993, he convicted the petitioner. An appeal was filed against the said judgment dated 18.05.1993. By the judgment and order dated 19.01.1996,

the said judgment and order dated 18.05.1993 was interfered with and remanded with a direction to take additional evidence in respect of the money receipts at the instance of the accused. It appears from the record that those money receipts were sent for forensic examination after collecting the specimen signatures of the Drawing and Disbursing Officer (D.D.O), who had lodged the complaint against the petitioner. Based on which, West Agartala P.S. case No. 45(11)/83 u/s 403 of the I.P.C. was registered. On receipt of the handwriting expert''s report, Exbt. A the trial recommenced. The D.D.O. has denied the signature on the questioned receipts as shown to him and disputed the opinion in the report of the handwriting expert. Surprisingly, neither has it surfaced from the record nor the questioned receipts were admitted in the evidence nor the specimen signatures which were referred in the report of the examiner of the questioned documents, the handwriting experts, Exbt. A. Despite that it has been contended in defence of the petitioner that he had returned the said amount alleged to have been embezzled by him on the strength of those receipts.

4. The petitioner did not challenge the other findings returned by the trial court as regards his entrustment as the Cashier or his receipt of the said amount against a bill from the Treasury and also of not remitting the same to the concerned authority namely, the Scheduled Tribe Development Corporation. In the appeal the grounds of objection were restricted to the non-appreciation of the content of the money receipts as the fact. For reference, observation of the appellate court in this regard may be reproduced for purpose of record.

The Ld. Advocate Mr. D. Guha appearing for the appellant have very steadily submitted that his entire defence rests with the money receipt. It is contended by the Ld. Counsel Mr. Guha that the Experts opinion should be regarded as true and authentic in view of this fact that the expert is a specialist and his skill in comparing the handwriting and signature. According to the Ld. Counsel for the appellant, it is empathetically proved that although the appellant encashed the money but the same was handed over to the D.D.O. under a money receipt which has been supported by the opinion of the Expert (Marked as Exbt. ''A''). It is added by the Ld. Counsel that this money receipt is bound to create a cloud in the entire prosecution case and where there are tow probabilities-one which is favourable to the accused should be accepted by the court. The Ld. defence counsel submitted that in this scenario the appellant is entitled to the acquittal at least on benefit of doubt on the cloud created in the money receipt.

There is no other arguments from the side of the Ld. counsel of the appellant.

5. To lay the perspective, the fact that has been proved by the prosecution may briefly be stated. The petitioner while working as a Lower Division Clerk cum Cashier in the Directorate of Tribal Welfare, Government of Tripura was endorsed with a bill for an amount of Rs. 5,00,000/- (Rupees five lakhs). The said bill No. 321 dated 07.10.1982 was passed and cleared by the Deputy Director, S.B. Sarkar (PW-1) for payment to the Managing Director, Scheduled Tribe Development Corporation. The petitioner had drawn the amount from the State

Bank of India through the Treasury on 12.10.1982, but did not pay the same to the Managing Director of the Scheduled Tribe Development Corporation and did not account the same in the relevant cash book or the other registers. When it was brought to the notice of PW-1 that the petitioner did not remit the said amount to the said Corporation, at the instance of the higher authority, a search was conducted in the chest of the Cashier in presence of the Executive Magistrate and the police from the concerned Police Station. But that amount was not found in the chest and accordingly, PW-1 filed the written Ejahar in the police station against the petitioner. On registration of the case u/s 409 of the I.P.C., the police investigated the matter and filed the charge sheet against the petitioner. During investigation, the police seized all the material documents including the letter of engaging the petitioner as the Cashier, the relevant cash book, acquittance rolls, D.O. letters, the original bill, various other correspondences and recorded the statements of the witnesses, out of whom 21(twenty one) witnesses were examined in the trial and they brought on record all those documents including the seizure list and the material objects in the evidence being Exbt. 1 to Exbt. 38 and Exbt. M.O. 1 to Exbt. M.O. 9 series. Just before the judgment (pronounced on 18.05.1993), 2(two) money receipts were filed by the accused person.

6. On appreciation of the evidence, by the judgment and order dated 18.05.1993, the petitioner has been convicted u/s 409 of the I.P.C. and sentenced to suffer R.I. for 6(six) years and to pay a fine of Rs. 1,00,000/- (Rupees one lakh) and in default of payment fine, to suffer further R.I. for 1 1/2 years. On appeal as stated, the Additional Sessions Judge, West Tripura, Agartala by the judgment and order dated 19.01.1996 set aside the said judgment dated 18.05.1993 and remanded the case for disposal after getting two money receipts, filed by the petitioner, examined by the handwriting experts and after taking additional evidence. Accordingly, the money receipts were examined by the Govt. Examiner of the Questioned Documents. In the report, it has been stated that the signatures found in the money receipt were of PW-1. For this purpose, PW-1 was re-examined where he has stated that the signature appearing on the money receipts was not his. He disputed the opinion of the handwriting experts. In the examination carried out u/s 313 of the Cr.P.C., the petitioner has explained that the said amount against the Bill No. 321 was brought from the bank along with the D.D.O. and was kept in the double locker of the Treasury. On 02.11.1983 the D.D.O. took the money from the locker stating that he would purchase a draft for the corporation by giving those money receipts. That apart, he has stated that his letter regretting his act and assuring of refunding the said amount was obtained under duress. But he did not explain why the said money receipts were not made part of the official records or the acquittance roll. Apart that, he has not explained why he did not enter the said amount in the cash book when he had admittedly withdrawn the said amount on 12.10.1982. In response to the question No. 32, he has admitted that on 12.10.1982 he had withdrawn the said amount from the S.B.I. Moreover, the bill

No. 321 dated 07.10.1982 in original has been admitted in the evidence, wherefrom the fact of withdrawal can be gathered. But the petitioner did not adduce any further evidence. The court has accepted the report straight as Exbt. A without examining the handwriting expert. The receipts which were produced by the petitioner were not admitted in the evidence.

7. On rehearing the entire matter, the petitioner was again convicted u/s 409 of the I.P.C. and sentenced to suffer R.I. for 5(five) years and a fine of Rs. 2,00,000/- (Rupees Two lakh) and in default of payment of fine to suffer further R.I. for 2(two) years by the Chief Judicial Magistrate, West Tripura, Agartala.

8. On fresh appraisal of the evidence led by the prosecution, it has been found established and admitted that the petitioner was the Cashier having entrustment and domain over the property. The bill bearing No. 321 dated 07.10.1982 amounting to Rs. 5,00,000/- was endorsed to the petitioner for encashment. The petitioner had enchased the said bill from the S.B.I. through the Treasury but he did not remit the amount to the Managing Director, Scheduled Tribe Development Corporation and had misappropriated the same. The only defence as projected by the petitioner is that he had refunded the said amount to PW-1 on taking the receipts which were not introduced in the evidence. The appellate court did not rely on the said receipts and dismissed the appeal.

9. Mr. Somik Deb, learned counsel appearing for the petitioner has projected the said defence again contending that the content of the money receipts would prove that the petitioner refunded the said amount to PW-1 and as such, no charge of misappropriation can be sustained against the petitioner.

10. Mr. A. Ghosh, learned P.P. appearing for the State has vigorously submitted that all the elements for proving embezzlement or misappropriation by the petitioner have been meticulously proved by the prosecution by placing all the documents and the materials in the evidence by the witnesses. Even the petitioner did not challenge any part of the entire process, beginning from the endorsement of the bill till encashment of the same by him and not remitting the amount to the said corporation. His only defence is that he has refunded the said money to PW-1. The money receipts are not brought in the evidence. Even the handwriting experts were not examined by the defence. On the face of the clear denial by PW-1 of the signature appearing on the money receipts as his signature, the burden was heavy on the petitioner to prove the content of the money receipts and to prove the signature of PW-1.

11. Since the challenge is limited to that aspect of the matter further discussion on the evidence so led by the prosecution is not at all required. It appears from the record that the examination of the money receipts by the Government examiner of the questioned documents has been carried out at the instance of the petitioner. It is really surprising that how the document has been admitted when that document, issued by the Government experts is covered by the category of the documents catalogued in Section 293 of the Cr.P.C. The report

has been so obtained by the court u/s 45 of the Evidence Act. The report can only be admitted in the evidence after due examination of the handwriting experts. Moreover, the procedure as laid down in Section 47 of the Evidence Act has to be exhausted inasmuch as it is well settled that unless the handwriting experts are examined their opinion cannot be used by the court for forming any opinion. Even the opinion of the handwriting expert is not a substantive evidence. Therefore, for purpose of having assurance, the procedure as laid down in Section 47 of the Evidence Act is to be followed. The person accustomed with the signature of the accused may be confronted with for proper identification of the handwriting or the signature inasmuch quality of opinion of handwriting experts depends on soundness of reason. It depends on the merits of the opinion whether the further corroboration would be required or sought. In this case, there is no compliance of Section 47 of the Evidence Act nor has the handwriting expert been examined and as such, no reliance can be placed on the said opinion. Moreover, the questioned money receipts have not been admitted in the evidence and as such, their content cannot be read in the evidence.

12. In view of this, even though the reasons assigned in the impugned judgment are different, this Court does not find any merit in this petition and hence, it is dismissed on affirming the finding of the conviction. However, on considering the age of the petitioner, the sentence is modified. But it is clearly held that the petitioner is not entitled to get any benefit u/s 360 of the Cr.P.C. for the nature of crime he has committed and in the manner the said crime has been executed. The petitioner is sentenced to suffer 3(three) years R.I. and to pay a fine of Rs. 2,00,000/- (Rupees Two lakh), in default of payment of fine, to suffer further R.I. for 2(two) years.

In the result, this petition fails and accordingly, the same is dismissed. Further the petitioner is directed to surrender before the Court of the Chief Judicial Magistrate, West Tripura, Agartala to suffer the sentence within a period of 15(fifteen) days from today.

Send down the LCRs forthwith.

