
(1983) 08 AHC CK 0026

In the Allahabad High Court

Case No : Government Appeal No's. 1697, 1698, 1699 and 1700 of 1978

State

APPELLANT

Vs

K.P. Jain

RESPONDENT

Date of Decision : 24-08-1983

Acts Referred:

Penal Code, 1860 (IPC) — Section 409

Citation : (1983) 7 ACR 529

Hon'ble Judges : R.A Misra, J

Bench : Single Bench

Advocate : S.V. Goswami and G.N. Sharma, for the Respondent

Judgement

R.A. Misra, J.—Sri S.P. Jain is Chairman of Aligarh Electric Supply. Company Ltd. and Sri K.P. Jain is Managing Director thereof. Sri K.S. Kohli was appointed Receiver of the aforesaid Company in the month of July 1972 by the District Magistrate of Aligarh. The Receiver counted the cash in the Chest of the Company on 31st of July 1972 according to the directions of the District Magistrate and detected a shortage of Rs. 1,67,744.16 paise. He submitted his report to the District Magistrate on the same day. The Receiver recorded the statement of Sri Shyam Sunder Saxena Cashier of the Company and forwarded the same along with his report to the District Magistrate. The Cashier stated that the cash which was found short was not available with him because that was taken away by the Managing Director Sri S.P. Jain. FIR was lodged at Police Station Banna Devi on 5-8-1972. The case was investigated and after completing the investigation charge-sheets were submitted against Sri S.P. Jain, the Chairman and K.P. Jain the Managing Director of the Company. They were tried in two Sessions Trials. They pleaded not guilty. The prosecution examined only one witness Sri Shyam Sunder Saxena (PW 1) the Cashier of the Company against whom the FIR was lodged. The Investigating Officer was not produced. The charge-sheets submitted by him have been proved by Rajeshwar Dayal Constable who had seen the Investigating Officer reading and writing. The

learned Judicial Magistrate on a consideration of the entire evidence arrived at the conclusion that the charges u/s 409 IPC were not proved beyond doubt against the accused Appellants S.P. Jain and K.P. Jain. He consequently acquitted them, of all the charges. The State has felt aggrieved and preferred these appeals. All these four appeals can under these circumstances be conveniently disposed of by a single judgment. This judgment would, therefore, govern all these four appeals.

2. The fact that Sri S.P. Jain was Chairman and K.P. Jain was Managing Director of Aligarh Electric Supply Company Ltd. is proved from the deposition of Sri Shyam Sunder Saxena (PW 1) and goes unchallenged by the defence.

3. The fact that Sri K.S. Kohli was appointed Receiver of the aforesaid Company in July 1972 is also proved from deposition of Sri Saxena (PW 1). It is faithfully proved that Sri Kohli the Receiver counted the cash in the Chest of the Company on 31st July 1972 and found shortage of Rs. 1,67,774.16. The Receiver recorded the statement of the Cashier Sri Saxena (PW 1) who stated that the aforesaid account was not available with him because that was taken away by the Managing Director Sri S.P. Jain. FIR was however lodged at the Police Station Banna Devi on 5-8-72 by Sri Kohli against Sri Shyam Sunder Saxena, the Cashier of the Company. The Investigating Officer has not been produced by the prosecution for the reasons best known to it. A Constable has been produced to prove the writing of the Investigating Officer to bring the charge-sheets on record. Thus there is the solitary deposition of Sri Shyam Sunder Saxena (PW 1) to prove that the accused were entrusted with the property in question or with dominion over it and have committed criminal breach of trust in respect thereof.

4. Sri Saxena (PW 1) has deposed that the aforesaid shortage in the Chest of the Company was caused because that amount was with S.P. Jain. He has deposed that the aforesaid amount was handed over by him to the accused in small amounts on different dates after obtaining slips from them. He has admitted in examination in chief that he did not hand over these amounts to the accused for purposes of the Company. The amount which he has spent on the directions of the accused is also included in the amount which was found to be short. He does not say to have spent the money for the purposes of the Company. Surprisingly enough Sri Saxena (PW 1) has admitted in his very examination in chief that these amounts which he paid to the accused are not entered in the Cash Book and no explanation for the same has been offered. He has admitted in his examination in chief that he used to make entries in the Cash Book whenever he used to make any payment on prescribed voucher and used to obtain receipt for having made the payment. The prescribed voucher used to be signed either by the Secretary or by the Chairman of the Company. It is clear from his deposition that the disputed payments have not been made on prescribed vouchers after proper entry in the cash book and after obtaining receipt for payment under the signatures of the Secretary or the Chairman. As I have mentioned above no explanation has been offered by the Cashier for having made the payments as he

says to the accused without following the prescribed procedure for payment of money from the Chest of the Company. The Cashier (PW 1) has deposed in detail the dates when he paid several amounts to both the accused. So the crucial question which arises for determination is whether the amounts which the Cashier says to have paid to the accused for purposes not connected with the affairs of the Company without following the prescribed procedure for payment of money from the Chest of the company, amounts to entrustment of the money to the accused and whether the accused have committed criminal breach of trust in respect thereof.

5. Before taking up the aforesaid point I would like to dispose of a short point whether the accused had dominion over the cash in the chest. There is nothing in the evidence of the Cashier to show that the accused had dominion over the cash in the Chest and that the cash could have been disposed of under their directions in the mode in which any such Trust might have been created. The prosecution was required to prove that the accused had dominion over the money in the chest which could be disposed of under the directions and that they have acted in violation of any direction of law prescribing the mode in which such trust was to be discharged. The prosecution has failed to discharge the burden. The Cashier simply says in his cross-examination that in the year 1959-60 Sri S.P. Jain was Managing Director and in that capacity was competent to keep with him money to the extent of two months expenses of the Company. He says that before the year 1971-72 also S.P. Jain used to keep with him money to the extent of two months expenses of the Company. He used to give account thereof to the Secretary. He further says that S.P. Jain has given account of the money upto the year 1971-72. As I have mentioned above he does not say to have made the disputed payments to the accused for keeping with them the amount which they were authorised to keep with them for the purposes of the Company. He has clearly deposed that these disputed amounts were not paid by him to the accused for the purposes of the Company. It is therefore abundantly clear from the evidence of the Cashier that the amounts which he says to have paid to the accused, in different dates were not at all paid for the purposes of the Company to be utilised and spent for the purposes and affairs of the Company. He was fully aware of the fact that these amounts were not being paid for the affairs of the Company or for purposes connected with the affairs of the Company. There is nothing in the evidence of the Cashier to show that the accused have received the money and held it on behalf of the Company so that they may be construed as Trustees of the property. The word "trust" is a comprehensive expression which has been used in Section 409 of the Indian Penal Code as covering not only the relationship of Trustee and beneficiary but also that of bailor and bailee, master and servant, pledger and pledgee, guardian and ward and, all other relations which postulate the existence of fiduciary relationship between the complainant and the accused. In the instant case neither there exists any such fiduciary relationship between the Cashier and the accused nor does any such relationship exist in respect of the disputed amount between the Company and

the accused. Admittedly the Company was the owner of the cash in the chest. There is nothing on the record to show that the Company entrusted the cash of the chest to the accused, "Entrustment" relationship between them. In the instant case the Cashier who says to have handed over the money to the accused was not the owner and so was not competent to create a fiduciary relationship between himself and the accused. The prosecution has thus failed to prove beyond doubt that the cash which was found short was entrusted to the accused and that they have committed criminal breach of trust. Learned Counsel for the State has placed reliance on Shivnarayan Laxminarayan Joshi and Others Vs. State of Maharashtra, , The State of Gujarat Vs. Jaswantlal Nathalal, , Superintendent and Remembrancer of Legal Affairs v. S.K. Roy AIR 1974 SC 795.

6. But the law laid down in these cases does not support the prosecution in establishing the fact that the money was entrusted to the accused and that they have committed criminal breach of trust in respect thereof. In the result the view taken by the court below in arriving at the conclusion that the charges are not proved beyond doubt against the accused Appellants is correct and bears out from the material on record. The order of acquittal passed by him against the prosecution is justified. I see no force in these appeals.

7. All the four appeals are consequently dismissed.