

(1992) 03 GUJ CK 0039
In the Gujarat High Court
Case No : Criminal Appeal No. 748 of 1983

State of Gujarat	Vs	APPELLANT
Chhotalal Vallabhji Brahmin		RESPONDENT

Date of Decision : 06-03-1992

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 379
Penal Code, 1860 (IPC) — Section 405, 408, 498

Citation : (1992) CriLJ 2689

Hon'ble Judges : J.N. Bhatt, J

Bench : Single Bench

Advocate : S.P. Dave, app, for the Appellant; Ramesh A. Mishra, for the Respondent

Final Decision : Dismissed

Judgement

J.N. Bhatt, J.—The appellant State has assailed the acquittal order passed by the learned Judicial Magistrate, First Class, Mangrol, in criminal case No. 527 of 1980 on 28-4-1983, by invoking the aids of the provisions of Section 379 of the Code of Criminal Procedure ("Code" for short Hereinafter).

In this appeal, the respondent is the original accused who was charged for the offence punishable u/s 408 of the Indian Penal Code. In that, it was alleged by the prosecution that the accused was working as a Principal of Sheriaj Rural Centre, primary basic School, at Mangrol, during the period from 31-3-1979 to 10-11-1979. The said school was run under the management of Shardagram Institute. According to the case of prosecution, during the aforesaid period, the accused in his capacity as Principal of the said school committed criminal breach of trust by misappropriating an amount of Rs. 300/- which came to him for the purpose of giving scholarship to the students of the school. Thus, it was alleged that the accused had received an amount of Rs. 510/- from the Social Welfare Department for the purpose of giving scholarship to 17 students of the school (Rs. 30/- to each). The accused, as alleged by the prosecution, did not disburse

the amount of Rs. 300/- out of Rs. 510/- being scholarship amount to the students and also misappropriated the money by selling books meant for students and thereby committed an offence punishable u/s 498 of the IPC. According to the prosecution case, the alleged incident occurred on or before 31-3-1979. First Information Report was lodged on the aforesaid facts against the accused, on 18-6-1980. The accused was charge sheeted for the offence punishable u/s 408 of the IPC, on 15-12-1980. The accused pleaded not guilty and claimed to be tried.

2. The prosecution examined as many as 11 prosecution witnesses. The prosecution, also, relied on the documentary evidence. According to the defence person, the prosecution case is, totally, false and the accused is, wrongly, implicated. It is, also, contended on behalf of the defence that false complaint was filed six months after the alleged incident out of animosity and the accused was suspended from the service and thereafter, he was wrongly dismissed from the service. It is stated at the bar that the dismissal was challenged by filing a special civil application in this Court which was allowed. The matter was further carried by the management in the Supreme Court and the management lost the legal battle there. This aspect is not disputed on behalf of the appellant State.

3. The learned Additional Public Prosecutor has taken this Court through the entire record and the impugned judgment. Even after having examined the entire record and impugned judgment, the learned Additional Public prosecutor has not been able to convince this Court to interfere with the acquittal order. In the opinion of this Court, the learned Trial Magistrate has, rightly, held that the accused is not found guilty for the offence punishable u/s 408 of the IPC. The learned Trial Magistrate has given benefit of doubt to the accused in view of the evidence and the circumstances emerging from the record. This Court, broadly, agrees with the reasons and the views of the learned Trial Court on the appreciation of the evidence. Therefore, it would not be necessary to repeat the narration of the evidence or to reiterate the reasons given by the learned Trial Court as held by the Apex Court of the land in State of Karnataka Vs. Hemareddy Alias Vemareddy and Another, . The expression of "general agreement" as held by the Highest Court of the land means general agreement with the reasons given by the Court, the decision, of which is under appeal and same will ordinarily suffice. Thus, when the appellate Court is agreeing generally with the view of the Trial Court, there will be no necessity, to reiterate the reasons, assigned by the Trial Court. Supreme Court in the aforesaid case had also relied on the case rendered in Girja Nandini Devi and Others Vs. Bijendra Narain Choudhury, . However, since this Court is addressed at a marathon length, it would be expedient to refer certain material aspects of the present case. The alleged incident of criminal breach of trust occurred, on or before 31-3-1979. The F.I. R. came to be lodged, on 18-6-1980. The accused was charge sheeted, on 15-12-1980. The prosecution has not been able to explain the delay in lodging the complaint against the accused for a period of more than 6 months, which is rightly, criticised by the Trial Court. The F.I.R. at Exh. 8 creates suspicious

circumstances as it was filed late by more than six months. It is open for the prosecution to explain the delay. Mere delay is not fatal. The circumstances and reasons resulting into delay in filing the F.I.R. for the complaint must be explained or accounted for by the prosecution. There is no any explanation, whatsoever, tendered by the prosecution to explain the delay for a period more than six months. Therefore, the learned Trial Magistrate is justified in holding that there were doubtful circumstances.

4. In the facts and circumstances of the case, the entrustment of an amount of Rs. 510/- to the accused as alleged by the prosecution is also not proved to the hilt. The entrustment is one of the important ingredients to be established for the offence of criminal breach of trust. Section 498 prescribes punishment in case of offence of criminal breach of trust by a clerk or servant. The Criminal Breach of Trust is defined in Section 405 of the IPC. Section 405 of IPC reads as under :

Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".

5. The terms of section are very wide. To constitute an offence of criminal breach of trust, there must be dishonest misappropriation by a person in whom confidence is placed as to the custody or management of the property in respect of which the breach of trust is charged. The section does not require that trust should be in furtherance of a lawful object. There must be an entrustment; there must be misappropriation or conversion to one's own use in violation of any legal direction or legal contract; and more over the misappropriation or conversion or disposal must be with dishonest intention. The definition of criminal breach of trust is complete in itself. No doubt, every breach of trust gives rise to a suit for damages, but it is only when there is evidence of a mental act of fraudulent misappropriation that the commission of embezzlement of any sum of money becomes a penal offence punishable as criminal breach of trust. The determining factor in judging whether a case is one of the criminal breach of trust or of criminal breach of contract is whether the person proceeded against has acted dishonestly. Every offence of criminal breach of trust, obviously, involves a civil wrong in respect of which the complainant may seek his redress for damages in Civil Court. But every breach of trust in the absence of mens rea cannot legally justify a criminal prosecution. It is true, there are separate ways in which the criminal breach of trust could be committed. An important element of the offence of criminal breach of trust is that there should be entrustment of property to the accused. In the present case, the learned Trial Magistrate had, rightly, observed that there is no clear and consistent evidence of the prosecution to prove that the accused was entrusted an amount of Rs. 510/-being the

amount of scholarship to be disbursed to the students. In her evidence, prosecution witness, Lataben Chitra, at Exh. 12, has said that an envelope brought by her was given to the accused as a Principal. This, by itself, is insufficient to constitute an entrustment in respect of specific amount of Rs. 510/- as alleged by the prosecution.

6. No doubt, it is true to establish a charge of criminal breach of trust, the prosecution is not obliged to prove the precise mode of conversion, misappropriation or misapplication by the accused of the property entrusted to him or over which he has dominion. This will be the second stage. It is incumbent upon the prosecution first to prove that there was an entrustment. Thereafter, it will be necessary to prove by the prosecution that there was either conversion or misappropriation or misapplication by the accused of the property entrusted to him. The Principal ingredient of the offence being dishonest misappropriation or conversion which may not ordinarily be a matter of direct proof, entrustment of property and failure in breach of an obligation to account for the property entrusted, if proved, may, in the light of other circumstances, justifiably lead to an inference of dishonest misappropriation or conversion.

7. The prosecution has not examined eye witness, an Assistant Teacher, in whose presence the envelope containing an amount of Rs. 510/- is alleged to have been handed over by Lataben to the accused. There is no explanation as to why such an important eye witness is not examined. In so far as the evidence of Lataben is concerned, there are serious and material contradictions in her testimony. Reading the evidence as a whole, it is not possible to hold, beyond reasonable doubt, that there was an entrustment of Rs. 510/- to the accused by Lataben.

8. No responsible officer of Shardagram Institute is examined. Unfortunately, no responsible officer is also examined from the Social Welfare Department with material information and relevant record. Another witness Ramniklal Lathabhai examined at Exh. 9 has turned hostile. The witness who was at Exh. 19 has also not fully supported the prosecution version. The evidence of other witnesses does not establish the offence punishable u/s 408 beyond reasonable doubt. The accused had produced a document at Exh. 158. It is a document signed by 14 students out of 17 students who were to be allotted scholarship of Rs. 30/- each. It is the prosecution contention that such a document is produced by the accused at a very late stage, after the oral evidence was over. In fact, the accused is not bound to produce anything nor is bound to open his mouth. It is for the prosecution to prove the complicity of the accused beyond reasonable doubt. Therefore, it cannot be contended that simply because the accused produced a document at Exh. 158 at a later stage cannot be looked into. It is a document showing the receipt of the scholarship by 14 students out of 17 students. It is, also, an admitted fact that one student who has not signed this Exh. 158 and who was examined in the Trial Court has admitted that he was paid an amount of Rs. 30/- by way of scholarship. Thus, according to the documentary evidence produced at Exh. 158, the scholarship of Rs. 30/- was paid to 15 students each

out of 17 students. Where is the question of misappropriation for criminal breach of trust in respect of an amount of Rs. 300/- as alleged by the prosecution. Needless to mention that Exh. 158 -- receipts showing disbursement of the amount to the students was written by star prosecution witness Lataben Chitra. This aspect substantially creates a cloud and shadow of doubt on the version of the prosecution. The complaint about the non-receipt of scholarship amount produced at Exh. 122 to 123 are admittedly made by one person without date. What will be the spontaneous reaction in a case of misappropriation of an amount of scholarship in a school run by a very highly reputed Institute like Shardagram management? Obviously, the responsible officer of the school or management will start investigation on receipt of any such complaint. No initial enquiry was made. No responsible officer has produced the record of enquiry proceedings conducted later on by the Institute. No reasonable explanation is forthcoming as to why the complaint is lodged against the accused after more than six months period and that too after his suspension and resultant removal from the service. In the facts and circumstances of the case, the accused is rightly given the benefit of doubt. No doubt, the accused is charged with a serious offence. The accused was working as Principal a custodian of an education of the primary students and who is alleged to have indulged in misappropriation of amount of scholarship meant to be paid to the poor and weaker section of the society. The charge is very serious. The circumstances in which, allegedly, the accused who happens to be Principal, had committed an offence of criminal breach of trust are also very very serious. However, the prosecution is obliged to prove beyond reasonable doubt, the- complicity or the culpability of the accused for the offence punishable u/s 408. The material ingredients of Section 408 must be borne in mind. The section requires --

(1) entrusting any person with property or with any dominion over property

(2) person entrusted (a) dishonestly misappropriating or converting to his own use that property (b) dishonestly using or disposing of that property (c) wilfully suffering any other person so to do in violation--

(i) of any direction of law prescribing the mode in which such trust is to be discharged

or;

(ii) of any legal contract made touching the discharge of such trust.

(3) that the accused was a clerk or the servant of the person disposing the trust.

9. As far as the last ingredient is concerned, there is no dispute that the accused was working as such Principal of the school at the relevant point of time. However, the prosecution has miserably failed to establish the other ingredients of the legal provisions of Section 498 of the IPC. In the facts and circumstances of the case and the evidence on record, the impugned acquittal order is justified and there is no any good and acceptable material on record to interfere with it.

10. In the result, the appeal is dismissed.