
(2010) 04 SHI CK 0038
In the High Court Of Himachal Pradesh

State of Himachal Pradesh

APPELLANT

Vs

Purshotam Dass Tadu

RESPONDENT

Date of Decision : 07-04-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 309, 409

Citation : (2010) 04 SHI CK 0038

Hon'ble Judges : Surjit Singh, J;Rajiv Sharma, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Surjit Singh, J.—This appeal by the State is directed against the judgment dated 13.12.1996 of the Chief Judicial Magistrate, whereby respondent Purshotam Dass Tadu, who was charged with and tried for offence, u/s 409 of the Indian Penal Code, has been acquitted.

2. Prosecution's case is that respondent was employed as Company Commander in Home Guards, 5th Battalion, Bilaspur in the year 1991. He had been entrusted with various items of stores for use by the volunteers and other staff members of Home Guards. There was a strike by the employees of the State Government with effect from 6.8.1991 onwards. Respondent also joined that strike and locked the office. On 10.8.1991, he was called upon to handover the keys to Paras Ram Dhiman (PW-4), who had been posted as Company Commander in his place, after terminating his services. Respondent did not handover the keys and the charge of the post of Company Commander to said PW-4 Paras Ram Dhiman. Office remained closed and locked till 21.8.1991. Commandant, 5th Battalion then approached the District Magistrate seeking permission to break open the locks of the stores and to make the office functional. Permission was granted. Three locked rooms, in which store articles were available, were broken open. Inventory of the stock articles found on opening of those three rooms, was prepared. The same was compared with the entries stock register Ex.PW-10/C. Twenty items of stock were found short. A list of those items was drawn. On the

basis of the shortage, it was presumed that the respondent, who was supposed to be Incharge of those articles, had misappropriated the same. So a case was got registered by the Commandant, 5th Battalion, Bilaspur against the respondent by making complaint Ex.PW-2/A.

3. During the course of investigation, search of the house of the respondent was conducted and 19 out of 25 items, reported to be short vide Ex.PW-2/A, were recovered and taken into possession vide memo Ex.PW-6/B. Consequently, the respondent was challenged, u/s 309 of the Indian Penal Code.

4. Trial Court has held that entries in the stock register and the issue register have not been proved and thus neither entrustment is proved nor has it been proved as to how much stock should have been in hand at the time when the rooms were broken open. With these observation trial court has acquitted the respondent.

5. We have heard the learned Additional Advocate General as also the learned Counsel for the respondent and gone through the record.

6. Items which were found short, according to the prosecution, were as follows:

Sr.No. Particulars Nos.

1. Blanket black 2 2. Ground sheet 1 3. HHG shoulder number 8 pairs 4. Belt Nawari 2 5. Messtin 1 pair 6. Rank Section Loader 3 paris 7. Angithi iron 1 8. Bicycle 1 9. Name plates 10 10. Table fan 1 11. Leather belt 3 12. Mug plastic 1 13. Pire-bucket 9 14. Belcha 1 15. Pick bars 2 16. Tin tray 1 17. Pire-bitter 1 18. Pressure stove (paradise) 1 19. Rank Havaladar 5 pairs 20. Table clothe 1 1/2 meters. 21. Hand bag leather 1 22. Water bottle 1 23. Woolen jersey 1 24. Big shoulder bags 2 25. Curtains of windows 6 1/2 meters

7. Out of the aforesaid 25 items, 19 were allegedly recovered from the house of respondent and taken into possession vide memo Ex.PW-6/A on 17.9.1991. After the adjustment of aforesaid 19 items, following items remained short:

Sr.No. Particulars Nos.

1. Ground sheet 1 2. Mug plastic 1 3. Pick bars 2 4. Water bottle 1

8. As regards name plates, PW-4 Paras Ram Dhiman admitted that in the stock register, the entry shows that after the issue of name plates, no name plate was supposed to be in the stock. So shortage of name plates is also stands explained by prosecution's own evidence. Rest of the items are of very little value. They are water bottle, plastic mug and ground sheet. Prosecution has not proved the entries in the stock register indicting that these items had been in fact entrusted to the respondent nor has it proved the entries in the issue register to rule out the possibility of these articles having been issued.

9. For the foregoing reasons, we see no ground to interfere with the judgment of the trial court. Hence, the appeal is dismissed.