

(1994) 06 GAU CK 0011
In the Gauhati High Court
Case No : Criminal Revision 1 (K) of 94

State of Nagaland

APPELLANT

Vs

B.N. Pant and Another

RESPONDENT

Date of Decision : 09-06-1994

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 407
Penal Code, 1860 (IPC) — Section 409

Citation : (1994) 2 GLR 171

Hon'ble Judges : H.K. Sema, J

Bench : Single Bench

Advocate : Public Prosecutor, for the Appellant; None appeared, for the Respondent

Final Decision : Allowed

Judgement

H.K. Sema, J.—This revision is directed against the Judgment and order dated 11.5.93 passed by the learned Addl. Deputy Commissioner (J) Tuensang in GR Case No. 74/92

2. In this case, rule was issued on 12.4.94 and a notice was issued to the Respondents No. 1 and 2, Office note dated 3.5.94 indicates that the service of notice upon Respondents 1 and 2 was duly served, however, none appeared for the Respondents. Lower Court records have been received and perused the same.

3. The genesis of the prosecution story may be briefly recited. On 16.7.92, a complaint was lodged by Sub-Divisional Inspector of Post Office to O.C. Police Station Tuensang to the effect that the accused B.N. Pant and accused S.C. Kakoti misappropriated the Government's money to the tune of Rs. 88,688.26/- and requested to take necessary action. On the basis of the aforesaid complaint, Tuensang P.S. Case No. 7(7) 92 u/s 409 I.P.C. was registered and investigated upon, On completion of investigation, a prima facie case was established against the accused persons and the I.O. submitted charge sheet on 2.9.92, From the order it appears no further progress was made in the trial after the submission of

the chargesheet. However, on 11.5.93 the learned Addl. Deputy Commissioner (J) Tuensang after examining the accused u/s 313 of Code of Criminal Procedure has disposed of the GR Case 74/92 on merit showing leniency to both the accused by directing them to deposit the misappropriated money within a period of One and half years on monthly instalments basis.

4. By the aforesaid Judgment, the learned A.D.C, (J) also directed the authority to revoke the suspension order of the accused persons and reinstate them in their services to enable them to deposit the amount on monthly instalment basis. The learned A.D.C. (J) was of the view that there was an agreement entered into between the accused and the complainant on 10.7.92 that the accused would deposit the misappropriated amount within 30 days w.e.f. 10.7.92 to 10.2.93 to the Sub-Divisional Post master Tuensang, The learned A.D.C.(J) Was therefore, of the view that before the expiry of the simulated period of 30 days, complainant has lodged the Criminal complaint in writing According to the learned A.D.C. (J) the aforesaid action of the complainant was improper because the complaint was lodged before the expiry of 30 days.

5. It is contended by Mr. E.Y. Renthungo, that the procedure adopted by the learned Court below is unknown to the law in as much as no chargesheet has been framed in accordance with law, and no trial was initiated, but on the other hand, the accused persons were purportedly have been examined u/s 313 of Code of Criminal Procedure and on the basis of which the learned A.D.C. (J) disposed of the Criminal case by directing the accused persons to deposit the misappropriated amount as aforesaid.

6. Before I advert to the other points, I may at this stage say that, it is shocking to notice that a person who is entrusted with the administration of justice, that too, & Judicial Officer of a senior cadre in the rank of Addl. Deputy Commissioner (3) could have passed such an order In a grave offence charged u/s 409 I.P.C. I say this, because on perusal of the record, the learned A.D.C (I) himself has found the accused persons guilty of the offence.

7. There is also other circumstances which clearly established a prima facie case against the accused. This apart, from the record, it appears that both the accused have confessed their guilt before the learned Magistrate, Tuensang. Even on the face of this hard facts appearing against the accused persons, the learned A.D.C. (J) instead of starting the trial and impose a punishment in accordance with law, have allowed them to escape unpunished by directing them to deposit the misappropriated amount. Such a grave offence committed by Public servant itself deserved deterrent punishment in accordance with law. However, this has not been done in the instant case in violation of all canon of law. Definitely, the Judicial officer of Grade of Addl, Deputy Commissioner (J) cannot plead ignorance of law.

8. It is well established principle of law that in an offence u/s 409 of the I.P.C. where the facts and circumstances of the case clearly established that there was

embezzlement of Government money by the accused in as much as the accused had put to personal use the Government money entrusted to him, instead of depositing the same in the proper place, the fact that the accused refunded the amount when the act of defalcation came to be discovered does not absolve him of the offence committed by him. See Vishwa Nath Vs. State of Jammu and Kashmir, and Krishan Kumar Vs. The Union of India,

9. Keeping in view the aforesaid established principle of law, the Judgment and Order dated 11.5.93 passed by the learned Addl. Deputy Commissioner (J) Tuensang in CR/74/92 is unsustainable in law the same is accordingly quashed and set aside.

10. Considering the facts and circumstances of this case, it may not be safe to remit this case again to the same Court for trial. In exercise of power u/s 407 of the Code of Criminal Procedure I direct that Tuensang P.S. Case No. 7 (7) 92 u/s 409 I.P.C. corresponding to OR Case No. 74/92 shall stand transferred from the Court of learned Addl. Deputy Commissioner (J) Tuensang to the Court of learned Addl. Deputy Commissioner (J) Mokokchung. The learned ADC (J) Mokokchung shall now receive the GR Case No. 74/92 to its file and proceed with the trial afresh in accordance with law.

11. Registry is directed to transmit the lower Court records along with a copy of this order to the Court of learned A.D.C. (J) Mokokchung forthwith.

12. Let a copy of Judgment of this Court and the Judgment and Order dated 11.5.93 passed by the learned A.D.C. (J) Tuensang in OR Case No. 74/92 be furnished to the Secretary, Law Department with a direction to place a copy of this Judgment in the personal file of Shri Lanu Walling learned Addl. Deputy Commissioner (J) Tuensang.

13. With the aforesaid direction, this revision petition is allowed. It is made clear that the learned A.D.C. (J) Mokokchung shall proceed with the trial uninfluenced by any observation made by this Court.

Keeping in view that this case has been pending since 1992, the learned Addl. Deputy Commissioner (J) Mokokchung is directed to dispose of the case as expeditiously as possible preferably within a period of six months from the date of receipt of the record.