

(1988) 08 P&H CK 0068

In the Punjab And Haryana At Chandigarh

Case No : Criminal Appeal No. 395-DBA of 1983

State of Punjab

APPELLANT

Vs

Buta Singh

RESPONDENT

Date of Decision : 31-08-1988

Acts Referred:

Citation : (1988) 2 RCR(Criminal) 528

Hon'ble Judges : S.S.Grewal, J and S.S.Dewan, J

Advocate : R.S Ghai, S.K. Syal, Bipan Ghai, Advocates for appearing Parties

Judgement

S.S. Grewal, J.—Buta Singh respondent was tried and convicted under section 409, Indian Penal Code, by Shri M.L. Malhotra, Judicial Magistrate 1st Class, Amritsar, vide order dated 7 4.1981. He was sentenced to undergo rigorous imprisonment for 11/2 years and to pay a fine of Rs. 1000. In default of payment of fine, he was ordered to undergo further rigorous imprisonment for three months. The appeal filed by Buta Singh against his conviction and sentence was allowed by Shri N.C. Khichi, Additional Sessions Judge, Amritsar. who vide his order dated 31.8.1982 held that Buta Singh was tried without sanction for prosecution, and, thus, the trial was non est. The order of conviction and sentence passed by the trial court was set aside.

2. Against the aforesaid order of acquittal the State has filed the present appeal.

3. In brief the facts relevant for the disposal of this appeal are that on 18.7.1979 Shri Joginder Singh D.S.P. (Vigilance) received information that Buta Singh, posted as Patwari, had embezzled Rs. 245.20, entrusted to him by Gurdip Singh of village Wadala, towards payment of the instalment of the Tacavi loan. On the basis of the said secret information, a case was registered against Buta Singh. During the investigation of the case, it was found that a sum of Rs. 245.20, which was entrusted to Buta Singh by Gurdip Singh P.W. was not deposited in the Treasury. After completion of the investigation, Buta Singh accused was challaned, tried, convicted and sentenced by the trial court, and was acquitted by the first appellate Court, as detailed above.

4. We have heard the learned counsel for the parties.

5. On behalf of the State of Punjab it was rightly submitted that the first appellate Court erred in relying on a Single Bench authority of this Court reported as Ram Kishan v. The State of Haryana, 1981 C.L.R. 624, in holding that in absence of sanction for prosecution of the accused the whole trial was without jurisdiction and the proceedings of the case before the trial Court were non est.

6. The aforesaid authority in Ram Kishan's case (supra) cannot be relied upon in view of another Single Bench authority of our High Court in case Yogi Bharat Abrol v. State of Punjab, 1981 P.L.R. 98, where it was held as under :

"As regards the sanction of the competent authority as envisaged in Section 197 of the Criminal Procedure Code, it may be observed that defalcation or misappropriation of the property entrusted to a public servant is no part of his duties and in doing so he is not acting in the discharge of his duties, and, therefore, the question of prior sanction for prosecution does not arise....

While dealing with this question, reliance was placed on the authoritative pronouncement of their Lordships of the Supreme Court in Harihari Prasad etc. v. State of Bihar, (1972)3 S.C.C. 89.

7. In this view of the matter, the order of acquittal recorded by the first appellate Court cannot be legally sustained. The said order is hereby set aside. Since the first appellate Court had not disposed of the appeal on merits, the case is sent back to it with the direction to dispose of the appeal on merits. For this purpose the parties through their counsel have been directed to appear before the first appellate Court on 26.9.1988. The record of the first appellate Court and that of the trial Court be sent back forthwith, with the direction that the Sessions Judge, Amritsar, may either dispose of the appeal himself or transfer the same to the Court of Additional Sessions Judge, Amritsar, for disposal of the appeal on merits according to law. Since this case relates to the year 1982, the first appellate Court is directed to dispose of the appeal expeditiously, preferably within three months.