

(1964) 08 AHC CK 0010

Allahabad High Court

Case No: Criminal Revision No. 1058 of 1963

Kedarnath

APPELLANT

Vs

State

RESPONDENT

Date of Decision: Aug. 20, 1964

Acts Referred:

- Penal Code, 1860 (IPC) - Section 405, 409

Citation: AIR 1965 All 233 : (1965) CriLJ 539

Hon'ble Judges: Satish Chandra, J

Bench: Single Bench

Advocate: S.N. Mulla and Bhagwat Pd. Gupta, for the Appellant; A.G.A., for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Satish Chandra, J.

This is a revision by one Kedar Nath against his conviction u/s 409, I. P. C. and sentence of three years" rigorous imprisonment.

2. In the district of Deoria there is a Co operative Federation at a place known as Bodarwar. In the beginning of the year 1958 the Federation resolved to run a brick-kiln and by resolution No. 3 dated 13-1-1958 the Federation resolved inter alia that a Manager and a Chaukidar be engaged for running the brick-kiln (Vide page 24 of the Minute Book Ex. VIII). On 23-1-1958 by resolution No. 4 (Ex.Ka.16) the Federation decided to appoint Kedar Nath, the applicant, as Manager on a monthly salary of Rs. 55/-. The Federation held a meeting on 1-3-1958 in which it appointed a committee for the supervision of the brick-kiln by resolution No. 5-B. This committee consisted of several gentlemen other than the applicant, the Manager. This resolution also stated that the entire responsibility in respect of the brick-kiln shall be of the Manager as well as of the Managing Committee. The applicant admittedly

worked as the Manager of the brick-kiln,

3. It appears that after sometime the applicant was suspended from the office of the Manager as certain complaints were received by the Federation and the Federation wanted to enquire into them. Resolution No. 3 of the meeting of the Federation held on 17-7-1959 states that after investigation Sri Kedar Nath has been found innocent of the charges and that he is reinstated to the post of the Manager of the brick-kiln. On 18-5-1959 in reply to the applicant's letter of the same date, a letter was served on the applicant (Ex.Ka-17) informing him that the entire responsibility of running the brick-kiln has been placed on him as Manager. On 23-5-1959 the Federation, by a resolution, increased the salary of the applicant to Rs. 65/- per month with effect from May 1959. The same day by another resolution it resolved that the supervision of the brick-kiln shall be the responsibility of the President and the Secretary of the Federation, but subject to that, in all matters complete responsibility shall be of the Manager (Vide Ex.Ka 18).

4. Ram Adhyaya Sharma (P. W. 1) is the Inspector of the Federation. He used to inspect the brick-kiln and used to make notes of his inspection in a register Ex. 7. He has stated in the witness-box that the applicant being the Manager, was responsible for the entire work of the brick-kiln. It was his duty to get the bricks made, burnt, taken out and sold. It was his duty to keep the stock book and maintain all the relevant accounts in respect of the brick-kiln. It was also his duty to control the staff and pay them as also to meet the expenses of the brick-kiln. He also stated that the applicant used to maintain all the account books with respect to the stock of coal, bricks, etc., their receipt and sale in his own hand. This fact has not been denied by the applicant. Ram Adhyaya Sharma used to periodically inspect the brick kiln.

In his inspection note dated 3-1-1960 written in the Register Ex. 7, he pointed out several discrepancies and defects in the working of the brick-kiln and the maintenance of its accounts. He suggested that a Bharai register should be maintained, that the Nikasi register should be filled in daily. He stated that accounts are incomplete and that several necessary registers are not being maintained. He again inspected the brick-kiln on 3-4-1960 and with regret noted that in spite of his previous objections and suggestions no improvement has been made and that the state of accounts is extremely unsatisfactory. He also mentioned that the accounts are suspicious. He asked the Manager to complete them and show it to him within a fortnight. He noted that the accounts of the brick-kiln are maintained in a manner that there is room for misappropriation. On 15-5-1960 Sri Sharma again inspected the brick-kiln and this time he found the state of affairs exceedingly unsatisfactory. He noted that the Cash Book is incomplete, that the Manager has not produced the vouchers of expenses, that in spite of several objections the Bharai Register is not being maintained, that the coal register is incomplete, that the Nikasi register appears to be fictitious, that the Manager did not show him the stock register as a result of which he could not check the stocks, and that he suspects that there is

some mystery behind it. On 17-5-1960 Jagdish Singh Supervisor by a note made in the Register Ex. 7 directed the Manager Kedar Nath to carry out the instructions in the inspection note immediately.

5. At this stage it appears enquiries were initiated as a result whereof the Federation on 1-6-1960 suspended the Manager Kedar Nath. On 19-6-1960 stock was checked and a charge list was prepared, thereby Jagdish Singh, supervisor took over the charge of the brick-kiln from the applicant.

6. The applicant has been convicted u/s 409, I. P. C. for embezzlement on two counts--firstly for Rs. 578-48 paises as the price of 14 tons of coal found short on the actual stock taking and secondly for Rs. 6572.75 paises towards the price of different classes of bricks found short on actual stock taking. The Court below has found that the applicant was responsible for keeping and maintaining the stocks as well as the accounts. He was responsible for the working of the brick-kiln in its entirety. In effect he was not merely the Manager but also Accountant-cum-clerk of the brick-kiln. In June 1960 when the stocks were actually checked they were found short when compared with the balance mentioned in the account books maintained by the applicant Kedar Nath himself.

7. The applicant does not deny that he maintained the account books and that there was the alleged shortage. He has in his defence given several explanations to account for the shortage.

8. In respect of the shortage of coal the applicant stated that he had given the entire stock of coal to Shabbir, coalman, and the latter used to keep the accounts of the consumption of coal; that normally two tons of coal were consumed per day, but on 14 different days Shabbir told the applicant that only one ton of coal was consumed each day and on Shabbir's so saying the applicant made entries of the consumed coal at the rate of one ton for those days. He says that actually on those dates the consumption was two tons per day and the shortage is due to inaccurate entries of consumption made at the instance of Shabbir.

9. I agree with the lower Courts that this explanation is not believable and does not appeal to reason. According to it Shabbir was creating a record incriminating himself by reporting a consumption less than the actual. The Courts below have inferred that the applicant misappropriated the 14 tons of coal dishonestly with a view to cause wrongful loss to the brick-kiln.

10. The other item of embezzlement is of bricks. The shortage is not disputed. The accused has offered an explanation for this shortage. He stated that he used to go out on official work of the brick-kiln for several days in a month. In his absence Jagdish Singh used to be in charge of the sales of the bricks and the shortage in the bricks is due to Jagdish Singh selling them without making any entry in the register for them. The evidence led by the accused to establish this explanation has been found to be vague in nature. There is no evidence giving detail of dates and

occasions when Jagdish Singh was incharge of the brick-kiln. It has been found that the evidence adduced by the applicant does not establish that Jagdish Singh disposed of bricks in the applicant's absence. The explanation offered has been disbelieved. It has been held that the applicant failed to account for the shortage of the bricks and that it can reasonably be inferred that he misappropriated them dishonestly.

11. Pt. S.N. Mulla, appearing for the applicant, has argued that even on the findings arrived at by the Courts below, no offence is made out. It is urged that in the absence of any evidence to establish the modus operandi of the applicant in committing the embezzlement, or to show when, how and by whom were the bricks and coal removed, no criminal breach of trust can be established. This Kind of argument was repelled by the Supreme Court in [Jaikrishnadas Manohardas Desai and Another Vs. The State of Bombay](#), in the following words:

"Direct evidence to establish misappropriation of the cloth over which the appellants had dominion is undoubtedly lacking, but 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. The principal ingredient of the offence being dishonest misappropriation or conversion which may not ordinarily ho 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 the other circumstances justifiably lead to an inference of dishonest misappropriation or conversion."

Their Lordships further go on to observe: --

"Conviction of a person for the offence of criminal breach of trust may not, in all cases, be founded merely on his failure to account for the property entrusted to him, or over which he has dominion, even when a duty to account is imposed upon him, but where he is unable to account or renders an explanation for his failure to account which is untrue, an Inference of misappropriation with dishonest intent may readily be made."

Under his legal contract the applicant as the Manager was duty bound to account for the stocks. He miserably failed to account for them. The explanation offered by him for the shortage has been found to be untrue. In these circumstances the inference of dishonest misappropriation or conversion made by the Court below cannot be characterised as illegal or perverse.

12. The next submission of the learned counsel was that the applicant may have been negligent in conducting the affairs of the brick-kiln and may have incurred civil liability, but in the absence of any finding that the applicant actually misappropriated or connived at it, he could not be held guilty of criminal breach of trust. The learned counsel contended that if it is possible to hold on the basis of the

evidence that some one else may have done it, then the applicant is entitled to the benefit of doubt.

13. Section 405, I. P. C. defines "Criminal breach of trust". The second part of the section says that "whoever willfully suffers any other person to misappropriate or convert any property, commits criminal breach of trust." Hence willful suffering makes a man liable. "Willful" means deliberate or intentional and not accidental or by inadvertence.

14. In substance the argument is that the applicant may have made an error of judgment in good faith or may have been negligent in the discharge of his duties, but he did not act deliberately or intentionally. The negligence was not culpable.

15. Negligence is a term of art but has distinct meanings in different jurisdictions. In Torts, damage is an essential ingredient, but that element is not necessary in the law of master and servant. In law of crimes there are a series of offences based on negligence in which loss or injury is not material. It is enough if the act is likely to cause injury or endanger life. Sections 279, 290, 285 and 287 of the I. P. C. are illustrative examples. For criminal breach of trust u/s 405, I. P. C. dishonesty, that is, wrongful loss or gain, has to be established.

16. Apart from the question of loss, another ingredient which runs through every branch of the law of negligence is that there must be a duty to take care. The nature of the duty and the standard of care will vary according to the nature of the office or the contract and the circumstances. Generally speaking, the standard that the law enjoins is governed by the knowledge and skill that the office or occupation requires, by the magnitude of the task and by the gravity of the consequences that are likely to ensue if the requisite degree of care is not exercised.

17. Good faith imports the exercise of due care and attention. A person can be excused for having committed an error of judgment only if he exercised due care and attention and his conduct makes it clear that there was not negligence according to reasonable standards. The standard of care required is that of a reasonably prudent man who acts with the care and caution required of a person in his position dealing with a matter of similar importance. If such a person could have acted in a similar way, then only could the accused be excused for what he calls a mere error of judgment or innocent dereliction of duty.

18. The question is what is the standard of care that is to be expected in the case of a man in the position of the applicant. The applicant was a Manager-cum-accountant. He was responsible for the entire administration of the brick-kiln. He was a trustee of the Federation property. It is evident that he had got a high position and a high standard of care was required. Either the applicant had good experience of running a brick-kiln; in that case he did not act like a reasonable prudent man in his position. If he did not have specialised knowledge, he should have acted with greater circumspection and caution. He should have taken

additional care to see that he was given proper advice. The inspection notes of Ram Adhyaya Sharma repeatedly warned him and useful suggestions for avoiding loss were made. Thus he was given correct advice, but he chose to disregard it. The applicant's conduct was thus deliberate. This was not a case of mere error of Judgment in good faith. His negligence was culpable. Even if it be assumed that someone else committed the misappropriation the applicant willfully suffered him to do so. As the Supreme Court says ([The State of Uttar Pradesh and Others Vs. Babu Ram Upadhyaya](#),

"To constitute an offence under this section, there must be an entrustment of property and dishonest misappropriation of it. The person entrusted may misappropriate it himself, or he may willfully suffer another person to do so."

19. Accordingly the applicant would be guilty. He has been rightly convicted and sentenced.

20. In the result, the revision fails and is dismissed. The applicant is on bail. He must surrender and serve out the sentence.