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**(2000) 01 AHC CK 0174**

**Allahabad High Court**

**Case No:** Government Criminal Appeal No. 308 of 1980

State of U.P.

APPELLANT

Vs

Ram Chandra Singh

RESPONDENT

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**Date of Decision:** Jan. 21, 2000

**Acts Referred:**

- Arms Act, 1959 - Section 25
- Penal Code, 1860 (IPC) - Section 399, 402, 409, 411

**Citation:** (2000) 1 ALT(Cri) 17 : (2000) CriLJ 2266

**Hon'ble Judges:** R.R.K. Trivedi, J; M.C. Jain, J

**Bench:** Division Bench

**Final Decision:** Dismissed

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**Judgement**

M.C. Jain, J.

The State has preferred this appeal against the judgment and order dated 17-11-1979 passed by Sri. R.C. Srivastava, the then Chief Judicial Magistrate, Etawah in Criminal Case No. 623 of 1975 (Crime No. 539 of 1973, Police Station Kotwali, District Etawah) Whereby the respondent has been acquitted of the charged offence u/s 409 IPC.

2. Draped in brevity, the facts are that the accused-respondent Ram Chandra Singh, Head Constable was In-charge of Sadar Malkhana, District Etawah. A report against him and his assistant Constable Ram Sanahi was made on 19-8-1973 by Sir T.D. Sharma, the then Public Prosecutor, Etawah that the case properties of the following seven cases which had been deposited in Sadar Malkhana were not available :

1. Case property No 885/72 u/s 25 Arms Act, P.S. Ekdil.
2. Case property No. 807/72 u/s 25 Arms Act, P.S. Bharthana.
3. Case property No. 880/72 u/s 25 Arms Act. P.S. Achhalda

4. Case property No. 120/73 u/s 25 Arms Act P.S. Auraiya

5. Case property No. 140/73 u/s 25 Arms Act P.S. Auraiya

6. Case property No. 40/79 u/s 399/402 IPC and 25 Arms Act Police Station Sahail.

7. Case property No. 677/713/725 of 1971 u/s 394/41 IPC, P.S. Kotwali (100 currency note Rs. 100/- each total Rs. 10,000/- and one revolver 32 bore)

3. In due course investigation was taken up by Special investigation Squad, Etawah and ultimately a chargesheet was laid on 30-3-1975 against the accused-respondent Head Constable Ram Chandra Singh.

4. The defence of the accused-respondent may also be taken note of. He admitted that he was in-charge as Malkhana Moharrir of Sadar Malkhana, Etawah during the years 1972 and 1973 having obtained charge from Head Constable Rama Saran Singh. He obtained the custody of the properties Nos. 885 72 120/73, 140/73 and 677/713/725 of 1971. According to him, the two properties numbering 807/72 and 880/72 were obtained by Constable Shravan Kumar. He also contended that he had reported the matter to S.P. Etawah about the loss of the properties from Malkhana and Sri T.D. Sharma, Public Prosecutor, being officer-in-charge of Malkhana, in order to shift his responsibility and out of hostility towards him got him implicated and chargesheeted by the local police. He denied misappropriation conversion of the properties in question to his own use. From July 1972 to 15th March. 1973 separate locks were put on inner and outer doors of Malkhana out of which the key of the lock of the outer door used to remain in his possession and that of the inner door lock was kept by the Public Prosecutor or the Assistant Public Prosecutor. After the closure of the Malkhana and before its opening the two keys use to remain with the Assistant Public Prosecutor and none of the keys remained with him while the Malkhana was closed.

5. At the trial, the prosecution examined the Public Prosecutor Sri T.D.Sharma PW 1. Mukhtiyar Ahmad PW 2, Dy. S.P. Sri V.S. Tyagi PW 3, Ram Sharan Singh PW 4, Retd. Head Constable Kushal Pal Singh PW 5 APR Anand Swarup Sharma PW 6, Constable Ram Sanahi PW 7 and the then APO Sri K.P. Singh PW 8. S.I. Shishu Pal Singh DW 1 and Constable Clerk Yadu Nath Singh DW 2 were examined by the accused-respondent also in defence.

6. On consideration of the material and evidence on record, the learned Court below held that though the entrustment of the property in question to the accused-respondent was proved, but misappropriation of the same by him was not established. The accused-respondent was accordingly acquitted. The State of U.P. being aggrieved by the said judgment of acquittal has now come in appeal before this Court.

7. We have heard learned A.G.A. in support of appeal and Sir Vinay Saran from the side of accused-respondent in opposition of the same. The argument of the learned

A.G.A is that entrustment of the properties in question to the accused-respondent as well as misappropriation of the same by him was fully established by the evidence adduced on record and the learned court below erred in acquitting the accused-respondent. We have carefully examined the evidence on record to ascertain the worth of such submission of the learned A.G.A. After giving our anxious consideration to the evidence on record, we do not find it possible to hold a contrary view than that taken by the Court below. It would be proper to state the reasons in this behalf in the succeeding discussion.

8. No doubt, the factum of the entrustment of five of the seven properties in question was admitted to the accused-respondent. He candidly admitted that he was Malkhana Moharrir from July 1972 to 15.8.1973. The important aspect of the matter is that first report about the loss of the properties was made by the accused himself to the S.P. on 15-8-1973. He narrated that on 8-8-1973 property item No. 885/72 of a case u/s 25 of the Indian Arms Act on being requisitioned by the Court (32 bore revolver along with cartridges) was not traceable and then it was thought by him and his assistant-Constable Ram Sanehi that it might have been misplaced some where. They made a thorough search of Malkhana and then it came to be revealed that properties item No. 807/72 (a country made revolver and cartridges), No. 141/73 (countrymade pistol and cartridges) and No. 40/73 (countrymade pistol) were also missing. Property item No. 677/713/725 of 1971 containing Rupees 10,000/- cash and 32 bore revolver kept in wooden lock box had been found intact during this search on 9-8-1973. Subsequently on routine checking on 14-8-1973 it was found that out of the property at item No.,677/713/725 of 1971, two articles viz Rs. 10,000/- currency notes and 32 bore revolver were also missing, but other properties of this item number were kept in the box as usual. It was also mentioned by him in his report Ex. Ka-4 that his assistant-Constable Ram Sanehi had gone on leave on Sunday after a meeting and after keeping the registers in Malkhana and getting it closed. He returned back on 14-8-1973. It was so mentioned by him in his report:

...MAL BE TAK TALASH KARNE SE NAHI MIL SAKE HAIN CONSTABLE RAM SANEHI SE BHI POOCHHA GAYA TO USNE LAILMI ZAHIR KI. MALKHANE KE ANDAR BHAR TATHA MAAL KE DENE LENE WA RAKHNE MEIN HAIN DONO MILJULKAR RAM KARTE HAIN KARIB EK MAH PAHLE RAM SANEHI SETALA KHULWATE SAMAY TALA GIRNE SE CHABI TOOT GAYI THI JISKI MAINE USI DIN TALA DEKAR RAM SANEHI SE CHABI BANWAI THI....

9. It was on the report of the accused-respondent that the S.P. passed the order on 15-8-1973 for enquiry by the Dy. S.P. V.S. Tyagi and for constituting a Board of verification of the properties in the Malkhana by cent per cent checking. It was after the enquiry that a report against the accused-respondent and Constable Ram Sanehi was made on 19-8-1973 and the accused-respondent alone came to be ultimately chargesheeted. The strange feature of the case is that though constable

Ram Sanehi, assistant of the accused-respondent was coaccused but he was not chargesheeted and was made a prosecution witness. The conduct of the accused-respondent is not compatible with his guilt. In other words he would not have made a report to the S.P. on 15-8-1973 regarding the missing properties if he himself had misappropriated the same and had converted them to his own use. He had completed about 29 years of service and was at the verge of his retirement. Indeed, he must have been aware of the consequences of any shortage of property in the Malkhana that a criminal case could be registered against him and he could be deprived of his pension gratuity and other retiral benefits. The Inquiry Officer Sri V.S. Tyagi PW 3 also admitted in his crossexamination that he had seen the character roll of the accused-respondent and had found that he had won prizes also. What we wish to emphasize is that had the accused-respondent been guilty of misappropriation, he would not have conducted himself in the manner he did by making a report. On the other hand, the inference can justifiably be drawn that could be a handiwork of a person having no fear of exposure of connected with direct responsibility of Malkhana properties.

10. Another aspect of the matter is that the accused-respondent alone did not have access to the Malkhana. It was clear from the evidence of PW 1 T.D. Sharma PW 4 Ram Sharan Singh. PW 5 Kushal Pal Singh, PW 6 A.S. Sharma and PW 7 Constable Ram Sanehi (Assistant of the accused-respondent that besides the Malkhana Moharrir, the Court Moharrir of various courts. Constables of Police Stations bringing properties to the Malkhana, the assistant of Malkhana Moharrir, Public Prosecutor and Assistant of Malkhana Moharrir, Public Prosecutor and Assistant Public Prosecutor all had access to the Malkhana. The setting of the Malkhana was such that Malkhana Moharrir used to sit in the outer room and the main Malkhana was in the other connecting room. The possibility could not be ruled out of a foul game having been played by someone else having access to the malkhana, causing to disappear the properties in question. There did not exist foolproof system of a counter at the outer end of the a Malkhana for the receipt and delivery of the properties with complete ban on the entry of anyone else to the Malkhana except the accused-respondent.

11. We also note that during the enquiry also there was only suspicion of misappropriation having been committed by the accused respondent and his assistant PW 7 Constable Ram Sanehi. It is not easily understandable and rather sounds to be strange that Constable Ram Sanehi (assistant of accused-respondent) though suspected to be a co-accused of misappropriation in the enquiry report of PW 3 Sri V.S. Tyagi was not chargesheeted and was instead made the prosecution witness.

12. We also note that the initial report made by the accused respondent on 15-8-1973 to the S.P. (forming foundation of enquiry by Sri. Tyagi, checking of Malkhana properties by Board of prosecutors and the first information report Ex. Ka

1) mentioned that the key of the wooden box was broken and duplicate key was got prepared through Constable Ram Sanahi. But the enquiry report Ex. Ka 7 submitted by Sri V.S. Tyagi was silent on this aspect of the matter and so was the first information report Ex. Ka 1 lodged by PW 1 Sir T.D. Sharma. As mentioned above, Constable Ram Sanahi was himself examined by the prosecution as PW 7 but he did not say even a word refuting this assertion of the accused-respondent made in his report to the S.P. on 15-8-1973 that the key of the wooden box had been broken and duplicate key was got prepared by the accused-respondent through him. In this view of the matter, the possibility could not be ruled out that the persons other than accused-respondent had duplicate key of the lock of the wooden box. We are of the opinion that if something goes amiss after entrustment for reasons beyond the control of trustee, then he cannot be hauled up in criminal law for misappropriation.

13. On a judicial scrutiny of the evidence on record, the conclusion cannot be escaped that charge was foisted on the accused-respondent on the theoretical approach of his being Malkhana Muharrir, ignoring other crucial aspects of the matter as came to be surfaced in the evidence adduced before the Court that it was he who had made the first report to the S.P. and that other to had access to the Malkhana including his assistant PW 7 Constable Ram Sanahi through whom a duplicate key had been got prepared about a month back. Curiously enough, Constable Ram Sanahi who was a suspected Co-accused was not chargesheeted and was rather examined as a prosecution witness. The charge of misappropriation was not at all proved against the accused-respondent. The allegations made against him on the basis of suspicion could not pass in the realm of certainty without clinching and satisfactory evidence. Mere entrustment did not establish misappropriation. There ought to have been trustworthy evidence of clinching nature leading to the only inference that it was the accused respondent alone who committed the alleged misappropriation. We find ourselves in agreement with the learned Court below that prosecution could not discharge its burden in this behalf. We are inclined to affirm the judgment of acquittal recorded by the learned Court below.

14. For the foregoing discussion, we do not find any merit in this appeal filed by the State against the acquittal of the accused-respondent Ran Chandra Singh. We accordingly dismiss it, affirming the judgment and order under appeal. The accused-respondent Ram Chandra Singh is on bail. He need not surrender. His personal Bond and bail bonds are cancelled.

15. Let a copy of this judgment along with the record of the case be immediately sent to the Court below for necessary entries in the concerned registers under intimation to this Court within two months.