Velji Raghavji Patel vs State Of Maharashtra on 11 December, 1964

Equivalent citations: 1965 AIR 1433, 1965 SCR (2) 429, AIR 1965 SUPREME COURT 1433, 1965 (1) SCWR 586, 1965 ALL CRI R 392, 1965 MAH L J 487, 1965 SCD 824, 1965 2 SCR 429, 1965 2 SCJ 186, 1965 MAD L J(CRI) 519, 1965 67 BOM LR 443

Author: J.R. Mudholkar

Bench: J.R. Mudholkar, Raghubar Dayal

PETITIONER:
VELJI RAGHAVJI PATEL

Vs.

RESPONDENT:
STATE OF MAHARASHTRA

DATE OF JUDGMENT:
11/12/1964

BENCH:
MUDHOLKAR, J.R.
BENCH:
MUDHOLKAR, J.R.
DAYAL, RAGHUBAR

CITATION:
1965 AIR 1433 1965 SCR (2) 429
CITATOR INFO :
F 1967 SC1342 (4)
RF 1968 SC 700 (8)
R 1985 SC 628 (24,46,72,76)

ACT:
Indian Penal Code, 1860 (Act 45 of 1860), ss. 403 and 409-Partner-Failure to account for monies of firm-lf guilty of criminal breach of trust or dishonest misappropriation of property.

HEADNOTE:
The appellant was the working partner in a firm. It was agreed among the partners that he should carry on the work of recovery of the dues of the partnership. On the

allegation that he misappropriated certain sums and also failed to deposit in bank some collections as he was required to do, he was convicted for the offence of criminal breach of trust under s. 409, Indian Penal Code. In appeal to the Supreme Court it was contended that as he realised the sums in his capacity as partner and utilised them for the business of the partnership, he was only liable to render accounts to his partners and his failure to do so would not amount to criminal breach of trust.

HELD : The appellant could not be said to have been guilty of criminal breach of trust,

Though as a partner he had dominion over the property of the partnership for the purpose of criminal breach of trust the mere existence of such dominion is not enough. It must be further shown that his dominion was the result of entrustment, that is, the prosecution must establish that the dominion over the partnership assets was, by a specific agreement, entrusted to the accused. [432 E-G]

Bhuban Mohan Rana v. Surendra Mohan Das, I.L.R. (1952) 2. Cal. 23(F.B.) approved.

Even if there was a mandate to the appellant with respect to some dues to collect and deposit in bank, faliure to do so would not constitute the offence, as he was also authorised by the other partners to spend the money for the business of the partnership. [434 D-E]

The appellant would not also be guilty of dishonest misappropriation of property under s. 403 of the code, because, he had undefined ownership along with the other partners over all the assets of the partnership and as such owner, in whichever way, and with whatever intention he used the property, he would not be liable for misappropriation. [434 H]

JUDGMENT:

CRIMINAL APPELLATE, JURISDICTION : Criminal Appeal No. 43 of 1963.

Appeal by special leave from the judgment and order dated February 1, 1963 of the Bombay High Court in Criminal Appeal No. 972 of 1962.

O.P. Rana, for the appellant.

P. K. Chatterjee and B. R. G. K. Achar, for the respondent.

The Judgment of the Court was delivered by Mudholkar J. In this appeal from the judgment of the Bombay High Court the question which falls to be considered is whether a partner can be convicted under s. 409, Indian Penal Code on the ground that his failure to account for monies belonging to the firm in which he was a partner amounts to criminal breach of trust.

The admitted facts are briefly these The firm, Messrs. Bharat Silp Pramandal, which was formed for carrying on the business of building construction, originally conisted of eight partners and the appellant was its working partner. This firm was constituted in the year 1954. But on February 6, 1957 three of the partners retired and the business was continued by the remaining five partners. Disputes arose amongst them, which were referred to arbitration of Mr. J. T. Desai, a Solicitor. Apparently, in pursuance of his award a fresh agreement (Ex. N) was entered into by the partners on June 4, 1958. By virtue of this agreement the appellant's share in the firm's business was to be of 50 nP. in a rupee while the other partners had different shares in the remaining 50 nP. Nagindas Jivraj Mehta, who is the complainant in this case had a share to the extent of 6 nP. Under this agreement the parties decided not to undertake new work. The agreement required the appellant to complete all the accounts and prohibited from borrowing money in the name of the firm. It required him "to use his best efforts to realise all pending bills, security deposits, claims etc." as well as to dispose of the plant, machinery etc. The agreement also provided that partners, other than the appellant, would procure, if the need arose, further finance to the maximum limit of Rs. 25,000/- but that if a sum in excess of this amount was required, that excess was to be brought in by all the partners including the appellant "individually pro rata in proportion to their shares of profits and losses in the firm". Clause 8 of this agreement permitted the appellant to withdraw on his own account a sum of Rs. 10,000 "no sooner he is able to realise any of the pending claims of bills of the firm or security deposits". We have dealt with this agreement at some length because it will be relevant to consider these matters in the context of the argument of Mr. Rana to the effect that the appellant as working partner was entitled to utilise the realizations made by him for carrying on the work of the firm.

According to the complainant the appellant committed mis- appropriation to the tune of Rs. 8,905/- consisting of the follow-ing six items Rs. 2,871/-

3,000/-

1,100/-

1,100/-

750/-

84/-

TOTAL 8,905/-

The trial court acquitted the appellant with respect to the last two items but convicted him in respect of the first four items.

The appellant admits that he realised these four items but he says that he did so in his capacity as partner and he utilised them for the business of the partnership. Therefore, according to him, he is only liable to render accounts to his partners and cannot in any circumstances be said to be guilty of an offence under S. 409, I.P.C. He also points out that the complainant has instituted a suit for the

dissolution of the partnership and for rendition of accounts and that he instituted the present complaint solely with the idea of making it difficult, if not impossible, for the appellant to defend the civil suit properly. On behalf of the appellant it is contended that even if the prosecution had succeeded in showing that the four items referred to above were realised by the appellant and that he has not accounted for them properly he will not be liable for criminal breach of trust under s. 409, I.P.C. but that his liability would be only of a civil nature. In support of this contention reliance is placed upon Bhuban Mohan Rana v. Surendra Mohan Das(1). There the following question was referred for decision by the Full Bench "Can a charge under s. 406 of the Indian Penal Code be framed against a person, who, according to the complainant, is a partner with him and is accused of the offence in respect of property belonging to both of them as partners ?"

> All the five Judges constituting the Full Bench answered the question in the negative. In the leading judgment which was, (1) 1. L. R. (1952) II Cal. 23.

delivered by Harris C.J., he pointed out that before criminal breach of trust is established it must be, shown that the person charged has been entrusted with property or with dominion over property and that a partner does not, in the ordinary course, hold property in a fiduciary capacity. The learned Chief Justice further pointed out that there is really no distinct or defined share of a partner in any item belonging to the partnership. Upon the dissolution of the partnership and after an account is taken it may turn out that a partner who retains an asset is entitled to the whole of the asset and may be, much more. He referred to the English view that a partner does not hold money belonging to the partnership in a fiduciary capacity and said that this view appeared to him to be correct. Referring to the decision in The Queen v. Okhoy Coomar Shaw(1) in which a Full Bench had held that a partner who dishonestly misappropriates or converts to his own use any of the partnership property with which he is entrusted or over which he has dominion, is guilty of an offence under s. 405, I.P.C., Harris C.J. observed :

> "The Full Bench never seems to have Considered that there is really no partner's share in the property until an account (sic) and it may well be that a partner, who retains an asset, is entitled not only to his share according to the partnership agreement in that asset, but, on taking an account, it may be found that he is entitled to the whole of the asset and considerably more. In such a case, how can it be said that he has been of a breach of trust and has acted dishonestly towards his co-partners, if an account would show that he was entitled to everything which he had retained ?"

He has referred to a number of decisions of the Indian High Courts in some of which the view taken in Okoy Coomar Shaw's case(1) was followed. One of those cases was Jagannath Raghunathdas v. Emperor(2) where it was held that a partner may be prosecuted under s. 406, I.P.C. for failure to account for partnership monies and assets. In that case the partner who was the accused was given authority by the other partners to collect monies or property and according to the Bombay High Court in these circumstances lie was "entrusted" with dominion over collections made by him. The learned Judges who decided that case had, however, pointed out that the court should approach (1) 13 Bengal Law Reports 307.

(2) A. 1. R. 1932 Bom. 47.

cases of this kind very carefully because it was impossible to say in many cases what the share of the accused might be, whether the accused was indebted to the firm or whether the firm was indebted to him. The High Court also pointed out that if the firm was indebted to him there might be no dishonest intention in his dealing with the partnership property. In the arguments before us, apart from these three decisions, our attention was called to a few more decisions of the High Courts in India. But whether they take one view or the other they do not seem to add to what has been said in these three decisions. We, therefore, do not feel called upon to make any reference to these decisions.

It seems to us that the view taken in Bhuban Mohan Rana's case(1) by the later Full Bench of the Calcutta High Court is the right one. Upon the plain reading of s. 405, I.P.C. it is obvious that before a person can be said to have committed criminal breach of trust it must be established that he was either entrusted with or entrusted with dominion over propery which he is said to have converted to his own use or disposed of in violation of any direction of law etc. Every partner has dominion over property by reason of the fact that he is a partner. This is a kind of dominion which every owner of property has over his property. But it is not dominion of this kind which satisfies the requirements of s. 405. In order to establish "entrustment of dominion"

> over property to an accused person the mere existence of that person's dominion over property is not enough. It must be further shown that his dominion was the result of entrustment. Therefore, as rightly pointed out by Harris C.J., the prosecution must establish that dominion over the assets or a particular asset of the partnership was, by a special agreement between the parties, entrusted to the accused person. If in the absence of such a special agreement a partner receives money belonging to the partnership he cannot be said to have received it in a fidu- ciary capacity or in other words cannot be hold to have been "entrusted" with dominion over partnership properties. Mr. Chatterjee who appears for the respondent sought to show that there was special agreement in this case. According to him, by virtue of certain decisions taken at a meeting of the partners held on January 7, 1959 the appellant had been entrusted with the duty of making recoveries of monies from the debtors of the firm and, therefore, this was a case of specific entrustment.
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> (1) I.L.R. 1962 11 Cal. 23.

All that he could point out was item No. 15 in the minutes, of that meeting which runs thus :

> "Shri Veljibhai agrees to recover the monies due by Shri Kablasingh immediately and shall deposit the same with the Bankers of the firm."

He has however, not been able to explain the next item in the minutes, the relevant portion of which runs thus :

> "(16) If in future any further moneys are required to be spent the same shall be spent out of the coveries of the firm and no partner shall be bound or responsible to bring in any further moneys.....

Reading the two together the meaning seems to be only this that as working partner the appellant should carry on the work of recovery of the dues of the partnership and that in respect of the dues from one Kablasingh it was decided that they should be deposited in the bank. It does not follow from this that any of the other partners was precluded from making the recoveries. Further, even if this is said to be a mandate to the appellant item 16 authorises him to spend the money for the business of the partnership. That is to say, if the money was required for the business of the partnership it was not obligatory upon the appellant to deposit it in the bank. In our opinion, therefore, the appellant cannot be said to have been guilty of criminal breach of trust even with respect to the dues realised by him from Kablasingh and in not depositing them in the bank as alleged by the prosecution.

Mr. Chatterjee finally contends that the act of the appellant will at least amount to dishonest misappropriation of property even though it may not amount to criminal breach of trust and, therefore, his conviction could be altered from one under s. 409 to that under s. 403. Section 403 runs thus :

> "Whoever dishonestly misappropriates or converts to his own use any moveable property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

It is obvious that an owner of property, in whichever way he uses his property and with whatever intention will not be liable for misappropriaion and that would be so even if he is not the exclusive owner thereof. As already stated, a partner has, undefined ownership along with the other partners over all the assets of the, part-

nership. If he chooses to use any of them for his own purposes he may be accountable civilly to the other partners. But he does not thereby commit any misappropriation. Mr. Chatterjee's alternative contention must be rejected.

in the result we allow the appeal and set aside the conviction and sentence passed against him. Appeal allowed.