

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 25-1-20019

Judgment delivered on 08--03-2019

CRA No. 1242 of 2002

1. Sharadalal s/o. Behari Lal aged about 30 years, r/o. Shantinagar, Jagdalpur, Distt. Bastar (CG).
2. D.K. Satman s/o. Anand Kumarm Satmal, aged about 46 years, r/o. Mission Compound, Jagdalpur, Distt. Bastar (CG).

---- Appellants

Versus

- State of Chhattisgarh through Prezerper, Jagdalpur, Dist. Bastar (CG).

---- Respondent

For Appellant No.1 : Mr. T.K. Tiwari, Advocate
For Appellant No.2 : Mr. Manoj Paranjpe, Advocate.

For respondent : Mr. Ravish Verma, Govt. Advocate.
State

Hon'ble Shri Justice Ram Prasanna Sharma

CAV Judgment

1 This appeal is preferred against the judgment dated 28-11-2002 passed by the Additional Sessions Judge and Special Judge (Prevention of Corruption Act, 1988) (for short, the Act, 1988), Bastar at Jagdalpur (CG) in Session Case No. 6 of 1997 wherein the said Court has convicted the appellants for the commission of offence under Section 409 of IPC and sentenced them to undergo RI for two years and to pay fine of Rs.5000/- each with default stipulations.

2. As per version of prosecution, appellants were working as Asst. Development Officer and Village Assistant in the office of Block Development, Tokapal. They were entrusted for construction work. It is alleged that the appellant No.2 namely D.K. Satman was entrusted with amount of Rs.75,000/- for construction of middle school Mawalibhata, Rs.75,000/- was given for construction of school building at Bakatipara, Rs.45,056/- was given for construction of school building at Gurram and Rs.30,000/- was given for construction of Anganbadi hostel. It is alleged that appellant No.2 was entrusted with amount of Rs.2,25,056/- and after valuation of the aforesaid work, it was found that he spent Rs.1,94,300/- and no account in respect of remaining amount was given by him. It is also alleged that Rs.70,000/- was given to appellant No.1 namely Sharadlal for construction of middle school, but after valuation it was found that Rs.45,000/- was spent and no account was submitted for balance amount. It is further case of the prosecution that Rs.15,000/- was given by the appellant No.2 D.K Satman to one health worker, Takapal. Rs.7500/- Rs. 3750/- and Rs.1250/- were given to Asst. Engineer/Block Development Officer and one accountant. Again, it is alleged that Rs.7,000/- was given to Asst. Engineer namely Shri Raman and Rs.2000/- was given to the accountant by appellant No.1 Sharadlal, therefore, it is case of misappropriation of the amount entrusted to them.

3. Learned counsel for the appellants would submit as under:

- i) No mistake in the muster roll or the bill was found and no irregularity was found for the work in question, therefore, it is not a case of any criminal Act.
- ii) As per version of defence witness, balance amount was deposited by the appellants which was not considered by the trial court without assigning any cogent and sufficient reason.
- iii) The trial Court ought to have appreciated that withholding the amount does not create any offence, therefore, finding of the trial court is liable to be set aside.

4 On the other hand, learned counsel for the respondent/State would submit that the finding of the trial Court is based on proper marshaling of the evidence and the same is not liable to be interfered while invoking the jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused record of the court below in which impugned judgment is passed.

6. To substantiate the charge, prosecution examined as many as 19 witnesses. To nullify the charge, defence side examined two witnesses.

7. Chandraman Patel (PW/1) deposed before the trial Court that the amount was entrusted to the appellants by the then Block Development Officer Shri N.K Dixit. N.K Dixit was examined as PW/17 who deposed before the trial court that during the course of construction of work he has been transferred to some other place namely Antagarh and as per version of this witness, after his transfer he did not trust any sum to appellant Sharadlal (para 5). One promise note Ex.P/21 was filed before the trial Court in which appellant No.1 Sharadlal promised that he will use the amount received by him time by time for construction of work and if any amount is recoverable from him, he will deposit the same and same can be recovered from his PF or other dues. In this document filed by the prosecution no time limit is fixed for construction of work.

8. From the evidence of N.K. Dixit (PW/17) it is not clear as to how much amount was trusted to the appellants before his transfer. From the evidence of K.C. Das (DW/1) who was accountant in the office of Janpad Panchayat, Tokpal, the balance amount was deposited by appellant No.1 Sharadlal. S.R. Mishra (DW/2) deposed before the trial court that he was accountant in the office of Janpad Panchayat, Tokpal. As per version of this witness, if any work is left by any employee, then it has to be got completed by some agency and the employee who was earlier

trusted with the work is bound to deposit the balance amount. Ex.P/17 is the report of the authorities dated 24-7-1997 and as per that report, major portion of the work was completed by both the appellants and only small portion of the work was to be completed. From the report itself, it is not clear as to what was the time frame for completing the work and whether time could have been extended or not. The person namely N.K. Dixit (PW/17) who was transferred during pendency of the work, was not able to say as to how much amount was trusted by him and whether any amount was further trusted to any of the appellants after his transfer. Therefore, from the evidence of this witness, it is not clear as to how much amount was trusted to appellants and for how much amount the construction work was completed.

9. PW/3 Haridas is Sub-Engineer who measured the work of the appellants. As per version of this witness, earlier work was trusted to the appellants, but later-on it was trusted to one Sarpanch. From the entire evidence on record, it is not clear as to what was the time frame for the work in question. Therefore,, it cannot be held that work was not completed by the appellants within stipulated period.

10. Now the question for consideration of this court is whether any of the appellants misappropriated the amount trusted to them. The case of the prosecution rests on two documents i.e.,Ex. P/18

and P/19 which were alleged to be written by the appellants No. 1 and 2 respectively. Pankaj Raj (PW/15) was Project Officer at the time of work in question and as per version of this witness both the appellants have written these papers that they have given some amount to one health worker namely Mana Sai and some amount was given to Sub Engineer Shri Raman, Block Development Officer N.K. Dixit and Accountant N.K. Dewangan. From the statement of Pankaj Rag (PW/15), it is clear that neither this statement was written by him nor he dictated for reducing in writing the said document. From the evidence of this witness, it appears that he was Project Officer of the District and was in a position to dominate the will of the appellants who were subordinates to him. No one can be compelled to give evidence against himself and in the present case, when there is no stipulated period for completion of work and major portion of the work was completed by the appellants and rest of the work was handed over to one Sarpanch for completion, there is nothing to instigate the appellants to write down such statement at their own will, therefore, it appears that the said officer who has command over the present appellants may have dominated his will and it may be a case of undue influence, therefore, it would not be safe to rely on this document. Again, all the persons named in the said document have been examined before the trial court. Manasai is

examined as PW/5, Accountant N.K. Dewangan is examined as PW/11 and N.K. Dixit is examined as PW/17, but no one deposed before the trial court that they have received any sum from the appellants, therefore, it is not established from the evidence that the amount trusted to the appellant was given to any one or it is used for individual purpose. It is only when there is evidence of mental act and misappropriation, offence of breach of trust becomes punishable. This mental act distinguishes the act amounting to civil wrong or criminal breach of trust. Every breach of trust in absence of *mens rea* is not criminal and intention has to be proved by cogent evidence.

11. In the present case, there is no evidence that the amount trusted to the appellants was dishonestly used by themselves or by some other person. The mere fact that the accounts submitted were incorrect, would not lead to breach of trust. Again, mere retention is not an offence because in the present case, there is a contract that any amount found to be recoverable can be recovered from Government employees and as per version of defence witnesses, the amount was recovered. The trial court has lost sight of the nature of contract and recovery from the appellants and again lost sight of the factual and legal aspect of the matter, therefore, finding of the trial Court is not sustainable.

12. Accordingly, the appeal is allowed. Conviction and sentence of the appellants under Section 409 of IPC is set aside. They are acquitted of the said charge.

Sd/-

(Ram Prasanna Sharma)

Judge

Raju