

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-43447-2016(O&M) and
other connected cases
Date of Order:16.09.2019

Amit Madan

..Petitioner

Versus

State of Punjab and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vipin Ghai, Sr. Advocate, with
Mr. Amit Khanna, Advocate,
for the petitioner.

Mr. Karan Garg, Advocate,
for the petitioner (in CRM-M-1445-2017)

Mr. Bhriagu Dutt Sharma, Advocate
for the petitioner (in CRM-M-1310-2017)

Mr. SPS Tinna, Addl. A.G., Punjab

Mr. Mohinder Kumar, Advocate, and
Mr. Sunil Kumar, Advocate,
for the complainant.

ANIL KSHETARPAL, J(Oral)

By this order, CRM-M-43447-2016, CRM-M-1310-2017 and
CRM-M-1445-2017 shall stand disposed of.

It is apparent that criminal prosecution has been launched in
total abuse of the process of law. First informant claims that he runs an
organization namely 'Om Namaha Shivae Sewa Mandal(Regd.), 1, New
Vijay Nagar, Jalandhar, mobilizes funds from different devotees with the
object to promote, facilitate, organize, finance and maintain Yatra of Holy
Cave of Lord Shiva Baba Amar Nath Ji. With the further objective to

establish, organize, finance or provide free meals, tents, medical camps, water supply, boarding, etc. for the pilgrims to various pilgrimage (Yatra). It is claimed that first informant engaged 'On Dot Courier' for sending intimations to different followers. 22300 letters containing brochures and compact discs were delivered to the company for onward transmission to the devotees. For that purpose, @ 9/- per courier/envelope an amount of Rs.2,00,700/- was paid. It has been alleged that courier agency had returned 4853 letters on the pretext that they have no service to the places where 4853 addressees reside. Out of the said letters sent, complainant has knowledge that 14283 letters have neither been delivered nor returned. A notice was sent but the company did not reply and therefore, first informant has suffered a loss of Rs.2.5 crores.

At this stage, it may be noticed that the first informant before lodging the FIR had sent a notice through his counsel which was addressed to the company and in the notice, following demand was made:-

“Now, therefore, I by means of this legal notice call upon you noticees to make good the loss suffered by my client due to the negligence, unfair trade practice and deficiency in service on part of you noticees within 7 days from the receipt of this legal notice, failing which my client shall be constrained to seek his redressal from the court of competent jurisdiction and in that event you noticee shall be liable to pay the costs of such litigation and the charges incidental thereto.”

Instead of filing appropriate proceedings either before the forums created under the Consumer Protection Act or the Civil Court, present FIR was got registered under Section 406 IPC. The police also presented final report under Section 173 Cr.P.C.

This court has heard learned counsel for the parties at length.

Learned counsel for the first informant was repeatedly asked as

to how and in what manner offence of criminal breach of trust as defined in Section 405 IPC is made out. He submitted that since the letters contained brochures and compact discs which would have resulted in donations to the religious organization, therefore, there is a criminal breach of trust. Hence, the first informant has lost the property. He further submits that the aforesaid brochures and compact discs also come in the definition of the property.

At this stage, it would be appropriate to notice that before criminal prosecution is sought to be initiated it is mandatory to allege and prove “mens rea” before some one can be alleged to have committed offence of criminal breach of trust as defined in Section 405 IPC punishable under Section 406 IPC. 'Dishonestly' has been defined in Section 24 IPC whereas 'criminal breach of trust' is defined in Section 405 IPC, which are extracted as under:-

24. **“Dishonestly”**.—Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing “dishonestly.”

405. Criminal breach of trust.—Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits “criminal breach of trust”.

Section 24 of the Indian Penal Code provides that whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing “dishonestly.

As per the allegations there is no intention to cause wrongful gain to any person. There is also no intention to wrongful loss to another person.

Section 405 IPC defining criminal breach of trust, can be subdivided into following parts:-

- (i) that some one should be entrusted with property, or with any dominion over property; or
- (ii) he must dishonestly misappropriates or converts to his own use that property; or
- (iii) dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged; or any legal contract, express or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do, commits “criminal breach of trust.

Now on analysis of the various parts of Section 405 IPC, it is apparent that there should be dishonest misappropriation or conversion of property for his own use or someone has dishonestly used or disposed of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged or of any legal contract expressed or implied which he has made touching the discharge of such trust.

An act of breach of trust simpliciter involves a civil wrong

entitling filing of civil suit. However, if the breach of trust is with mens rea, the same gives rise to criminal prosecution as well. Mere breach of trust is not an offence unless it is associated with an intention which is dishonest. Still further, in the present case, mens rea which is *sine-qua non* for initiation of proceedings of criminal breach of trust is totally absent. The aforesaid brouchers or copies of the compact disc are not alleged to have been dishonestly misappropriated or converted to its own use. It is not the allegation that the property has been dishonestly used or disposed of in violation of any direction of law prescribing the mode of such trust to be discharged or of any legal contract.

Section 405 IPC has been interpreted by the Hon'ble Supreme Court in more than one judgments. It may be noted here that in the case of **Asoke Basak vs. State of Maharashtra and others, (2010) 10 SCC 660**, the Hon'ble Supreme Court examined the ingredients of offence of criminal breach of trust. Para 21 is extracted as under:-

“21. It is plain that for constituting an offence of criminal breach of trust, the following ingredients must be satisfied:

“(a) a person should have been entrusted with property, or entrusted with dominion over property;

(b) that person should dishonestly misappropriate or convert to his own use that property, or dishonestly use or dispose of that property or wilfully suffer any other person to do so;

(c) that such misappropriation, conversion, use or disposal should be in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract which the person has made, touching the discharge of such trust.”

Similarly in the case of *Indian Oil Corpn. vs. NEPC India Ltd. and others, (2006) 6 SCC 736*, in para 22, the Court discussed the ingredients/constituents of offence under Section 405 IPC, which is extracted as under:-

22. A careful reading of the section shows that a criminal breach of trust involves the following ingredients :-

(a) a person should have been entrusted with property, or entrusted with dominion over property;

(b) that person should dishonestly misappropriate or convert to his own use that property, or dishonestly use or dispose of that property or willfully suffer any other person to do so;

(c) that such misappropriation, conversion, use or disposal should be in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract which the person has made, touching the discharge of such trust. The following are examples (which include the illustrations under section 405) where there is 'entrustment' :

(i) An 'Executor' of a will, with reference to the estate of the deceased bequeathed to legatees.

(ii) A 'Guardian' with reference to a property of a minor or person of unsound mind.

(iii) A 'Trustee' holding a property in trust, with reference to the beneficiary.

(iv) A 'Warehouse Keeper' with reference to the goods stored by a depositor.

(v) A carrier with reference to goods entrusted for transport belonging to the consignor/consignee.

(vi) A servant or agent with reference to the property of the master or principal.

(vii) A pledgee with reference to the goods pledged by the owner/borrower.

(viii) A debtor, with reference to a property held in trust on behalf of the creditor in whose favour he has executed a deed of pledge-cum-trust. (Under such a deed, the owner pledges his movable property, generally vehicle/machinery to the creditor, thereby delivering possession of the movable property to the creditor and the creditor in turn delivers back the pledged movable property to the debtor, to be held in trust and operated by the debtor) ”

Still further, once against Hon'ble Supreme Court in the case of **R. Venkatkrishnan vs. Central Bureau of Investigation, (2009) 11 SCC 737**, discussed in detail the ingredients fulfillment whereof is necessary to constitute offence under Section 405 IPC.

Now let us examine the facts of the present case.

In the present case, more than 22000 envelopes were sought to be dispatched containing identical brouchers and compact disc. It is claimed that the aforesaid compact disc contains recording of certain religious functions and activities carried out by the organization. The aforesaid brouchers were for distribution amongst devotees. The aforesaid brouchers and compact disc even if not delivered as desired by the dispatcher to 22000 devotees cannot be said to be dishonest misappropriation of the property. The loss of expected donation which the devotees would have given to the religions organization i.e. the first informant is uncertain. It may be case of 'breach of trust' but it is certainly not a case of 'criminal breach of trust'. Criminal breach of trust requires dishonest intention, misappropriation or conversion of the property to his own use or dishonestly uses or disposes of that property in violation of law or agreement. It is not the allegation that the aforesaid brouchers and the compact disc have been misappropriated and used by the company or the accused for their own use. Still further, such brouchers and compact

disc cannot be said to be property in the context it is used in Section 405 IPC.

In view of the aforesaid discussion, all the petitions are allowed. The FIR, final reports prepared by the police and consequential proceedings arising therefrom are quashed.

Petitions allowed with cost of Rs.1,00,000/- payable by the first informant-respondent no.2 to petitioners in all these petitions.

September 16, 2019
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No