

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment reserved on : 13th March, 2019

Judgment delivered on: 01st July, 2019

+ CRL.REV.P. 471/2016

P K SETH

..... Petitioner

versus

STATE (NCT) OF DELHI & ANR

..... Respondents

Advocates who appeared in this case:

For the Petitioners : Mr. Harsh Prabhakar with Mr. Anirudh Tanwar,
Advvs. with petitioner in person.

For the Respondents : Ms. Kusum Dhalla, APP for the State. Mr. Om
Prakash Sharma with Mr. Vikas Sharma, Advocates
for respondent No.2 with respondent No.2 in
person.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J.

1. Petitioner impugns order dated 23.03.2016 whereby the revision petition filed by respondent no. 2 impugning summoning order dated 02.07.2015 of the trial court was allowed.
2. The petitioner/complainant filed the subject complaint contending that he was working as developer of electronic display boards for banking industry. Because of his age and health he was not able to carry out his business effectively. Someone introduced him to

respondent no. 2 who was also involved in similar business.

3. Respondent no. 2 in the year 2007 inspected the factory of the petitioner and convinced him to work with him, however, under the guidance of the petitioner with the labour of respondent no. 2.

4. It is alleged that respondent no. 2 offered to shift the entire equipment used by the petitioner to his premises at B-18, Ram Nagar, Om Vihar, Uttam Nagar which was a tenanted premises of respondent no. 2. The equipment of petitioner was shifted to the said premises in September, 2012.

5. There was a dispute between the landlord of the said premises and his brother and accordingly, respondent no. 2 received an eviction order in respect of the said premises. Respondent no. 2 shifted all his equipment along with equipment of the petitioner and articles to ground floor of premises No. B-30 Ram Nagar, Om Vihar, Uttam Nagar. He was also operating his office on the second floor of the said property. It is alleged that when the articles were shifted to the said premises, same were duly accounted for.

6. It is alleged that thereafter respondent no. 2 started working under the guidance of the petitioner from the said premises. It is alleged that in the month of March, 2013, petitioner was unwell for two - three days and could not visit the said premises bearing No. B-30, Ram Nagar, Om Vihar, Uttam Nagar. When he visited the

premises after three – four days on 13/14 March, he found that his equipment was scattered here and there and the cartons in which the machinery and other equipment were packed were lying open. All components, office goods and articles had been taken away. The Compaq disc containing the software which was stored by the petitioner were also missing. All documents relating to purchases, dealings with banks, bill books and other business-related confidential documents were also missing.

7. It is alleged that petitioner informed the landlord of the said premises where the articles were stored, they both went to respondent no. 2 and informed him about the theft. Respondent no. 2 assured them that he would get the stolen articles recovered and compensate the petitioner for the loss suffered and requested him not to file a police complaint. As nothing was done, petitioner on 18.03.2013 filed the complaint with the police.

8. On the complaint, only a DD entry was made on 18.03.2013. Subsequently a further complaint was made by the petitioner to the DCP, Delhi Police consequent to which FIR No. 332/2013, Police Station Bindapur was registered.

9. A cancellation report was filed by the District Investigation Unit (DIU) stating that no evidence was found during interrogation. Petitioner filed a protest petition consequent to which by order dated 29.05.2014, Metropolitan Magistrate directed ACP, DIU to

investigate the matter and file a final report. Once again, a cancellation report was filed after further investigation.

10. By order dated 25.11.2014, on the statement of the petitioner, petitioner was permitted to treat the complaint as a complaint case under Section 200 Cr. P.C.

11. Petitioner thereafter led pre-summoning evidence. Consequent to the pre-summoning evidence, trial court by order dated 02.07.2015 summoned the respondent no. 2 to face trial for the offences under Sections 403/406 IPC. Respondent no. 2 filed a revision petition impugning order 02.07.2015 of the trial court summoning him.

12. By the impugned order dated 23.03.2016, the revisional court allowed the revision petition and held that from the pre-summoning evidence it was clear that articles of the petitioner were not taken by respondent no. 2 but respondent no. 2 had accommodated the petitioner to keep his articles in the rented hall. The place where the articles were kept was accessible to not only accused/respondent no. 2 but to petitioner as well and the workers were also residing there. The landlord of the rented hall was also having access to the said place.

13. The revisional court was of the view that since the petitioner could visit the rented hall and check his articles in the absence of respondent no. 2 there was no material to show that missing articles were moved or taken away from the rented hall by only the accused

and no other person. Further the revisional court was of the view that there is nothing to show that articles were entrusted to the respondent no. 2. Revisional court was of the view that basic ingredients of the offence under Sections 403/406 of the IPC were not satisfied.

14. Section 403 of the IPC reads as under:-

403. Dishonest misappropriation of property.—

Whoever dishonestly mis-appropriates or converts to his own use any movable property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

15. Any person who dishonestly mis-appropriates or converts to his own use any moveable property, is said to commit the offence of dishonest misappropriation of property and is liable to be punished under section 403 IPC.

16. Section 406 of the IPC is punishment for criminal breach of trust which is an offence under Section 405 of the IPC. Section 405 of the IPC reads as under: -

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”.

17. Under Section 405 IPC when a person being entrusted with a property or having 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, is said to commit “criminal breach of trust”.

18. Reasoning given by the revisional court for setting aside the summoning order is that the articles were not handed over by the petitioner to respondent no. 2 or taken by respondent no. 2 from the petitioner but he had accommodated him to keep the articles in the rented hall, the place where the articles were kept were accessible to not only respondent no. 2, complainant, workers of respondent no. 2 as well as the landlord. Accordingly, the revisional court was of the view that there was no entrustment of the articles.

19. In the pre-summoning evidence, the petitioner has deposed as under:-

“I was an engineer by profession and was working privately for last 40 years in the field of construction as electrical engineer. Since 2006-2007, I started working as developer of electronic display board for banking industry. Due to old age, I was able to carry on the business and I was introduced to Alok Kumar (Singh) by

one of my workers as involved in similar business of soldering of components. In the year 20'12, Alok Kumar came to my factory in Keshao Pur, Vikas Puri. After seeing my infrastructure, he was very much convinced and he agreed to do the job of labour work under my technical guidance. He offered me to shift my equipment to his work place i.e. B-18 and 8-30, Ram Nagar, Om Vihar which he has taken on rent and assured me that he will shift the complete instruments through his labours. I agreed to his proposition and allowed Alok Singh to shift the equipment and then all the equipment along with the books were shifted to the premises No. 8-18 in the month of September, 2012.

There was a dispute between landlord Vijay Singh with his brother in respect of premises No. 8-18 and immediately after one week of the shifting Vijay Singh received eviction order from Hon'ble High Court relating to premises 8-18. Therefore, Alok Singh shifted all my equipment along with his equipment and articles to the ground floor of premises No. 8- 30 where Alok Singh was working at second floor in his office. Some of the articles got broke during shifting therefore workers of Alok Singh repacked those articles in cartoons after counting each and every article. After that Alok Singh started working under my guidance. Alok Singh had evil plan to know everything from me and taking all the dealings from banks. He had planned to desert me after he gets all the knowledge and dealings from the banks.

In the month of March, 2013, I was not well for two three days, therefore, I could not visit the premises No. 8-30. After getting well on 13-14.03.2013, I visited the premises 8-30 and, found that my equipment was scattered here and there and the cartoons were open. All the components, office goods and lightings were taken away from those cartoons by him or his workers. There

was a computer table in which all the compact disks containing software were stored, they were all missing. The godrej desk which was containing bills and books of my work was broken open and all the documents relating to my purchase, dealing with banks, bill books and other business-related confidential documents were missing which I had kept as a record of my 40 years of labour. All these articles in the premises No. 8-30, ground floor which was locked and the keys of that lock used to be with Alok Singh only. The workers of Alok Singh also used to reside there in the same premises near the store where the articles were stored.

I immediately called Vijay Singh who had gone to his sons, and told him about the theft taken place in the store. Vijay Singh went to Alok Singh and informed about the theft. Later I also went to Alok Singh and told him about theft on which Alok Singh told me that he will get recover the stolen articles or compensate with money for those articles and requested me not to file a police case.

On 18.03.2013, I made a written complaint to the police when Alok Singh neither paid the money nor recovered the stolen articles after waiting two three days. I also met SHO, PS Bindapur personally. My complaint to police dated 18.03.2013 is Ex CW1/A, bearing my signature at point A, which was registered vide DO No. 43 A dated 18.03.2013. On my complaint, SHO, PS Bindapur deputed HC Puran Mal to investigate. After four five days HC Puran Mal visited premises No B-30 and checked the same and I showed him the broken locks of the table, computer table and the cartoons. I also showed him the articles to Alok which was lying and also shown him the place where workers of Alok used to stay. After that He Puran Mal told me that he will visit me again after three four days. In the meantime, he also met Alok Singh. After three four days when HC Puran Mal met me,

I told him whether FIR is registered and he replied that FIR cannot be registered unless money is paid. He asked me to pay Rs. 4.0 lacs and said that if I pay this amount, he will get my articles recovered on the same, date. I made various telephone calls and asked them to register the FIR and investigate. I also visited SHO, PS Bindapur. I told him that I have been asked to pay money on which SHO called HC Puran Mal and HC Puran Mal then told that no lock was broken and there was no theft. Earlier HC Puran Mal had told me to repair the table.”

20. The landlord of the premises was also examined in the pre-summoning evidence and he has, inter-alia, deposed as under:-

“In September, 2012 there were ten to twelve labourers working with Alok Singh. The hall in the ground floor of property bearing No. B-30, Ram Nagar was given on rent to Sh. Alok Singh when 8-18, Ram Nagar, was got vacated under the orders of the court. Some material was brought by the labours of Alok Singh from 8-18, Ram Nagar to 8-30 Ram Nagar at the ground floor and the same was kept in the hall. In half portion of the hall Alok Singh kept the material and in remaining half portion my household articles were lying. Sh. PK Seth came along with Sh. Alok Singh in my property 5-6 days prior to bringing the material by Sh. Alok Singh and this fact was told by my wife to me. Sh. Alok Singh separated some material in the hall saying that his materials belongs to Sh. P.K. Seth and he is also doing the electric work for Sh. PK Seth and he is like his father.

After about five six months P.K. Seth met me and told me that he had put his articles in the said hall, but those articles are missing. Thereafter, he proceeded to PS and I accompanied him to PS for making a report as he was not able to walk, therefore, I took him in my car. I had

also talked to Alok Singh and his labourers about the missing of articles of Sh. P.K. Seth. At that time Alok Singh had told me that he does not know about any article as he does not reside there and only labours reside there. Police had also taken my statements during investigation on various occasions. I have given letter dated 27.07.2013 to SHO, PS Bindapur, bearing my signatures at point A and same is already Ex. CW1/H. The said hall is having three gates opening in two separate streets. The keys of the door locks used to remain with Alok Singh or his labours.

On 30.07.2013, police interrogated me in question answer format vide Ex. CW4/A, bearing my signature at point A. I do not remember the date when the articles from that hall were removed. I cannot say if the articles were removed in the month of February, 2013.”

21. In his pre-summoning evidence, the petitioner has stated that respondent no. 2 was in similar business as that of the petitioner and he had agreed to do the job of labour work under his technical guidance. He has stated that respondent no. 2 offered to shift his equipment to his own work place which has taken on rent. All the equipment and books were shifted to the said premises. All articles which were shifted were packed in cartons after counting. He has stated that respondent no. 2 had evil plan to know everything from him about the business and all dealings with the banks.

22. He has alleged that all his office goods, equipment and components were taken away from those cartons by respondent no. 2 or his workers. Compaq disc containing software along with bills and

books of his business and all documents relating to purchase, dealing with banks, confidential finance documents and records of over 40 years have been removed. He has stated that the articles were kept in the premises on ground floor which was locked and the key of the lock used to be with respondent no. 2 and his workers also used to reside in the same premises near the store where the articles were kept. He has further stated that when he and the landlord went to respondent no. 2 to inform him about the theft, he had assured that he would get the stolen articles recovered. He has specifically stated that the premises were under the lock and the key was with respondent no. 2 and nobody else had access to the premises.

23. The landlord in his deposition has stated that the hall on the ground floor of premises bearing no. B-30 was given on rent to respondent no. 2. He has stated that the premises were inspected by the petitioner prior to bringing of the material by respondent no. 2. He has further stated that respondent no. 2 separated some material in the hall stating that this material belonged to petitioner and he was doing electrical work for the petitioner.

24. He has further deposed that when he went along with the petitioner to inform respondent No. 2 about the stolen articles, respondent No. 2 stated that he did not reside there and only his labour resided there. He has further deposed that the hall is having three gates opening in two separate streets and the keys of the door locks

used to remain with respondent no. 2 or his labourer.

25. The depositions of the petitioner and the landlord prima facie show that respondent no. 2, who was also in similar line of business, had approached the petitioner for working under his guidance. The nature of work was highly technical and the petitioner had over 40 years of experience in the said work. Respondent no. 2 is alleged to have approached the petitioner and convinced him for shifting all the articles and equipment to his property where he would work under the guidance of the petitioner. All the equipment of the petitioner was shifted to the location of respondent no. 2. The premises, where the articles were shifted, was in the control of respondent no. 2. Even the articles which were shifted to the premises of respondent no. 2 were under his control. Labourers of respondent no. 2 used to reside in the said premises. Further, only the articles of petitioner went missing and none of the articles/goods of respondent no. 2 were missing from the said premises.

26. The revisional court has clearly committed an error in holding that there was no entrustment. The deposition of the witnesses including that of the petitioner clearly shows that the articles were entrusted to respondent no. 2 and were lying in his control. The reasoning given by the revisional court that because other persons had access to the area where the articles were stored there was no entrustment is clearly erroneous.

27. If A entrusts his goods to B, then it is the responsibility of B to keep them secure. If B keeps the goods in an open place, which is accessible to others, even then it is his responsibility and he cannot escape his liability by merely stating that the articles were kept in a place which was accessible to other individuals including A.

28. In the present case, even the landlord had deposed that the keys of the godown used to be in the possession of respondent no. 2 and his labourers. *Prima facie* the ingredients of Section 403 of the IPC and Section 406 of the IPC are made out in the present case.

29. Reference may be had to the judgment of the Supreme Court in *Pratibha Rani Vs. Suraj Kumar & Anr.* 1985 (2) SCC 370 wherein the Supreme Court has held that for the purpose of entrustment exclusive possession is not mandatory, even joint possession of articles would also constitute entrustment.

30. Thus, I am of the view that the revisional court has clearly committed an error in setting aside the summoning order of the trial court, summoning respondent no. 2 to face trial for the offences punishable under Sections 403/406 IPC.

31. Accordingly, the petition is allowed. The impugned order dated 23.03.2016 is set aside. Consequently, order dated 02.07.2015 summoning respondent no. 2 is restored.

32. List the matter before the concerned trial court for issuing

appropriate directions in terms of this order on 15.07.2019.

33. It is clarified that above observations are only prima facie in nature and would have no bearing on the final outcome of the case consequent to evidence being led by the parties.

34. Petition is allowed in the above terms.

35. Order *Dasti* under signatures of the Court Master.

JULY 01, 2019
'rs'

SANJEEV SACHDEVA, J



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