



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

307

CRM-M No.16977 of 2014
Date of Decision: 12.12.2024

Baldev Singh and others ... Petitioners

Versus

Krishan Lal ... Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Naresh Prabhakar, Advocate,
for the petitioners.

Mr. K.S. Dadwal, Advocate,
for the respondent.

MANISHA BATRA, J. (Oral)

1. The instant petition has been filed under Section 482 of the Code of Criminal Procedure seeking quashing of criminal complaint bearing No.72/1 titled *Krishan Lal vl. Baldev Singh and others* pending in the Court of learned Judicial Magistrate 1st Class, Ludhiana, the order dated 01.04.2013 passed by learned Judicial Magistrate 1st Class, Ludhiana thereby summoning the petitioners No.1, 3 and 13 for commission of offences punishable under Sections 408 and 409 read with Section 120-B of IPC and summoning all the petitioners for commission of offences punishable under Sections 380 and 381 read with Section 120-B of IPC as well as the order dated 20.02.2014 passed by the Court of learned Additional Sessions Judge/Revisional Court, Ludhiana thereby

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upholding the order dated 01.04.2013.

2. Briefly stated, the aforementioned complaint had been filed by the respondent-complainant Krishan Lal (since dead) on the allegations that he along with the petitioners No.1, 2 and six other persons was permanent trustee of Shiv Mandir Charitable Trust, Ludhiana. In the year 2003, the petitioner No.1 was appointed as President of the Trust and petitioner No.2 was appointed as Cashier. The Trust was managing Shiv Temple. The donations received in the temple had been misappropriated by the petitioners No.1 and 2 in connivance with the petitioner No.13 who is appointed as Priest in the temple as well as the remaining petitioners. It was alleged that the Trust was fetching rental income from different tenants who were inducted as such in the shops forming part of building of the temple and the amount of money so received was deposited in the bank account opened in the name of the Trust. The petitioners No.1 and 2 who were authorized to operate this account, had misappropriated a sum of more than Rs.36 lakhs received by way of rent and had failed to give details of the transactions as conducted by them. In view of their conduct, the trustees had called a meeting on 21.03.2006 and it was the respondent-complainant who was unanimously elected as President of the Trust. He alleged that on 16.11.2008, the petitioners in connivance with each other committed theft of amount of Rs.33,544/- kept in the donation box of the temple by opening the same. As such, he prayed for taking action in the matter.

3. On presentation of the complaint in the Court, the learned trial Magistrate proceeded to record preliminary evidence. The respondent

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examined two witnesses namely, CW-2 Madan Lal Sharma and CW-3 Brij Malik besides himself appearing as CW-1. On giving consideration to the contentions as raised on behalf of respondent and on appraising the preliminary evidence, process was ordered to be issued against the petitioners No.1, 2 and 13 for commission of offences punishable under Sections 408 and 409 read with Section 120-B of IPC whereas all the petitioners were summoned for commission of offences punishable under Sections 380 and 381 read with Section 120-B of IPC. Feeling aggrieved, the petitioners filed a revision petition before the Court of learned Additional Sessions Judge, Ludhiana which was dismissed vide order dated 20.02.2014.

4. It is argued by learned counsel for the petitioners that the impugned orders as passed by the Courts below are not sustainable in the eyes of law. The learned trial Court while issuing process against them ignored the fact that neither the ingredients for commission of offences under Sections 408 and 409 of IPC nor of Section 380 and 381 of IPC were even prima facie made out against either of them. Rather the respondent himself was guilty of concealment of material facts. The learned Magistrate did not apply her judicious mind. A cryptic and non-speaking order had been passed. The learned revisional Court also did not appreciate the evidence produced on record in a proper perspective. Hence, it is urged that the petition deserves to be accepted and the impugned order is liable to be set aside whereas the complaint filed by the respondent is liable to be dismissed.

5. Per contra, learned counsel for the respondent has argued that there was no illegality or infirmity in the impugned orders and they deserve

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to be sustained. It was accordingly urged that the petition does not deserve to be allowed.

6. I have heard learned counsel for the parties at considerable length and have gone through the record.

7. Though in the impugned order dated 01.04.2013 as passed by the learned Judicial Magistrate, summons to face trial for commission of offences punishable under Sections 408 and 409 read with Section 120-B of IPC have been shown to be issued as against the respondent-accused No.1, 3 and 13 but on a perusal of the entire record as well as the impugned order, it clearly appears that infact, the learned trial Court had issued process under the aforementioned sections as against the petitioners-accused No.1, 2 and 13 and not against the petitioners No.1, 3 and 13 and it appears due to some typing mistake, the petitioner No.3 has also ordered to be summoned under the aforementioned sections. Therefore, this Court will treat the impugned order qua issuance of process under Sections 408 and 409 of IPC as against the petitioners No.1, 2 and 13 instead of petitioners No.1, 3 and 13. Admittedly, the petitioners No.1 and 2 were trustess of the Trust and were appointed as President as well as Cashier respectively of the Trust and the petitioner No.13 who is admittedly working as Priest in the temple of the Trust, have been summoned for commission of offences punishable under Sections 408 and 409 of IPC. Section 408 of IPC deals with offence of criminal breach of trust committed by a clerk or servant. The essential ingredients for proving this offence are:-

(i) the accused must be a clerk or servant;

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(ii) he must have been entrusted with property or with dominion over property, and

(iii) he must have committed criminal breach of trust in respect of such property.

8. Then coming to Section 409 of IPC which deals with offence of criminal breach of trust by public servant. The essential ingredients to be established in a charge against a public servant, of an offence under this section are:-

(i) that the accused was a public servant;

(ii) that he was entrusted, in such capacity, with property;

(iii) that he committed breach of trust as defined in Section 405.

9. The offence of criminal breach of trust has been defined under Section 405 of the Indian Penal Code. The basic requirement to bring home the accusations under Section 405 is the requirement to prove conjointly (i) entrustment and (ii) whether the accused was actuated by dishonest intention or not, misappropriated it or converted it to his own use to the detriment of the persons who entrusted it. In order that an offence under Section 405 is committed, two elements are essential, namely, entrustment with property or dominion over any property and dishonest misappropriation or conversion of such property. Then to prove the charge under Section 406 of IPC, it is required to be proved that the accused was entrusted with some property or with dominion over it and he misappropriated it, or converted it to his own use or used it or disposed of it.

10. On a bare reading of the provisions of Sections 408 and 409 of

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IPC, it is apparent that the provisions of Section 408 of IPC will not apply where the accused is not a Clerk or servant of the complainant and for the purpose of Section 409 of Indian Penal Code, the entrustment must be to a public servant. Since in the instant case, as per the allegations in the complaint itself, the petitioners No.1 and 2 were trustees of the Trust and not employees or servant thereof, therefore, in the opinion of this Court, the very basic and essential ingredient for commission of offence under Section 408 of IPC has not been established as against them. Then so far as Section 409 of IPC is concerned, admittedly and apparently, neither of the petitioners No.1, 2 and 13 is a public servant and as such, no case for commission of offence under Section 409 of IPC has been made out as against either of them. Undoubtedly, the petitioner No.13 had been appointed as Priest of the temple and, therefore, it can be assumed that he was an employee of the Trust. However, on going through the evidence produced on record, it clearly emerges that the same does not prove that this petitioner had been entrusted with any property belonging to the Trust or was having dominion over any such property and he misappropriated or converted the same to his own use. Bare oral statements of the witnesses examined by the complainant on this point are not at all sufficient in the absence of any documentary evidence on record. As such, this Court has no hesitation to hold that no case for issuing process against the petitioners No.1, 2 and 13 for commission of offences punishable under Sections 408 and 409 of IPC had been made out nor from the evidence produced on record, it is revealed that either of them hatched any conspiracy with each other to misappropriate the property

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belonging to the Trust/temple in any manner whatsoever and, therefore, the ingredients for commission of offence under Section 120-B of IPC have also not been established as against them.

11. So far as the allegation that all the petitioners in connivance with each other had committed theft of a sum of Rs.33,544/- by breaking open the donation box belonging to the Trust and kept in its temple are concerned, the offence of theft is defined under Section 378 of IPC and Section 379 of IPC prescribes the punishment therefor. A person commits “theft”, as defined in this section, if:

- (a) he removes movable property,
- (b) from out of possession of another,
- (c) without that person’s consent
- (d) in order to take it dishonestly.

12. Section 380 of IPC is aggravated form of offence of theft and the aggravation lies in the fact that the theft of property is committed in a building, tent or vessel. All that is necessary is that the property should be under the protection of the building. Section 378 of IPC is the genus and Section 380 of IPC is one specie of the offence of theft. With regard to the allegations of theft, the case of respondent-complainant rested upon statements of two witnesses namely, Brij Mohan Malik and Madan Lal Sharma and himself. All of them deposed that on 16.11.2008, the petitioners came to the premises of the temple, opened the donation box in the presence of witnesses Madan Lal Sharma and Brij Mohan Malik and took away a sum of Rs.33,544/-. The petitioners No.1 and 2 admittedly being trustees, could

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not be held guilty for committing offence of theft. Even otherwise, it has been revealed that the aforementioned amount had been deposited on 20.11.2008 in the bank account of the Trust as maintained by ICICI Bank as a copy of the statement of the said account has been placed on record. As such, the allegations that theft of the aforementioned amount had been committed have also not been established. The learned trial Court while passing the impugned order did not take these points into consideration and in the considered opinion of this Court, the order passed by the learned trial Magistrate is, therefore, not sustainable in the eyes of law as the evidence produced on record could not be stated to be even prima facie sufficient to prove the factum of commission of the offences for which the petitioners have been summoned.

13. In view of the discussion as made above, it is held that the findings as given by the learned Magistrate and affirmed by the Court of learned Additional Sessions Judge are not sustainable in the eyes of law and are liable to be set aside. It is ordered accordingly. As a consequence, the complaint is dismissed and the petition is allowed.

12.12.2024
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(MANISHA BATRA)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No