

PETITIONER:
VASUDEO KULKARNI

Vs.

RESPONDENT:
SURYAKANT BHATT & ANR.

DATE OF JUDGMENT 02/03/1977

BENCH:
GOSWAMI, P.K.
BENCH:
GOSWAMI, P.K.
SHINGAL, P.N.

CITATION:
1977 AIR 1331 1977 SCR (3) 109
1977 SCC (2) 304

ACT:

Practice and Procedure--Trial Court acquitted the accused--High Court--When could reverse trial court's findings.

HEADNOTE:

The appellant was a lawyer, under whom the complainant (first respondent) was a junior. The appellant was engaged as counsel in certain cases by the complainant's father. The appellant submitted statement of accounts to the complainant's father in respect of the sums spent by him in the suits. After a lapse of three years the complainant filed a complaint against the appellant making allegations under ss. 409, 468 and 474 I.P.C. The trial Court acquitted him holding that the prosecution had been launched after inordinate delay and that there was no clear and conclusive evidence of criminal intention and dishonest mental act on the appellant's part. The High Court, on appeal, set aside the acquittal holding that the appellant's explanation in regard to the discrepancies was not true and could not be accepted. Allowing the appeal to this Court,

HELD: There was no sufficient ground for the High Court to interfere with the acquittal in this case when the reasons given by the trial Court were weighty and cogent and there was no compelling justification to take a contrary view. [112 F]

The mere fact that certain amounts were in the hands of the appellant and the accounts submitted were incorrect would not lead to the conclusion that the appellant committed criminal breach of trust. [111 F]

In the instant case, the complainant was a junior of the appellant and he could himself easily find out the discrepancy in the accounts and could have drawn the appellant's attention to it. The complainant's father did not authorise him to file the complaint nor was he examined to corroborate the complainant. Secondly, in a notice issued to the appellant by the complainant's father the latter did not attribute any dishonest intention or criminal intent on former's part. The High Court was wrong in holding the charge as proved and in reversing the order of the trial Court. [111 G; 112 C]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 24 of 1972.

(Appeal by Special Leave from the Judgment and Order dated 22-10-1971 of the Madhya Pradesh High Court (Indore Bench) in CrI. A. No. 292/70).

R.L. Kohli, R.C. Kohli and A.G. Ratnaparkhi, for the appellant.

M.K. Khan and S.K. Dhingra, for respondent No. 1.

Ram Panjwani and H.S. Parihar, for respondent No. 2.

The Judgment of the Court was delivered by

GOSWAMI, J. This appeal by special leave is directed against the judgment of the High Court of Madhya Pradesh convicting the appellant under section 409, Indian Penal Code, and sentencing him to one

110

year's rigorous imprisonment and to a fine of Rs. 250/-, in default further rigorous imprisonment for three months, in appeal against acquittal at the instance of the complainant (first respondent herein).

The appellant is a senior lawyer of 25 years' standing in Indore and the complainant was acting as his junior. The complainant's father, Dinubhai, was the senior partner of a firm of Chartered Accountant, M/s. Dinubhai & Co., with its registered office in Bombay and a branch office in Indore. The Indore office was looked after by the second partner, M.C. Mehta. It appears that the firm was dissolved on July 5, 1960, when Mehta ceased to be a partner and Dinubhai appointed the appellant as counsel and attorney for filing suits and for recovering dues from various parties. Dinubhai filed a suit, being suit No. 13 of 1962, for recovery of Rs. 12,500/- in the court of the Third Additional District Judge, Indore, impleading M.C. Mehta and one Chandulal Shah as defendants in that suit. Although the suit was decreed, it appears there were two cross appeals against the decree in the High Court, one by Dinubhai and the other by Chandulal Shah. The appellant was appearing for Dinubhai in both the appeals. He received some amounts in advance from Dinubhai and submitted a statement of account of Shri Dinubhai (Ex. P-1) dated February 9, 1965, wherein two items, namely, Rs. 210/- and Rs. 110/- were mentioned as being towards "paper book charges" respectively on 21-4-1964 and 22-9-1964. The entry on 22-9-1964 shows that the amount of Rs. 110/- is one of several items mentioned therein as expenses incurred in the appeal filed by Chandulal Shah against Dinubhai. So far as the items mentioned in Ex. P-1 on 21-4-1964 including the last item of Rs. 210/-, there is no mention whether the expenditure was actually incurred on that date.

The complainant was not pulling on well with his father for some reason or other and also parted company with his senior, the appellant. He filed a complaint against the appellant on December 8, 1967, making allegations under sections 409, 468 and 474 IPC. Ultimately the appellant was charged under section 409 IPC with regard to the amounts of Rs. 210/- and Rs. 110/- which were mentioned in the statement of account (Ex. P-1) received by the complainant on February 10, 1965. The complainant examined himself and a clerk of the High Court to prove that no paper book charges were deposited on the dates mentioned in the accounts. On the other hand a sum of Rs. 26.50 was deposited as paper book charges on March 18, 1965, in the particular appeal.

The appellant denied the charge and stated that there

was a typing error in the accounts and the actual figures should have been Rs. 211/(and not Rs. 210/-) and Rs. 10/-(and not Rs. 110/-). When the appellant's attention had been drawn to these amounts he admitted these to be typing errors and asked for adjustment of the amount of Rs. 300/- towards his fees in the case of Kothari Book Depot.

It is rather curious that a criminal complaint should have been lodged against the appellant nearly three years after the receipt of the accounts by the complainant.

111

The trial court acquitted the accused (appellant herein) by observing as follows :--

"To sum up, the prosecution has been launched after inordinate unexplained delay, there is no clear and conclusive evidence of the criminal intention and dishonest mental act of the accused, the real aggrieved person has not come with the complainant but has already sought the alternative remedy in Civil Court which is being already pursued. The question whether or not the adjustment made by the accused towards his fees was proper can more appropriately be decided by Civil Court. Accused having reasonable claim against the complainant for any equivalent sum of money, his user of the disputed sum for his own purpose will not amount to criminal breach of trust".

The High Court, on the other hand, held that the charge was established against the accused and set aside the acquittal. The High Court held that the explanation of the accused did not appear to be true and, therefore, could not be accepted. It further held that it was clear that on the dates mentioned in the accounts no amounts were deposited as paper book charges in the High Court. The High Court concluded as follows :--

"Consequently it cannot be doubted that the respondent, who as an agent of the complainant's father was entrusted with the amounts, showed false expenses and thereby kept the amounts with himself. In the face of these facts and also on the finding that the explanation given by the respondent cannot be accepted, the respondent cannot escape conviction under section 409 I.P.C. as that was the only charge framed against him by the trying Magistrate".

The statement of account (Ex. P.I) as well as the correspondence between the appellant and the complainant's father, who was client, clearly show that there was mutual accounting and adjustment between them. The mere fact that certain amounts were in the hands of the appellant and the accounts submitted were incorrect would not lead to the inevitable conclusion that the appellant committed criminal breach of trust in respect of these items. The complainant, who was a junior attached to him and was looking after his cases could himself easily find out the discrepancies in the accounts and in a normal course he would have drawn the attention of his senior on receipt of the statement of account in February 1965. The accused in his statement under section 342, Criminal Procedure Code, stated, inter alia, as follows :--

"Typing error has occurred in the statement of account of Ex. P-1. The difference of Rs. 300.00 which has occurred, has

been adjusted against my fees in Kothari Book Depot's case at the instance of Suryakant. I have given a receipt for it which is in possession of Suryakant. Surya kant used to maintain account of Court expenses of Dinubhai's cases in a register. That register is with Suryakant.

112

Suryakant used to remain present in the court on each date along with me. He knows everything. Nothing is concealed from him. There is Gadbad of money between Suryakant and his father. Hence on the instigation of other people this false case has been launched. Suryakant had got typed the statement of account Ex. P-I from the register".

On one side we have the solitary statement of the complainant. Even his father is not there to corroborate him or even to show that he authorised him to file the complaint. As against his statement, we have the explanation of the appellant. The trial court who had an opportunity to see the complainant giving evidence did not choose to rely on his version of the case and preferred to accept the explanation of the appellant. In this state of the evidence we fail to see how the High Court, in an appeal against acquittal, thought it possible to hold the charge as proved. While the complaint was filed on December 8, 1967, a few months earlier on May 16, 1967, a lawyer's notice was addressed to the appellant on behalf of Dinubhai. We may extract the following passage from that letter:

"My client has instructed me to call upon you to remit to him the balance of Rs. 1700/- lying with you (after deducting your fees of Rs. 3300/- from the amount of Rs. 5,000/- paid to you) within 24 hours of the receipt of this reply otherwise my client will not only place the matter before the Bar Council of M.P. but, if so advised, will also file a suit for its recovery against you at your cost and consequences which please note".

This would clearly show that neither Dinubhai nor his lawyer ever thought of attributing any dishonest intention or criminal intent to the appellant. In view of this letter it is not possible to accept the sole testimony of the complainant imputing dishonest intention on the part of the appellant. We are clearly of opinion that there was no sufficient ground for the High Court to interfere with the acquittal in this case when the reasons given by the trial court were weighty and cogent and there was no compelling justification to take a contrary view.

At the conclusion of the argument by Mr. Khan on behalf of the complainant pressing for conviction of the appellant, Mr. Panjwani, appearing on behalf of the State, fairly enough, did not think it proper to support the judgment of the High Court.

In the result the appeal is allowed. The judgment of the High Court is set aside. The appellant shall be discharged from his bail bond.

P.B.R.

Appeal

allowed.

113