

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Revision No. 1031 of 2012

Ravi Shankar Kumar, son of Sri Sangeet Prasad Singh
Resident of Village- Oraina, P.S.- Muffasil,
District- Nawada (Bihar), At present residing
at Retired Colony, Chakradharpur,
District- West Singhbhum (Jharkhand) Petitioner
-Versus-
The State of Jharkhand Opp. Party

CORAM: HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

Through: Video Conferencing

09/16.11.2021

1. Heard Mr. Yogesh Modi, the learned amicus curiae appearing on behalf of the petitioner.
2. Heard Mr. Arup Kumar Dey, the learned A.P.P. appearing on behalf of the Opposite Party-State.
3. The present criminal revision has been instituted on the basis of an application preferred by the petitioner directly from jail. There was delay of 19 days in preferring the criminal revision which was condoned vide order dated 04.01.2013.
4. In the present criminal revision, the legality and validity of the judgment dated 31.01.2012 passed by the learned 1st Additional Sessions Judge, West Singhbhum at Chaibasa in Criminal Appeal No. 44/2011 is under challenge. The learned appellate court has confirmed the judgment of conviction and the order of sentence dated 07.04.2011 passed by the learned Chief Judicial Magistrate, West Singhbhum at Chaibasa in G.R. Case No. 549/2009 arising out of Sadar P.S. Case No. 76/2009 and has dismissed the criminal appeal.
5. The learned trial court had convicted the petitioner under Sections 406 and 427 of the Indian Penal Code and had sentenced him to undergo Rigorous Imprisonment for two years under Section 406 of the Indian Penal Code and Rigorous

Imprisonment for one year under Section 427 of the Indian Penal Code. Both the sentences were directed to run concurrently and the period of custody was directed to be set off.

Arguments on behalf of the petitioner

6. Learned amicus curiae appearing on behalf of the petitioner submitted that the entire dispute in the present case arises out of civil dispute between the parties, inasmuch as, the case of the prosecution was that the petitioner being the Secretary of the NGO was entrusted with certain clothes for stitching skirts and shirts for school children. But upon measurement, those skirts and shirts were not found fit as per the tender or specification given from the side of the prosecution. He submitted that the learned courts below have not recorded any finding regarding dishonest intention on the part of the petitioner, rather the entire finding is in connection with entrustment and not discharging the work entrusted to the petitioner as per the specification. The learned amicus curiae submitted that in such circumstances, the basic ingredients for offence under Section 405 of the Indian Penal Code which defines "criminal breach of trust" are missing and the entire dispute is in the realm of civil dispute.

7. The learned amicus curiae further submitted that there were two categories; one was for the students from Class-V to VII and the other was for the students from Class-VIII to X and while taking the measurement, the petitioner was never informed and as per the records, only one sample of skirt and shirt for each class was given under each of the category i.e. altogether four samples were given for measurement. He submitted that a number of skirts and shirts were stitched and measurement of one skirt and one shirt with regard to each category could not have led to the conclusion that the entire

stock was not matching with the specifications of the tender. He further submitted that as per the evidence of P.W.-1, two persons namely, Shekhar Pradhan and Badrinath Munda were entrusted for the purpose of measurement of finished dresses. But so far as the evidence of P.W.-6 Meghnath Gope is concerned, who is said to have measured the clothes, no such work of measurement was assigned. He submitted that the evidence of P.W.-6 is of no consequence as he was never directed to measure the stitched skirts and shirts. The learned amicus submitted that the aforesaid aspects of the matter have not been properly considered by the learned courts below and accordingly, the impugned judgments are perverse and cannot be sustained in the eyes of law.

8. The learned amicus curiae also submitted that there is no evidence on record to indicate as to what was the total length of cloth handed over to the petitioner and it is not the case of the prosecution that any portion of the length of cloth entrusted to the petitioner has been misappropriated by him. He also submitted that it is a simple case of entrustment of clothes for stitching and the final stitched items were not found satisfactory in terms of the parameters prescribed as per the contract between the parties and as such, no criminality is involved in the present case. He also submitted that the entire prosecution case is based on the measurement taken at the back of the petitioner.

Arguments on behalf of the Opposite Party-State

9. The learned A.P.P. appearing on behalf of Opposite Party-State, on the other hand, opposed the prayer and submitted that the impugned judgments are well-reasoned judgments based on the evidences on record and they are neither perverse, nor illegal and no material irregularity has been indicated by the learned amicus curiae appearing on

behalf of the petitioner calling for any interference in revisional jurisdiction.

Findings of this Court

10. The prosecution case is based on the typed report of Sanjay Kumar Thakur, District Welfare Officer, West Singhbhum at Chaibasa stating therein that an advertisement was published on 20.11.2008 in daily newspaper 'Dainik Jagran' inviting tender for stitching of half shirt, full shirt, half pant, full pant and skirt for the students of Class- I to X residing in the residential school/hostel run under the welfare department for the Financial Year 2008-2009. In view of the tender, the proposal of the NGO 'Siddhant' was accepted in terms of the conditions contained in the Office Letter No.1135/K dated 17.09.2009. The clothes worth of Rs.1,84,944/- was made available to the NGO for stitching which was received by its Secretary, namely, Ravi Shankar (petitioner) and the NGO was directed to deliver the dresses to the B.D.O., Manoharpur and to obtain receipt from there and to submit the receipt in the office of the District Welfare Officer for needful. It was further stated that the dresses were stitched and 1150 pieces of shirts and skirts each were delivered to the B.D.O., Manoharpur by Binod, the Office-in-charge of the NGO and bill of Rs.46,000/- towards charge of stitching was produced before the District Welfare Officer, West Singhbhum at Chaibasa. Thereafter, the B.D.O., Manoharpur was directed to submit a report regarding the quality of the supplied materials. Subsequently, the B.D.O., Manoharpur submitted its report that the stitched items were found below the required measurement and that the NGO saved the clothes during stitching and also damaged the clothes.

11. On the basis of the typed report, the case was registered as Sadar P.S. Case No. 76/2009 under Sections 406, 409, 427, 120(B) and 420 of the Indian Penal Code against the petitioner

and one Binod Kumar. After completion of investigation, charge-sheet was submitted against the petitioner and continued the investigation against Binod Kumar. On 19.03.2010, cognizance of the offence under Sections 406, 409, 427, 420 and 120(B) of the Indian Penal Code was taken and thereafter, charges were framed under the same sections to which the petitioner pleaded not guilty and claimed to be tried.

12. In course of trial, the prosecution examined altogether 11 witnesses to prove its case. P.W.-1 is Sanjay Kumar Thakur, District Welfare Officer who is the Informant of the case, P.W.-2 is Dilip Kumar Mukhiya, Assistant posted at District Welfare Office, Chaibasa, P.W.-3 is Dinesh Jha, Head Clerk posted at District Welfare Office, Chaibasa, P.W.-4 is Baidyanath Oraon, Block Development Officer, Manoharpur, P.W.-5 is Uma Shankar Prasad, In-charge, Block Welfare Office at Manoharpur Block, P.W.-6 is Meghnath Gope who claimed himself as a tailor, P.W.7 is Shekhar Pradhan who claimed himself as a tailor running his shop named 'Puja Ladies Tailor, P.W.-8 is Sikandar Prasad Yadav, A.S.I. who brought the Material Exhibits (finished clothes) before the trial court, P.W.-9 is Badri Nath Singh Munda, Choukidar, Welfare Office at Manoharpur Block, P.W.-10 is Shyam Sundar Mandal, A.S.I. who is the Investigating Officer of the case and P.W.-11 is Dhaneshwar Pahan who is an employee of District Welfare Office.

13. After closure of prosecution evidence, the statements of the petitioner were recorded under Section 313 of Cr.P.C. wherein he denied the incriminating evidences put to him and further denied to have caused any loss or damage to the Government and also denied any act of conspiracy in the matter. He stated in his defence that he had obtained information from different departments under the Right to Information Act, 2005, on the basis of which, he has filed

complaints before the Hon'ble Lokayukt, Jharkhand. On 30.11.2009, the D.C., Chaibasa had admitted the allegations and had informed him that his predecessor had adopted irregularities in connection with the development funds. Out of 10 complaints, 9 are still pending. He further stated that he had filed two writ petitions and P.I.L. before the Hon'ble Jharkhand High Court. Due to these reasons, the local district administration became biased and instituted the present false case against him. The petitioner did not adduce any evidence in his defence.

14. The learned trial court considered the materials on record and recorded its findings that the petitioner received bundle of clothes entered in the Stock Register maintained at the office of the District Welfare Officer, Chaibasa and he and his N.G.O. was entrusted to complete the work for supplying the finished school dresses for which a valid tender was advertised in 'Dainik Jagran' daily. The trial court recorded that the material exhibits brought on record by P.W.-8 and evidences of two tailors-P.W.-6 and P.W.-7 clearly proved the fact that the school dresses supplied by the petitioner and his N.G.O. were short in size what was required in terms of the advertisement / tender. Therefore, a case of criminal breach of trust was established beyond all reasonable doubts. The learned trial court further recorded that a considerable loss and damages to the property of the Government has been caused by the conduct of the petitioner and his N.G.O. The learned trial court convicted the petitioner under Sections 406 and 427 of the Indian Penal Code and sentenced him as mentioned above. However, the learned trial court acquitted the petitioner from the charges under Sections 409, 120(B) and 420 of the Indian Penal Code.

15. The learned appellate court also considered the materials on record and recorded its findings at Para-6 which read as under:

"6. The base of the case is the measurement of clothes made by two tailors. The evidence of those of the tailors have been recorded as P.W.-6 and P.W.-7. They have categorically stated that the sample of two pieces of stitched shirt and skirt were brought before them which were not found, as per their measurement (P.W.-6 at Para-2, 3 and 4 and P.W.-7 at Para-2 and 3). There are two parts of the case. The first part is of entrustment and the second part is of measurement of the finished stitched dresses which were handed over on behalf of the appellant. The deposition of P.W.-1, P.W.-2 and P.W.-3 corroborates on the point of entrustment, [PW-1 at Para-5 and 6, PW-2 (at para-3, 4 and 5) and PW-3 (at para-2 and 3)]. Moreover, this fact of entrustment is not challenged by the appellant. Furthermore, Ext-1 to Ext-17 also reveals that there was entrustment of clothes in favour of organization of appellant. Ext-5 is series of receiving of clothes, while Ext-1 and Ext-1/1 is paper relating to tender and Ext-2 to Ext-4 are the letters issued from accused and his NGO.

7. Thus, there is sufficient material for entrustment, as per stock register maintained in the office of District Welfare Office and further the stitched dresses supplied on behalf of the NGO were not found up to standard measurement. It was not useful for students. Hence, I do not find any infirmity or irregularity in the judgment passed by the ld. court below."

16. After hearing the learned counsel for the parties and going through the records of the case, this Court finds that P.W.-1, Informant, deposed that the tender was floated for supply of school dresses which was exhibited as Exhibit-1 and 1/1. The tender was published on the direction of the then District Welfare Officer as contained in Exhibit-2 which bears the signature of the then D.D.C. marked as Exhibit-2/1. The N.G.O. 'Siddhant' expressed its interest for completion of the work. A letter containing measurements of half pant and skirt

was issued to the supplier N.G.O. and the bundle of clothes was supplied to the supplier for making dresses and the petitioner received the bundle of clothes and made the required endorsement in the Stock Register which has been marked as Exhibit-5. The Stock Register contains 96 pages which has been endorsed by the petitioner and his endorsement has been marked as Exhibit-5/2. The N.G.O. supplied 1150 pieces of skirt and 1150 pieces of half shirt at Manohar Block and the receiving of the finished dresses has been marked as Exhibit-6. The petitioner submitted the bills for encashment which have been marked as Exhibit-7 and 7/1. Thereafter, the informant wrote an official letter to the B.D.O., Manoharpur which has been marked as Exhibit-8. The B.D.O., Manoharpur entrusted the inquiry to the Block Welfare Officer. The Block Welfare Officer constituted a team of tailors for measurement of the finished dresses. The proprietor of Puja Ladies Tailor namely, Shekhar Pradhan and Badrinath Munda were given the task of measurement of the finished dresses who found that the finished dresses were not in accordance with the measurements entrusted to the N.G.O. vide tender and subsequent letters. The B.D.O., Manoharpur submitted his report concluding that the finished dresses were not in accordance with the measurements prescribed in the tender. The report has been exhibited as Exhibit-10. He also exhibited his written report as Exhibit-11. In cross-examination, he admitted that the petitioner had earlier submitted applications seeking information under the Right to Information Act, 2005 and could not remember as to how much clothes had been handed over to the N.G.O. for supplying the finished school dresses and how many other N.G.O. had been put under the scrutiny. He could not remember the terms and conditions regarding measurement published in the advertisement and could not say about the particulars and

name of the company of clothes supplied to the N.G.O. for preparing school dresses. He further admitted that no show-cause notice was ever issued to the defaulting N.G.O. at any point of time.

17. This Court finds that the Informant has fully supported the prosecution case. P.W.-2 and P.W.-3 are formal witnesses and have deposed on the same and similar pattern and have corroborated the evidence of the Informant. P.W.-4 is the B.D.O., Manoharpur who had deputed the Block Welfare Officer for verification of the finished school dresses and he has proved the reports submitted by the Block Welfare Officer. P.W.-5 is the In-charge, Block Welfare Office who had constituted a team of two tailors who measured the finished school dresses and found that the school dresses were lacking the standard measurement prescribed by the department. He had submitted its report to the B.D.O., Manoharpur.

18. P.W.-6 and P.W.-7 are the tailors who were deputed for measurement of the finished school dresses. Both have stated that sample of two pieces of shirt and skirt each were brought before them and they had given specifications of the measurement of the two samples and had put their signatures on a piece of paper after measurement. Both admitted that the entire lot of 1150 pieces of shirts and entire lot of 1150 pieces of skirts were not brought before them for the measurement.

19. P.W.-8 produced 8 pieces of half shirts and 8 pieces of skirts before the learned trial court. He exhibited the half shirts as Material Exhibits- M-I to M-I/7 and the skirts as Material Exhibits- M-II to M-II/7. P.W.-9 is Chowkidar in the office of the Block Welfare Officer, Manoharpur who had received 1150 pieces of shirts and 1150 pieces of skirts and P.W.-11 is an employee from the office of the District Welfare Officer, Manoharpur and is a formal witness. He identified the

signatures of the officials on the Stock register. P.W.-10 is the Investigating Officer of the case and he deposed that he had recorded the statements of the witnesses during investigation of the case and claimed that he had verified the Material Exhibits and the Stock Register, etc. during investigation. During cross-examination, the defence has not been able to impeach the veracity of this witness regarding fairness of the investigation conducted by him.

20. It is not in dispute that the bundle of clothes was entrusted to the petitioner, who was the Secretary of the NGO 'Siddhant', for making school dresses for the students in terms of the tender and the N.G.O. delivered the finished school dresses to the B.D.O., Manoharpur and received the cost of stitching the clothes. This Court finds that two tailors i.e., P.W.-6 and P.W.-7 have proved the facts that the finished school dresses supplied by the petitioner and his N.G.O. were not found to be of standard measurement in terms of the tender thereby causing loss and damage to the property of the Government. This Court is of the view that all the essential ingredients of the offences under Sections 406 and 427 of the Indian Penal Code are satisfied against the petitioner.

21. It has been argued by the learned amicus appearing for the petitioner that the present case arises out of civil dispute and there is no criminality involved in this case. The basic ingredients of criminal breach of trust under section 405 IPC and consequent conviction under section 406 IPC i.e. entrustment of property to the petitioner and its dishonest misappropriation / disposal in violation of the legal contract touching the discharge of such entrustment has been duly satisfied in the present case. Further, the basic ingredients for constituting mischief under section 425 IPC and an offence under section 427 IPC are also satisfied.

The said argument that the case is merely a civil dispute, is devoid of any merit as the basic ingredients for the offence under Section 406 IPC as well as Section 427 IPC are satisfied in the present case. Merely because the case arises out of a commercial transaction between the parties, the same has no bearing in the matter so long as the basic ingredients of the offence are satisfied in the case. There can be both, civil as well as criminal liabilities arising out of the same transaction between the parties.

22. This Court further finds that the learned courts below have duly considered the evidences and materials on record and have recorded concurrent findings. This Court finds no illegality or material irregularity or perversity in the impugned judgments calling for interference under revisional jurisdiction.

23. Accordingly, the judgment of conviction and the order of sentence passed by the learned trial court and confirmed by the learned appellate court is upheld and the present criminal revision is hereby **dismissed**.

24. Pending interlocutory application, if any, is dismissed as not pressed.

25. It appears from the lower court records that the petitioner has remained in custody in connection with the present case for a considerable period and accordingly, the learned court below is directed to verify the period of custody of the petitioner in connection with the present case and to take further steps in the matter in accordance with law.

Appreciation for Amicus Curiae and Payment:

26. Before parting, this Court observes that vide order dated 18.08.2021, Mr. Yogesh Modi, Advocate was appointed as Amicus Curiae on behalf of the petitioner. This Court records its appreciation for the valuable assistance accorded by the learned Amicus Curiae in final disposal of the case. The

Secretary, Jharkhand High Court Legal Services Committee is directed to ensure payment of the legal remuneration to him upon submission of bills as per the usual norms.

27. The office is directed to provide a copy of this judgment to Mr. Yogesh Modi, the learned Amicus Curiae and also to the Secretary, Jharkhand High Court Legal Services Committee.

28. Let the lower court records be sent back immediately to the court concerned.

29. Let a copy of this judgment be communicated to the court concerned through 'e-mail/FAX'.

(Anubha Rawat Choudhary, J.)

Mukul