

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

Criminal Appeal No. 218/1999

State of Rajasthan

Appellant

VERSUS

Kailash & Ors.

Respondents

(With office report)

Date: 22.3.2006 :This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.B.SINHA

HON'BLE MR. JUSTICE P.P. NAOLEKAR

For Petitioner(s)

Mr. Kumar Kartikay, Adv.

Mr. Aruneshwar Gupta, Adv.

For Respondent (s)

Mr.Surya Kant, Adv.

Mr. Eklovya Rai Nagpal, Adv.

Mr. Narottam Vyas, Adv.

Mr. B.D.Sharma, Adv.

Mrs. K. Sarada Devi, Adv.

UPON hearing the learned counsel the Court made the following

O R D E R

The appeal is dismissed in terms of the signed order with costs.

(Pushap Lata Bhardwaj)

(Meenu Sethi)

Court Master

Court Master

Signed order is placed on the file

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.218/1999

State of Rajasthan

... Appellant

VERSUS

Kailash & Ors.

... Respondent
s

O R D E R

The respondents herein were charged for
commission of an offence under Section 411 I.P.C. in
the following situation:

One Smt. Asha Chaudhry, Principal of
Government Multipurpose Secondary School,
Sardarpura, Jodhpur was informed that the question
papers of 10th and 12th Class examination of Rajasthan

Secondary Education Board, which had been kept in a locked room by her, had been stolen. A First Information Report was lodged by her on 1.4.1992 at 7.45 a.m. on the basis whereof a case was registered under Section 457 and 380 I.P.C. Four

persons namely Mishrilal, Kishore, Laxmansingh, Dhirajkumar were arrested. They, while in custody, made a disclosure

statement and the original question papers were recovered from them. Fifteen other persons, who are respondents before us, were also arrested and on the basis of the confession purported to have been made by them photocopies of the said question papers were recovered from their possession. Charge sheets were submitted against all 19 accused for the offences under Sections 457,380, 414 and 411 I.P.C.

The accused filed an application for their discharge before the learned trial Judge. Learned trial Judge vide order dated 28.2.1997, while refusing to discharge those four persons, from whose possession original question papers were recovered, however opined that the rest of them who were found to be in

possession of the photocopies of the question papers cannot be said to have committed an offence having regard to the definition of stolen property as contained in Section 410 I.P.C. thereof. On the basis of the said findings fifteen accused persons were discharged.

The State, aggrieved by and dis-satisfied therewith, filed a Revision Petition before the High Court which by reason

of the impugned judgment has been dismissed summarily stating:

"Heard Public Prosecutor Shri Bhati. The Revision Petition is filed against the order of discharge. Learned trial Judge has given cogent reasons for discharging the accused. All the respondents accused are students.

Considering the reasons assigned by the trial Judge, I do not find any reason for interfere with the same.

Accordingly, this Revision Petition fails and is hereby dismissed."

The State is, thus, before us.

The learned counsel appearing on behalf of the State at the very outset would concede that having regard to the definition of stolen property, as contained

in Section 410 I.P.C., no case has been made out for prosecution of the concerned respondents under Section 411 I.P.C.. However, it was submitted that they could have been proceeded against for abetting the commission of an offence inasmuch as they have facilitated theft of the said question papers.

Learned counsel for the State would further submit that in view of the provisions contained in Section 39 of the Criminal Procedure Code, the accused person had also a duty to give prior information about the commission of the said offence.

The deficiency in the law in this behalf is apparent. When the Indian Penal Code was enacted in the year 1860 probably the makers thereof did not think of dealing with a situation like the present one. Penal offence cannot be created by an interpretative process. Creation of a potential offence is beyond the domain of the judiciary.

Most of the concerned respondents herein were students. They might have procured the photocopies of the question papers for passing the examinations they were going to take. The said act on their part may offend

our moral values. Such an action may also be contrary to the societal norms but having regard to the definition of stolen property as contained in Section 410 I.P.C., we are of the opinion that learned trial Judge was right in arriving at the decision that no case has been made out for framing charge against the respondents under Section 411 I.P.C., as the prosecution has not shown that there had been intention on the part of the said accused persons to receive a tangible moveable property, which was stolen.

It is not the case that the said respondents were party to any conspiracy. It is further not the case of the prosecution that the respondents had aided or abetted the

commission of an offence. Facilitation of theft, as was submitted by the learned counsel for the appellant, would mean that there had been prior concert in the commission of the offence on the part of the respondents herein. No case for abetment for commission of theft or for that matter receipt of stolen property has thus been made out.

Respondents were also not charged for failure on

their part to inform the authorities as regard
commission of an offence as adumbrated under Section
39 of the Criminal Procedure Code. We, therefore, cannot
accept the submissions of the learned counsel for the
State.

For the reasons aforementioned, we are of the
opinion that no case has been made out for interfering
with the impugned judgment of the trial Court as also of
the High Court. The appeal is dismissed accordingly
with costs.

.....J.

(S.B.SINHA)

.....J.

(P.P.NAOLEKAR)

New Delhi,

March 22, 2006.