

SUPREME COURT OF INDIA

Ram Narain

Vs.

State of Punjab

Crl.A.No.79 of 1953

(S. R. Das, N. H. Bhagwati, T. L. Venkatarama Ayyar, JJ.)

11.02.1955

JUDGEMENT

BHAGWATI, J.: -

1. The Appellant in this appeal by a special leave was a Head Constable of Police who was posted as an accountant in the National volunteer corps office in Ferozpur District. On 7-2-1950 he withdrew from the Treasury a sum of Rs. 11,579-8-0 on the strength of a contingent voucher being a subsistence allowance bill for the month of February, 1950, purporting to be signed by Rao Sahib Chowdhury Bhim Singh, Senior Superintendent of Police, Ferozpur. These signatures of Rao Sahib Chowdhury Bhim Singh were alleged to be forged and the Appellant was charged that he on or about 7-2-1950 fraudulently and dishonestly used as genuine a forged document, viz., subsistence allowance bill for the month of February, 1950 which he knew or had reasons to believe at the time he used it to be a forged document and thereby committed an offence punishable under S. 467 read with 471, Penal Code.

2. The Additional District Magistrate, Ferozpur, who tried the case negated the contention of the Appellant that sanction of the State Government was necessary for his prosecution under S. 5(2), East Punjab National Volunteer Corps Act, 1947. The Magistrate found on the evidence that the signatures of Rao Sahib Chowdhury Bhim Singh appearing on the bill were forged and that the Appellant was guilty of the offence with which he was charged. He therefore convicted the appellant of the offence and sentenced him to 4 1/2 years' rigorous imprisonment. An appeal was filed by the Appellant to the Punjab High Court against his conviction and sentence. Mr. Justice Soni who heard the appeal also negated the contention in regard to the sanction and confirmed this conviction. In regard to the sentence however the learned Judge considered the sentence of 4 1/2 years' rigorous imprisonment imposed upon the appellant as inadequate and thought that a sentence of fine should also have been imposed upon the Appellant. He therefore gave a verbal notice to the counsel for the Appellant to show cause why a sentence of fine should not also have been imposed upon the Appellant and after hearing the counsel for the Appellant the next day imposed upon him in addition a fine of Rs. 11,579-8-0 or in default of payment of fine further rigorous imprisonment of a year and a half. This appeal by special leave is directed against that judgment and order of the Punjab High Court.

3. The contention in regard to the sanction of the State Government under S. 5(2), East Punjab National Volunteer Corps Act, 1947 was again raised before us by the learned counsel for the Appellant. On a perusal of the rules framed by the State Government under S. 8 of the Act however

the learned counsel did not press this contention and nothing more need be said in regard to the same. We are of the opinion that the finding in that behalf arrived at by the learned Additional District Magistrate who tried the case was correct and the Appellant was lawfully prosecuted for the offence with which he had been charged.

4. The charge against the Appellant involved the proof by the prosecution that the signatures of Rao Sahib Chowdhury Bhim Singh on the bill dated 7-2-1950 were forged and that the appellant fraudulently and dishonestly used as genuine the bill bearing these forged signatures of Rao Sahib Chowdhury Bhim Singh for obtaining from the Treasury the sum of Rs. 11,579-8-0. The prosecution established the first point, viz., that the signatures of Rao Sahib Chowdhury Bhim Singh on the bill were forged. Considerable evidence was led by the prosecution including that of Rao Sahib Chowdhury Bhim Singh himself to show that the signatures appearing on the bill dated 7-2-1950 were forged.

The Appellant in his defence examined several witnesses connected with the Imperial Bank of India, Ferozepore where the payment had been made to him on the strength of the said bill. He also examined Mr. Charles E. Hardless, a handwriting expert who deposed that the signatures of Rao Sahib Chowdhury Bhim Singh appearing on the bill had been retouched. He however opined that the retouching was made not with a view to improve the signatures but with a view to subsequently distort the same so as to make them differ in appearance from the signatures usually written by Rao Sahib Chowdhury, Bhim Singh. Both the Courts below negated the defence version and came to the conclusion that the signatures of Rao Sahib Chowdhury Bhim Singh on the bill dated 7-2-1950 were forged. These are concurrent findings of fact and following the well-established practice of this Court we are not prepared to interfere with the same. It can therefore be taken as satisfactorily proved that the signatures of Rao Sahib Chowdhury Bhim Singh on the bill were forged.

5. The only other contention which the learned counsel for the Appellant urged before us was that there was, no fraudulent and dishonest intention on the part of the Appellant in using this forged bill as genuine. He urged that no questions were put to the appellant by the learned Judge when he examined him further in the High Court which gave him an opportunity of explaining the circumstances which were sought to be used against him. It was apparent on the record that the appellant withdrew Rs. 11,579-8-0 on 7-2-1950, Rs. 1,689-2-0 on 8-2-1950 and Rs. 17,889-12-0 on 18-2-1950, thus making up an aggregate sum of Rs. 31,158-6-0 withdrawn by him as subsistence allowance for the month of February 1950. When the Appellant however came to make his expenditure return for the month of February 1950 on or about 3-3-1950 he included therein only, the last two sums aggregating to Rupees 19,578-14-0 but not the first sum of Rupees 11,579-8-0 which he had withdrawn from the Treasury on 7-2-1950. That by itself was enough to show without anything more that the appellant was actuated by a fraudulent and dishonest motive in withdrawing this sum on the forged signatures of Rao Sahib Chowdhury Bhim Singh on that bill.

On these circumstances being proved against the appellant it was the duty of the appellant to establish that the non-inclusion of the sum of Rs. 11,579-8-0 in the expenditure return was not dishonest. The only explanation which he vouchsafed in answer to the questions which were put to him by the learned Judge in his further examination was that he did not include this sum of Rupees 11,579-8-0 in the expenditure return because he did not get B. M. 28 by that time. B. M. 28 was an extract of the bill which he sent along with the bill. It was to have come back to him from the Treasury and would be ordinarily returned at the end of the month. The expenditure return was made by the 3rd of the following month and the Appellant stated that any omission therefrom would be entered in the next month's expenditure return.

This explanation however did not go so far as to establish that B. M. 28 in connection with the bill in question was not returned by the Treasury to the Appellant at the end of February 1950. If at all that was his case he ought to have put it in cross-examination to the prosecution witnesses or led evidence himself in that behalf. P. W. 2, a clerk in the Accountant-General's Office, Simla produced the bills but he was not asked anything about B. M. 28 in regard to the bill which was sent on 7-2-1950 and which was supposed to have come back to the appellant from the Treasury after the bill was paid. D. W. 4. S. Harbans Singh was the clerk of the Treasury Office, Ferozepore who deposed to the receipt of the bill dated 7-2-1950. He also was not asked anything about B. M. 28 in connection with that bill. In our opinion the calling of D. W. 4 as his witness afforded the appellant an opportunity of eliciting from him the fact if any, that B. M. 28 in connection with this bill dated 7-2-1950 was not returned by the Treasury to the appellant till after he had filed the expenditure return for February 1950. The Appellant did not elicit this fact at all and on the record as it stands we are unable to find any explanation rendered by the Appellant in regard to the circumstance of his not having included Rs. 11,579-8-0 in the expenditure return which he submitted on or about 3-3-1950.

6. Under the above circumstances the fraudulent and dishonest motive which actuated the appellant in using the forged bill dated 7-2-1950 as genuine when he withdrew Rupees 11,579-8-0 on 7-2-1950 on the strength thereof was established and the offence with which the appellant had been charged was satisfactorily proved by the prosecution.

7. He was therefore rightly convicted by both the Courts below of the offence with which he had been charged.

8. The sentence of 4 1/2 years' rigorous imprisonment which was imposed upon the appellant was a deterrent sentence deliberately so imposed upon him by the learned Additional District Magistrate, Ferozepore. This was no doubt confirmed by the High Court. But in our opinion there was no justification whatever for imposing an additional sentence of a fine of Rs. 11,579-8-0 or in default further rigorous imprisonment for a period of year and a half. It is significant to observe in this connection that the embezzlement charge which was levelled against the appellant in regard to this sum of Rs. 11,579-8-0 ultimately failed and we feel that under the circumstances of the case the High Court should not have imposed this additional fine on the appellant.

9. While maintaining the conviction of the appellant for the charge under S. 467 read with S. 471 of the Penal Code and the sentence of 4 1/2 years' rigorous imprisonment imposed upon him by both the Courts below we set aside the sentence of fine imposed upon him by the High Court and the sentence of rigorous imprisonment in default of payment thereof.

10. The appeal will accordingly be dismissed except for the modification in the sentence indicated above.

Sentence modified.

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