

G. S. Bansal

Vs

The Delhi Administration

Criminal Appeal No. 219 of 1960

(K. Subha Rao, Raghuvar Dayal, J. R. Mudholkar)

21.03.1963

JUDGMENT

SUBBA RAO J. -

This appeal by special leave is against the judgment and order of the High Court of Punjab, Circuit Bench, Delhi, confirming those of the Additional Sessions Judge, Delhi, convicting the appellant under s. 467 of the Indian Penal Code and sentencing him to imprisonment till the rising of the Court and to a fine of Rs. 250/-.

The appellant is an Under Secretary, now under suspension, in the Ministry of Home Affairs, Government of India, New Delhi, and is the son of Janki Pershad. Janki Pershad held a ration depot in Delhi. In the year 1948 Janki Pershad purchased three Post Office National Savings Certificates of the face value of Rs. 250/- in the name of the Controller of Rationing, Delhi, and deposited the same with him as security. On February 21, 1952, Janki Pershad transferred the ration depot in favour of his grandson, S. K. Bansal, the son of the appellant. Thereafter, on April 16, 1952, Janki Pershad applied to the rationing authority for the release of the said security on the ground that he had transferred the concerned ration depot in favour of his grandson who had given a fresh cash security of his own. Before the said security given by him was released, Janki Pershad died on June 1, 1952. On July 1, 1952, the rationing authority wrote a letter to Janki Pershad, not knowing that he had died, informing him that the security deposited by him had been released and that he should get the pledged certificates transferred in his favour by filing in the prescribed form sent with that letter and presenting the same along with the certificates returned at the post office. The prosecution case is that, as Janki Pershad had by that time died, the appellant filled in the said form for transfer, affixed the signature purporting it to be that of his father, attested the said signature, and affixed the stamp of Ministry of Home Affairs, Government of India, beneath his own signature of attestation, and presented the said form and the certificates at the Post Office. Though the clerk at the Post Office had some doubts as to the genuineness of the signature of Janki Pershad, on an assurance given by the appellant, he issued fresh certificates in the name of Janki Pershad on July 12, 1952. On September 3, 1952, the appellant signed the three certificates on their back as Janki Pershad in token of their cancellation and placed his own attestation and stamp of his office thereon. He gave a letter of authority in favour of Bhawani Shankar, a daftri attached to his office, for cashing the same. Bhawani Shankar presented the certificates at the Post Office and received Rs. 275/- in payment thereof, on his furnishing the necessary receipt. The encashed amount was paid to the appellant.

On September 8, 1956, the Magistrate, First Class, Delhi, framed charges against the appellant under s. 467 of the Indian Penal code and committed him for trial before the Court of Sessions. On

February 2, 1959, the Additional Sessions Judge, Delhi, found him guilty under s. 467 of the Indian Penal Code and sentenced him as aforesaid. The appeal filed to the High Court was dismissed on January 7, 1960. Hence the present appeal.

The following were the charges framed against the appellant :

"Firstly, that you between 9th July, 1952 and 3rd September, 1952 at Delhi dishonestly or fraudulently attested the signatures of Janki Pershad Bansal deceased which were forged by you on the back of the application for transfer of National Savings Certificates from one person to another and thereby authorised the Post Master, General Post Office, Delhi, to transfer National Savings Certificates..... and that you thereby committed an offence punishable under section 467 IPC and within the cognizance of the Court of Sessions."

"Secondly, that you between 9th July, 1952 and 3rd September, 1952 at Delhi dishonestly or fraudulently in order to obtain delivery of a sum of Rs. 275/- attested the signatures of Janki Pershad deceased on National Savings Certificates..... which said signatures were forged by you and forged a letter of authority purporting to have been written by the deceased Janki Pershad Bansal and thereby obtained payment of Rs. 275/- from Post Master, G.P.O., Delhi, through Bhawani Shankar on the basis of the above National Savings Certificates fraudulently or dishonestly discharged by you and that you thereby committed an offence punishable, under section 467 IPC and within the cognizance of the Court of Sessions, Delhi."

The appellant denied that he forged the signature of his father in the application, in the certificates or in the letter of authority. He also denied to have gone to the Post Office and got the fresh certificates, or to have deputed Bhawani Shankar for encashment of the said certificates. Further, he disowned his own signature of attestation of the alleged signature of Janki pershad and denied to have affixed his office stamp on any of them. In short, his defence was a total denial of the prosecution case. The learned Additional Sessions Judge after considering the entire evidence placed before him, held that both the charges had been substantiated and therefore found the appellant guilty under s. 467 of the Indian Penal Code. On appeal, Chopra J., reviewed the entire evidence over again and came to the conclusion that though it had not been established that the signature on the application form was forged by the appellant, there was a clear and convincing evidence that the appellant attested the same. On the second charge, the learned Judge found that the alleged signatures of Janki Pershad on the back of the three certificates and the writing of the signature on the letter of authority were all forged by the appellant. On this finding, he dismissed the appeal.

There are, therefore, concurrent findings of fact that the appellant put the signature of his father on the relevant documents, attested them and got the securities transferred in the name of his father and received the money from the Post Office. The said findings being findings of fact based upon relevant evidence following the usual practice of this Court, we accept them.

Even so, Mr. Chari, learned counsel for the appellant, contends that on the said findings the appellant is not guilty of forgery as defined under s. 464 of the Indian Penal Code, for, it is said, he received the money which was admittedly due to him as a sole heir of his father and, therefore, he did not either gain an advantage for himself or cause any injury to another, and that the said point was directly and fully covered by a recent decision of this Court in *Dr. Vimla v. The Delhi*

Administration ([1963] Supp. 2 S.C.R. 585..).

Mr. Anthony, learned counsel appearing for the State, does not accept either the factual or the legal position advanced by the learned counsel for the appellant. He contends that on the facts found, the appellant, when he put the signatures of his father on the relevant documents, had the clear intention to secure an economic advantage to himself inasmuch as he resorted to the device adopted by him in order to save himself the trouble and expense of obtaining a succession certificate.

The conflicting arguments on the application of Dr. Vimla's case ([1963] Supp. 2 S.C.R. 585.), to the facts of the present case can be better appreciated if the facts of the present case are clearly borne in mind. If a person who has given postal certificates as security to a department by taking them in the name of the said department dies, his heir can get the said amount by following two procedures, namely, (1) after obtaining a succession certificate, he can apply to the department concerned to release the security and then apply to the postal department for getting the certificates cashed, and (2) if the current value of the certificates at the time of the death of the holder does not exceed Rs. 5,000/- he can, after the expiry of three months from the date of the death of the holder, satisfy the Post Master General that he is the sole heir of the holder and after making the relevant declaration recover the said money. In one case he has to incur expenses for obtaining the succession certificate and in the other he has to wait for three months and thereafter produce evidence to the satisfaction of the Post Master General that he is the sole heir of the deceased holder of the certificates. In the present case, the appellant attested the signature of Janki Pershad on the reverse of the application form for the transfer of the Post Office National Savings Certificates in the name of his father, got fresh certificates issued in the name of his father, signed the name of Janki Pershad on the back of the three certificates in token of their cancellation, placed his own attestation and stamp of his office thereon, gave a letter of authority in favour of Bhawani Shankar as though it was given by Janki Pershad and received the money from the Post Office. By this process he got not only the certificates which stood in the name of the Ration Department transferred in the name of his deceased father but also received the money payable to his father. Two steps were involved in the process, one was to get the certificates in the name of the Ration Department to be transferred in the name of his father and the second was to receive the money payable to his deceased father. As the father died before the certificates were transferred in his name by the Ration Department, the appellant should have taken steps by informing that fact to the said authority and getting an application from the said authority to the Postal authority for transferring the said certificates in his favour. The rationing authority might not have given such an application to the Postal authority unless a succession certificate was produced by him. No rules have been placed before us which enable the rationing authority to agree for the transfer of the security given to it to a person claiming to be the heir of the owner thereof without the production of any such certificate. In regard to the second process, the appellant would not have been able to get the money from the postal department within three months without a succession certificate and thereafter without producing necessary evidence of his heirship to the satisfaction of the Post Master General. This process entails delay, for the appellant can only apply to the postal authority after the expiry of three months and thereafter the payment depends upon the satisfaction of the officer concerned, which may entail further delay or even rejection, Be it as it may, on the facts his intention at the time when he made out the false documents was to short-circuit the alternative procedure open to him and receive the money without going through the expense and trouble involved therein. Section 463 of the Indian Penal Code reads :

"Whoever makes any false document or part of a document with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to

cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery."

Section 464 of the said Code reads :

"A person is said to make a false document -

First. - Who dishonestly or fraudulently makes, signs, seals or executes a document or part of a document, or makes any mark denoting the execution of a document, with the intention of causing it to be believed that such document or part of a document was made, signed, sealed or executed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed or executed or at a time at which he knows that it was not made, signed, sealed or executed; or

Secondly. - Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part thereof, after it has been made or executed either by himself or by any other person, whether such person be living or dead at the time of such alternation; or....."

A person, therefore, will be guilty of forgery if he dishonestly or fraudulently signs a document with the intention mentioned in s. 464 of the Code. Under s. 24 of the Code.

"Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing 'dishonestly'."

And under s. 25 thereof,

"A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise."

On the said facts we have no doubt that the appellant had made the false documents with an intention to cause wrongful gain to himself, for by adopting the aforesaid device he secured for himself a gain as otherwise he would have had to incur some expense for obtaining a succession certificate. Even on the assumption that he would have received the money after satisfying the rationing authority and the Post Master General, he secured an advantage by resorting to the said device, as he was relieved of the trouble of satisfying the rationing authority and the postal authority that he was the sole heir of his father and avoided the risk of their refusal, which would have entailed further delay. In that event he had secured an uneconomic advantage : in the former case he had made the false documents dishonestly and in the latter case fraudulently. In either case he committed forgery within the meaning of s. 463 of the Indian Penal Code.

The decision of this Court in Dr. Vimla's case ([1963] Supp. 2 S.C.R. 585.), is clearly distinguishable from the present case. In Dr. Vimla's case ([1963] Supp. 2 S.C.R. 585.), this Court, after considering the relevant decisions on the question, stated the legal position thus :

"The expression 'defraud' involves two elements, namely, deceit and injury to the person deceived. Injury is something other than economic loss, that is, deprivation of property, whether movable or immovable, or of money, and it will include any harm

whatever caused to any person in body, mind, reputation or such others. In short, it is a non-economic or non-pecuniary loss. A benefit or advantage to the deceiver will almost always cause loss or detriment to the deceived. Even in those rare cases where there is a benefit or advantage to the deceiver, but no corresponding loss to the deceived, the second condition is satisfied."

There, Dr. Vimla purchased a car in the name of her minor daughter Nalini, got the insurance policy taken on the car transferred in the name of Nalini by signing the necessary documents as Nalini and, when the car met with an accident, obtained the compensation money by signing the name of Nalini in the claim form and receipt; in short Dr. Vimla put through the relevant transaction in the name of her minor daughter for reasons best known to herself, that is to say, the real owner of the car was Dr. Vimla and she only used the name of her minor daughter. Neither she got any economic or non-economic advantage by making the said false documents nor the Insurance Company incurred any economic or non-economic loss by her so doing. Therefore, this Court held that she was not guilty of forgery. But in the present case, the appellant clearly secured an economic advantage by making the false documents by (i) saving the money which he would have otherwise spent in obtaining a succession certificate, and (ii) getting the money belonging to his father as his heir. Even otherwise he secured a non-economic advantage as he got himself relieved of the trouble of getting the certificate of proof to the satisfaction of the rationing authority and the Post Master General of his credential to receive the money. He was, therefore, guilty of making the false documents both dishonestly and fraudulently. The High Court is right in coming to conclusion which it did.

In the result, the appeal fails and is dismissed.

Appeal dismissed.

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