

Hari Sao and Another

Vs

The State of Bihar

Criminal Appeal No. 240(N) of 1966

(S. M. Sikri, G.K. Mitter, P. Jagmohan Reddy JJ)

15.10.1969

JUDGMENT

MITTER, J. –

1. This appeal by special leave is from a judgment and order of the High Court of Patna upholding the conviction of the two appellants under Section 420, I. P. C., read with Section 34, but reducing the sentence of imprisonment on each of them by awarding rigorous imprisonment for three years in place of seven years. The imposition of fine of Rs. 6,000/- on each of the appellants by the Sessions Judge was maintained by the High Court. The two appellants were charged with having cheated the Assistant Station Master of Sheonarayanpur Railway station on or about the period 13th May, 1960 to 12th May, 1963, by dishonestly inducing them to make a railway receipt with false particulars which was capable of being converted into a valuable security and thereby committed an offence punishable under Section 420, I. P. C. Five other persons were charged along with the appellants with having committed an offence punishable under Section 120-B, read with Section 420 of the Indian Penal Code but they were acquitted. The appellants were also charged under Section 463 of the Indian Penal Code but they were acquitted of this.

2. The facts about which there can be no dispute are as follows. The appellant Shankar Sah met the Station Master of Sheonarayanpur Railway station on May 11, 1960 and produced a forwarding note for booking a consignment of dry chillies to Calcutta. A wagon was allotted to him and stabled in the shed on May 12, 1960. On the day following both the appellants came to the Station Master and the necessary allotment entry was made in the forwarding note. The loading was done by the appellants without any help from the any railway employee and the appellants wanted to be supplied with rivets after the wagon was loaded by them. Such supply being given by the Station Master they put the rivets on the wagon. A railway Khalasi examined the rivets, sealed the wagon and fixed card labels on both sides of the wagon prepared by the Station Master. The railway receipt for the goods was made out by the Station Master to the effect that the consignment was "said to contain" 251 bags of dry chillies. The letters L/U were endorsed on the railway receipt meaning that the responsibility for loading and unloading of the consignment rested with the consignor. There was no facility for weighing the goods at the station and a note was made that the weight was as given by the consignor. This was indicated by the endorsement S. W. A. (sender's weight accepted). The wagon was attached to a goods train on the same day and carried forward out of the station on its way to Calcutta. There were frequent checkings of the rivets and the seals of the wagon during the night of 13th May, but on the morning of the 14th, the seal on one side of the wagon was broken and the seal card lying on the ground. The wagon was detached and taken to a goods shed and checked at about 2 p.m. on 15th May. It was found that the wagon contained only 197 bags of chaff (Bhusa) instead of 251 bags of dry chillies. An entry was made in the station diary and a first

information report was lodged on 18th May. The police submitted a charge-sheet against the accused and the case proceeded to trial after the commitment enquiry. The prosecution examined several witnesses to establish that the appellants had brought straw to the goods shed at Sheonarayanpur in place of chillies and loaded the wagon therewith. The Sessions Judge did not accept the evidence of some of them but relied upon that of P. W. 3, a cartman who gave testimony to the effect that he along with others had loaded straw in the wagon mentioned.

3. There was evidence before the Sessions Judge that the appellants had obtained a sum of Rs. 5,500/- from one Murarilal Jhunjhunwala by handing over the railway receipt to him by representing that they had booked 251 bags of chillies. The Sessions Judge held that the Station Master had not checked the goods or verified the weight thereof but had acted on the representation of the appellants. According to him the appellants were guilty of an offence under Section 420, read with Section 34, I. P. C. and he sentenced them as already mentioned.

4. In appeal the learned Judge of the High Court after discussing the evidence felt satisfied that what "was found as a result of the checking at 2 p.m. on 15th May, 1960, to be present in the wagon was nothing but the consignment which had been originally loaded by the appellants at Sheonarayanpur on the afternoon of 13th May, 1960". He further held that -

"... the representation made by the appellants to the Station Master (P. W. 39) both orally and in the forwarding note which they had presented to him was a false representation and on strength of such false representation the appellants had induced the Station Master to make out for them the railway receipt in respect of 251 bags of dry chillies. It is manifest that a valuable security such as a railway receipt is, in respect of 251 bags of chillies had been delivered to the appellants by the Station Master on the basis of the false representation which they had made to him both orally and in the forwarding note."

The learned Judge therefore held that the appellants had committed the offence of cheating acting together in pursuance of their common intention.

It has been urged that the appellants were not guilty of cheating inasmuch as the Station Master had written on the railway receipt that the consignment in question was said to be 251 bags of chillies and thus he could not be said to have acted upon the declaration of the appellants being correct. Similarly with regard to the other endorsement on the railway receipt "S.W.A." meaning "senders' weight accepted", it was made by the Station Master acting upon the declaration of the appellants.

5. Under Section 415 of the Indian Penal Code a person is said to cheat when he by deceiving another person fraudulently or dishonestly induces the person so deceived to deliver any property to him, or to consent that he shall retain any property or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he was not so deceived and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property. There can be no doubt that the appellants had by deceiving the Station Master induced him to deliver a railway receipt which could be used as a valuable security; but assuming that the appellants thereby induced the Station Master to make out the railway receipt it will still have to be shown that the making out of the receipt was likely to cause damage or harm to the railway or the Station Master.

6. We have therefore to examine whether the issue of the railway receipt with the endorsements

"said to contain" and "S.W. A." were likely to cause any damage to the railway. Under Section 58 of the Indian Railways Act the owner or person having charge of any goods which are brought upon a railway for the purpose of being carried thereon, has to deliver to a railway servant appointed in that behalf an account in writing signed by such owner or person and containing such description of the goods as may be sufficient to determine the rate which the railway administration is entitled to charge in respect thereof. This section casts an obligation on the owner or person having charge of goods to be carried by a railway to give a correct description thereof. Failure in this respect may, under sub-section (3) entitles the railway administration to charge in respect of the carriage of the goods at a rate not exceeding double the highest rate which may be in force at the time on the railway for any class of goods. Under Section 72 a person delivering to a railway administration goods to be carried by railway has to execute a note (forwarding note) in which the sender or his agent has to give such particulars in respect thereof as may be required. Section 73 provides for the general responsibility of a railway administration as a carrier of animals and goods except from any of the causes specified therein. But under the proviso to the section even in the case of loss, destruction, etc. from any of the said causes, the railway administration is not relieved of its responsibility for the loss, destruction, etc., of the goods unless it proves that it has used reasonable foresight and care in the carriage of the goods. Under Section 74 where goods are tendered to a railway administration for carriage at a special reduced rate known as 'the owner's risk rate' then, notwithstanding anything contained in Section 73, the railway administration is not to be responsible for any loss, destruction, damage, etc., from whatever cause arising, except upon proof that such loss, damage, destruction, etc. was due to negligence or misconduct on the part of the railway administration or any of its servants. Under Section 106 a person requested under Section 58 to give an account with respect to any goods and giving one which is materially false may be punished with fine which may extend to Rs. 150/- for every quintal or part of a quintal of the goods in addition to any rate or other charge to which the goods may be liable.

7. It is therefore clear that the railway administration may be liable for loss, destruction or non-delivery of the goods under Section 73 if it fails to use reasonable foresight and care in the carriage of the same and would also be similarly liable even in respect of goods carried at special reduced rate if there was negligence and misconduct on its part or any of its servants. Such liability on the part of the railways arises whenever it issues a railway receipt. The question therefore arises as to whether the railway ran any additional risk or liability in action upon the representation of the appellants and mentioning in the railway receipt the goods consigned were said to be 251 bags of chillies when in fact they were only 197 bags of straw. There can be little doubt that the railway did not run any additional risk. In case the goods were consumed by fire or even stolen from the wagon due to any negligence on the part of railway administration the owner would have to prove that he had put on rail 251 bags of chillies. He would also have to prove the weight of the chillies and the approximate value thereof. For this he would have to call evidence to show how and when he acquired the goods and the price he paid for them and exactly what quantity he loaded in the wagons. There would be no presumption that the goods put in the wagon were chillies because the railway did not accept the consignment as such and described it as 251 bags allegedly containing chillies. Nor was there any acceptance of the weight of the goods by the railway. The endorsement 'S. W. A.' would negative the plea, if any, that the weight was accepted by the railway. The endorsement "L/U" emphasised that the loading and unloading being in charge of the consignor the railway could not be held liable for any negligence in loading or unloading.

8. In this connection reference may be made to the Goods Tariff Rules. Rule 15 of Part I of the Goods Tariff shows that :

"The weight, description and classification of goods and quotation of rates as given in the railway receipt and forwarding note are merely inserted for the purpose of estimating the railway charges and the railway reserves the right of re-measurement, re-weighment, re-classification of goods and re-calculation of rates and other charges and correction of any other errors at the place of destination and of collecting any amount that may have been omitted or undercharged. No admission is conveyed by a railway receipt that the weight as shown therein has been received or that the description of goods as furnished by the consignor is correct."

Under Rule 22(1) every consignment of goods when handed to the railway for despatch must be accompanied by a forwarding note which must be signed by the sender or his authorised agent and must contain a declaration of the weight in accordance with Section 58 of the Indian Railways Act and destination of the goods consigned. Under Rule 24(2) if a materially false account is delivered with respect to the description of any goods, the person who give such false account, and if he is not the owner, the owner also, is, on conviction by a Magistrate, liable to a fine which may extend to Rs. 50/- per maund or part of a maund of the goods, and such fine will be in addition to the rate to which the goods may be liable.

9. In *Dominion of India v. Firm Museran Kishunprasad* a railway receipt was issued to the consignor qualified with the statement that the wagon was said to contain 255 bags of coconuts. As only 251 bags were received at the destination, the plaintiff made a claim for the price of the 4 bags of coconuts by way of damages. It was held by the Nagpur High Court that there was no proof that 255 bags had in fact been loaded referring to Rule 22 of the Goods Tariff General Rules it was said that the receipt issued "qualified the number by stating that the wagon was 'said to contain' 255 bags.... and the number was mentioned merely to calculate the freight". Reference was also made to Rule 15 under which the mentioning of the weight in the railway receipt did not amount to an admission of the correctness of the statement and according to Nagpur High Court "this rule applies with even more vigour where the railway receipt in addition contains the 'said to contain' remark".

In *Union of India v. S. P. L. Lokhu Reddiar* a claim was made against the railway for short delivery of 11 bags. The railway receipt showed that the wagon was said to contain 200 bags of white toor. It was urged there that as the seals were intact at the end of the journey the responsibility for the shortage must lie with the railway. It was pointed out that this would be so if the railway staff had loaded the goods after verifying them and in the circumstances of the case, the railway could not be held responsible for any shortage so long as there was no proof of tampering with the seals. The decision in the Nagpur case (supra) was followed in Madras and it was held that the endorsement to the effect that the consignment was 'said to contain' a certain number of bags did not amount to any admission on the part of the railway administration that the said number of bags had in fact been loaded.

10. It appears to us that the false representation made by the appellants in obtaining the railway receipt in the form in which it was issued did not cast any additional liability on the railway and the issue of the railway receipt therefore was not likely to cause any damage or harm to the railway. No question of cheating the railway or the Station Master therefore arose in this case and the appeal must be allowed. The appellants are directed to be set at liberty. The fine, if paid, must be refunded.

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