

SUPREME COURT OF INDIA

Dharamdeo Prasad Sinha

Vs.

State of Bihar

Crl.A.No.202 of 1968

(J. M. Shelat, I. D. Dua and S. C. Roy, JJ.)

07.09.1971

JUDGEMENT

SHELAT, J.:-

1. At all material times the Central Government was the controlling authority for disposal and distribution of fertilizers. As such, it used to make allotments to the various States. In Bihar, the fertilizers allotted to that State used to be distributed through various depots, which worked under the Bihar State Co-operative Marketing Union (hereinafter referred to as the Union). The appellant and one Rameshwar Singh were, during the period from July 1, 1962 to June 30, 1963, the general manager and watchman respectively at one such depot at Dighwara.

2. From out of the allotment made to Bihar, the Union, by its order dated September 22, 1962, directed Sindri Fertilizers to dispatch 72 tons of ammonium sulphate to Dighwara Depot. The appellant, as the manager of that depot, was informed of this order, first by a telegram and then by a letter of confirmation, so that the appellant knew of the order. In accordance with the said order, Sindri Fertilizers dispatched 72 tons of fertilizers by railway under railway receipt No. 989658,

dated December 7, 1962 (Ex. 9), and informed the Union of that fact. A copy of the dispatch advice was also forwarded to the appellant. The bill in respect of the consignment was sent to the Union which was paid by the Union.

3. On November 11, 1962, (sic 1963) the Union transferred the appellant and directed him to hand over charge of the depot to his successor, wit. Haidri. As the appellant failed to do so and went away locking the depot, the Union had to request the Sub-Divisional Officer, Dighwara to break open the lock and take charge of the depot. It was then only that the appellant started from May 13, 1964 and onwards handing over charge to Haidri. Even then he did not completely hand over the charge. In the meantime the Union had asked several depots, including Dighwara Depot, to send particulars of consignments received by them during the year 1962-63. This was for the purposes of the Union's annual accounting. The appellant failed to send the particulars in spite of repeated reminders from September 5, 1963 to June 22, 1964. At last, on November 11, 1964 the appellant was suspended from service on the charge of insubordination.

4. The accounts of Dighwara depot had been audited in October 1963. The Union received the audit note on August 25, 1964 from which it learnt that the fertilizers dispatched under the railway receipt dated December 7, 1962 were not accounted for in the depot's books. An enquiry followed which revealed that the said consignment was delivered by the railways under the signatures of Rameshwar, but was not entered in the depot's stock register or in any other register. A first information report (Ex. 7) was thereupon lodged against the appellant and Rameshwar under Section 409 of the Penal code. During the trial before the Sessions Court the appellant, as also the said Rameshwar, denied the charge of misappropriation challenging the prosecution case as to entrustment of the said consignment to them, and their dominion over it.

5. The facts which were not in dispute before the Trial Court were: (1) that the appellant was working as the general manager of Dighwara Depot during 1962-63, and as such was a public servant; (2) that the said consignment was dispatched from Sindri and arrived at Dighwara railway station on December 12, 1962 and was delivered the next day; and (3) that the said consignment was not entered in the books of the depot. Apart from these facts, there was evidence regarding allotment of the fertilizers to the State by the Central Government from Sindri Fertilizers, allotment by the Union of 72 tons to Dighwara Depot, the Union's order on Sindri Fertilizers to dispatch that quantity to Dighwara Depot, intimation of the said order to the appellant by a copy of that order confirming an earlier telegram to him, the railway receipt (Ex. 9), and a copy of the dispatch advice No. 62, dated December 2, 1962 (Ex. 19) to the Union showing the dispatch of the goods by Sindri Fertilizers under the said railway receipt, entries made in the Union's books on receipt of the dispatch advice (Ex. 19), entries in the railway registers at Dighwara, dated December 12 and 13, 1962 together with the signatures therein of Rameshwar showing the unloading and delivery of the said consignment to Rameshwar on production by him of the railway receipt (Ex. 9), the opinion of the handwriting expert corroborated by the evidence of the goods clerk (P. W. 6) showing that the signatures in the said railway register were those of Rameshwar as against his denial that they were his signatures and entries from the railway registers and two other railway receipts showing one earlier consignment and two later consignments, of which delivery had been taken by Rameshwar

on behalf of the appellant.

6. The Trial Judge was however, of the view (a) that in the absence of an endorsement by the appellant on the railway receipt (Ex. 9) it could not be said that Rameshwar was authorised by him to take delivery of the consignment, (b) that though the railway registers bore Rameshwar's signatures there was a possibility of the goods clerk (P. W. 6) having taken advantage of Rameshwar being not "a very much literate person" and thus having obtained his signatures, (c) that there was no satisfactory proof that the appellant had received the railway receipt, and therefore, any one intending mischief could have intercepted it and obtained delivery of the goods from the goods clerk after managing to take Rameshwar's signatures in the railway registers, and (d) that in the absence of a general authority given by the appellant to Rameshwar or a specific authority by way of an endorsement on the railway receipt as required by the conditions on the railway receipt, it could not be held that Rameshwar was the appellant's authorised agent. The Trial Judge appears to have been impressed also by the fact admitted by the goods clerk that on December 12, 1962 he allowed the unloading of the goods without the production of the railway receipt. According to him, that fact, coupled with the delivery of the goods on a railway receipt which bore no endorsement of the appellant, indicated that some mischief had been played by some one in which "the railway employees placed themselves in the position of accomplices for the same". He was also impressed by the fact that the prosecution had failed to adduce reliable evidence in respect of the removal of the goods from the railway station to the depot. He declined also to draw any inference against the appellant from his subsequent conduct (a) in failing to comply with the demand by the Union of particulars of consignments received by him during 1962-63, and (b) in failing to hand over charge to Haidri until the Sub-Divisional Officer had to be requested to take charge of the depot. The Trial Judge was of the view that the failure to hand over the charge was not due to any recalcitrance on the part of the appellant as the delay in doing so was due to (a) his being on medical leave, and (b) the refusal of Haidri to take charge as evidenced by his letter (Ex. A-1) dated October 5, 1964. In this view he held that the prosecution failed to establish that the appellant received the railway receipt, that he authorised Rameshwar to take delivery on his behalf, and that therefore, there was no satisfactory evidence of entrustment of the goods or their misappropriation by him. The result was that he acquitted both the appellant and Rameshwar.

7. In an appeal against the said acquittal, the High Court disagreed with the reasoning of the Trial Judge and reversing his judgment convicted the appellant and the said Rameshwar under Sec. 409 and sentenced the appellant to five years' rigorous imprisonment and a fine of Rs. 10,000/-, in default two years' further rigorous imprisonment. The appellant has challenged in this appeal the High Court's judgment and order of conviction and sentence.

8. The High Court first set out the undisputed facts, namely, the appellant and Rameshwar being the manager and watchman respectively of Dighwara Depot at the relevant time, the Union having allotted 72 tons of fertilisers to that depot, its order on Sindri Fertilizers to dispatch 72 tons to Dighwara Depot and the dispatch thereof having been made under a railway receipt in the name of the appellant as the consignee. Next, the High Court accepted the evidence of the goods clerk (P. W. 6) that the consignment arrived at Dighwara railway station on December 12, 1962 when it was

unloaded and delivery thereof was given to Rameshwar the next day on production by him of the railway receipt. The High Court explained that the goods were loaded on December 2, 1962, although the railway receipt therefor was prepared on December 7, 1962, and that therefore, the goods could not be said to have arrived in an unusually short period as apprehended by the Trial Judge. Nor was there any mystery about Sindri Fertilizers having dispatched the railway receipt on a Sunday, or about the fact of the goods having been unloaded on the very day of their arrival without the railway receipt having then been produced. There was nothing wrong in doing so as the unloading was done after obtaining Rameshwar's signature in the placement register and delivery was given the next day after production of the railway receipt by him. The High Court also felt no difficulty in holding that Rameshwar took delivery of the goods on the strength of the railway receipt which was in the appellant's name as the consignee in view of the entries in the railway registers produced by the goods clerk. These signatures, though denied by Rameshwar, were proved through the evidence not only of the goods clerk, but also of the handwriting expert.

9. On the question of Rameshwar having been authorised by the appellant to take delivery, it was true that the railway receipt (Ex. 9) did not contain the appellant's endorsement and delivery could not be given to Rameshwar as provided by the conditions printed on the railway receipt itself. The prosecution, however, had produced two other railway receipts (Exs. 9/1 and 9/2) dated 31st/1st February, 1963 and 19th/20th September, 1963 which also did not have such endorsements on them by the appellant. Yet, the evidence showed that Rameshwar had been given and had taken delivery of goods thereunder. Furthermore, those goods were duly accounted in the depot's books by the appellant himself. On these facts, the High Court found that Rameshwar could not have been given delivery of those goods unless the appellant had handed over to him the railway receipt and unless delivery used to be given to Rameshwar, though contrary to the railway directions, without there being the appellant's endorsement thereon.

10. The High Court next relied on the evidence as to the dispatch of the railway receipt from Sindri, the entries relating thereto in the railway receipt register of that factory as also the evidence of P. W. 15 in that regard. Though the railway receipt was dispatched on December 9, 1962, which was a Sunday, a fact commented upon by the Trial Court, there could not be any doubt about its dispatch as it was in fact recovered on January 20, 1965 by the Police from Dighwara railway station. Besides this evidence, the High court relied on the evidence disclosing the subsequent conduct of the appellant, namely, (1) his failure, in spite of insistent demands of the head office, to give particulars of consignments received by him during 1962-63, and (2) his long delay in handing over charge to Haidri after he was transferred and his failure, even when he at last gave charge, to hand over the railway receipt register for 1962-63. In the opinion of the High Court these defaults were deliberate and not due to any medical leave as alleged by him (which was never granted to him) or other such reasons advanced by him, and that the defaults showed his guilty awareness that if it was handed over, it would show receipt by him of the railway receipt and the fact of the goods thereunder not having been accounted by him. On an elaborate scrutiny of the evidence and after examining the reasons given by the Trial Court for its order of acquittal, the High Court concluded that those reasons could not be sustained, and consequently, it reversed, as stated above, the order of acquittal and convicted the appellant and Rameshwar.

11. When this appeal was called out the appellant appeared in person. On second thoughts, however,

he requested for legal assistance, whereupon Mr. Yogeshwar Prasad, who was present in the Court at that time, volunteered to argue the appellant's case on his behalf. The appeal was thereupon adjourned to enable counsel to study the case and to take instructions. We are indebted to Mr. Yogeshwar Prasad for the assistance rendered by him.

12. Mr. Yogeshwar Prasad took us to the evidence in the course of his arguments. At the end, however, we came to the conclusion that his contention that there was insufficient evidence to sustain the appellant's conviction could not be upheld, nor was it possible to accept his argument that the High Court had failed to take into account the reasons given by the Trial Court, for its order of acquittal. As Mr. Jha pointed out from the High Court's judgment, each point raised by the Trial Court was dealt with and answered by the High Court, and it was after so doing that the High Court refused to accept the acquittal order of the Trial Court.

13. There was ample evidence of an indisputable character to establish that the Union had placed an order for 72 tons of fertilizers with Sindri factory for Dighwara Depot and had requested top priority. In view of that request, it was hardly to be wondered that the railway receipt in respect of that dispatch was posted on December 9, 1962 although that day happened to be a Sunday. That fact could not be relied on to hold that the railway receipt was not received at Dighwara. Indeed, it was seized from the railway station by the police during their investigation.

14. As for the dispatch of the goods, the evidence of the goods clerk was that the consignment arrived at Dighwara on December 12, 1962 when upon Rameshwar giving his signatures in the placement register, the goods were unloaded from the five wagons which had arrived on that day. An employee of the Sindri Fertilizers (P. W. 15) proved entries dated December 9, 1962 from the railway receipt register maintained at Sindri showing the receipt by that concern of the railway receipt. He also proved copies of dispatch advice having been sent by them to the Union and Dighwara Depot (Ex. 19). The practice was to prepare the dispatch advice in triplicate, one of which would be retained at Sindri and one each would be sent to the Union at Patna and to the concerned depot. This evidence clearly shows (1) dispatch of the consignment, and (2) its information having been sent to the appellant and the Union. Since the Union received a copy of the dispatch advice, there is no reason to think that a copy of it also sent to the appellant was not received by him. The appellant, therefore, knew that the consignment of 72 tons had been dispatched from Sindri to Dighwara, and naturally therefore, would be on a look-out for the railway receipt therefor.

15. The evidence of V. P. Sinha (P. W. 4) corroborates the evidence as to the dispatch of the goods. It proves the practice at Sindri to send a dispatch advice to the Union for every consignment. He also produced the bill register (Ex. 6) showing payment to Sindri by the Union for the consignment which could not have been made except upon information that the consignment had been dispatched to Dighwara. It may be that such payment ought not to have been made until Dighwara Depot had signalled receipt by it of the goods. The payment may, therefore, be said to have been prematurely made. But it is nobody's case that the consignment was not dispatched or that it did not arrive at

Dighwara. In fact, its delivery was taken on production of the railway receipt therefor by Rameshwar after acknowledging the receipt thereof by giving his signatures in the railway registers. The dispatch of the consignment to Dighwara and its delivery therefore, cannot be disputed. There is further the evidence of Srivastava (P. W. 3) and Ansari (P. W. 12), both employees of the Union, showing that the appellant had been informed by a letter dated September 22, 1962 of the Union having asked Sindri to dispatch to the appellant 72 tons of fertilizers. The effect of all this evidence is that the appellant knew of the order placed with Sindri, of the dispatch of consignment by Sindri to Dighwara, and therefore, he must have been expecting the consignment at any moment. There is next the fact that a railway receipt with the appellant as the consignee did arrive at Dighwara and was produced by Rameshwar before P. W. 6 for the purpose of obtaining delivery.

16. Assuming for a moment that the appellant did not receive the railway receipt or any intimation as to the arrival of the consignment, it is impossible to think, in the light of the information he had both as regards the order and the dispatch, that he would not have made inquiries from the post office and the railway station whether the railway receipt and the goods had arrived or not. His silence in that regard is totally inconsistent with his position as the manager and the information he already had. The only conclusion, therefore, which can be drawn from his conduct is that he had received the railway receipt, which must in the ordinary course have come to him and he must also have known about the arrival of the consignment. If it were otherwise, he was bound to make frantic inquiries from the railway station, the post office, from Sindri Fertilizers as well as the Union. On the other hand, if he was unaware of the arrival of the consignment and its delivery on production of a railway receipt in his name, he would not have failed to intimate to the Union of his not having received that consignment in response to the several letters from the Union asking him to furnish particulars of consignments received by him during that year. There can be no doubt that his failure to do so was deliberate, for, he must have realised that if he were to inform the Union that he had not received the consignment, the Union would at once cause inquiries to be made both at Sindri and Dighwara and the matter would at once be out. On such an inquiry the railway authorities both at Sindri and Dighwara were bound to disclose the fact of dispatch, the arrival and delivery of the consignment, the person to whom its delivery was made and the fact of the railway receipt, which was in the appellant's name, having been produced at the time of and for the purpose of taking delivery. It is easy therefore, to understand why the appellant kept quiet and did not inform the Union that though he had received a copy of the dispatch advice from Sindri, he had not received the railway receipt, or the consignment.

17. The railway register produced by the goods clerk at Dighwara and the seizure of the railway receipt from that goods clerk by the police leave no doubt whatsoever that the consignment was dispatched from Sindri, that it arrived at Dighwara and was unloaded on December 12, 1962 and delivered the next day. It cannot also be disputed that the unloading was allowed upon Rameshwar giving his signatures in the placement register and delivery was given the next day on his producing the railway receipt, and his signing the delivery register signifying receipt by him of the consignment.

18. It is true that the railway receipt did not have any endorsement of the appellant on it, authorising

Rameshwar to take delivery as his agent. But Rameshwar could have been given delivery in two ways only, either in his own right or as the appellant's agent. Ordinarily, he would not be given delivery in his own right since the railway receipt named the appellant as the consignee, unless the goods clerk was privy to an unauthorised delivery. The question is, was that so?

19. But before the goods clerk could be held privy to such an unauthorised delivery, we have to take into account the fact of Rameshwar having been given delivery of consignments at least on three other occasions. The evidence shows that Rameshwar had, on production of railway receipts by him, which were in the appellant's name been given delivery of consignments on October 15, 1962, February 14, 1963 and June 16, 1963 and relevant entries were made in the railway registers to that effect. The important thing about these deliveries was that they were made and taken openly and not surreptitiously in the sense that railway receipts were produced and accepted, entries were made in the railway registers and the goods under the three consignments were duly accounted in the Dighwara Depot registers by the appellant himself. Obviously, therefore, delivery on all the three occasions was given to and taken by Rameshwar not in his own right but as the agent of the appellant. This could not have happened unless the appellant had handed over the railway receipts to Rameshwar for taking delivery. There is no gainsaying, therefore, that on all the three occasions he was held out by the appellant to P. W. 6 as his agent. That is the clear consequence of the three consignments duly registered and accounted in the depot books by the appellant. In the light of this evidence it would not be right to jump to the conclusion, in the absence of some evidence to the contrary, that the goods clerk (P. W. 6) was privy to some fraud or that he had managed to obtain Rameshwar's signatures in the railway registers taking advantage of that watchman being not too literate as the Trial Judge surmised. If that was so, Rameshwar would not have denied in his defence that those signatures were his; his defence then would have been that he had not taken delivery but that the goods clerk had dishonestly got him to affix his signatures in the railway registers.

20. As already stated, of the three occasions when Rameshwar took delivery, one was before the incident in question and the other two thereafter. It is not possible to appreciate why the two subsequent occasions could not be looked into and evidence in their regard admitted as the Trial Court appears to have thought. Evidence regarding all the three occasions was led to show that Rameshwar, at least on those three occasions, acted and was treated as the appellant's agent by P. W. 6 and was so held out by the appellant.

21. It is true that in respect of the delivery on October 15, 1962 the relevant railway receipt was not produced, and therefore, it could not be ascertained whether it contained an endorsement of the appellant or not. But the railway receipts in respect of the other two consignments were brought on record and they showed no endorsement of the appellant thereon. As aforesaid, the goods relating to those railway receipts were accounted for by the appellant as having been received by him and were duly shown by him in the depot books. By doing so, he acknowledged the fact that Rameshwar had been given delivery as his agent even in the absence of an endorsement by him on either of those two railway receipts. Undoubtedly, the goods clerk gave delivery contrary to the conditions in the railway receipts but his failure to observe those conditions is not material on the question of the appellant's responsibility. What is important is that the appellant had held out Rameshwar as his

agent to the goods clerk and the goods clerk had treated him as such agent and had not insisted on the necessity of the appellant's endorsement on those two railway receipts.

22. These instances indicate a course of conduct on the part of the appellant, Rameshwar and the goods clerk as a result whereof the goods clerk had given delivery to Rameshwar without insisting on the appellant's endorsement on the railway receipts. Probably he did not do so because in a comparatively small place like Dighwara he must have known both the appellant and Rameshwar as employees of a semi-government institution, and must have thought that there would be no harm in not insisting on an endorsement by the appellant as the consignee.

23. In the light of these facts, the High Court was justified in its conclusion that Rameshwar had taken delivery of the consignment in question as the agent and to the knowledge of the appellant, and that P. W. 6 gave him delivery as such agent, although the railway receipt did not contain an endorsement by the appellant on the footing of Rameshwar having had a general authority from the appellant to take delivery. There is no doubt that the goods under the consignment were not entered in the stock register or in any other register of the depot, and therefore, were clearly misappropriated.

24. Evidence regarding the subsequent conduct of the appellant highlighted the appellant's responsibility in connection with the delivery of the consignment and non-accounting thereof by him.

25. As already stated, the Union authorities had called for particulars of consignments received by the various depots. Letters calling for these particulars were addressed amongst others to the appellant from September 1963 to May 1964. The evidence shows that whereas the other depots complied with this requisition the appellant did not. This conduct on his part was held by the High Court to be significant. If he had received the consignment through Rameshwar and yet had not entered it in the books, he would not obviously be in a position to give particulars of consignments received by him during the year. If he were to give the particulars but were not to show the consignment, with the information of its dispatch which the Union had through the copy of the dispatch advice sent to it by the Sindri Fertilizers, the appellant must know that the Union was bound to make inquiry as to how the appellant had not received the consignment. It was for this reason that the appellant persistently failed to furnish the particulars called for from him.

26. The second piece of evidence disclosing the appellant's subsequent conduct was equally important. He was transferred in November 1963 from Dighwara to Majhantia. It is clear that on one pretext or the other, he went on delaying handing over the charge of the depot and its registers to Haidri. He even went away from Dighwara locking the depot so that Haidri was not able to take charge. The Union authorities at last had to be severe with him and suspended him from service by its order dated April 11, 1964, on the ground of insubordination. Since the appellant had gone away

locking the depot the Union authorities had also to request the Sub-Divisional Officer to break open the lock and take charge of the depot. This having come to the knowledge of the appellant, he started handing over the charge but only in dribblets from May 11, 1964, though he had been transferred as early as November 1963. On August 28, 1964, he at last sent a few registers through his father-in-law, Mangal Prasad. Significantly, though amongst these registers there was the railway receipt register for 1963-64, such a register for 1962-63 was not handed over. But it was not as if that register had not been maintained by him. The audit report for the year 1962-63 (Ex. 16) shows that in October 1963, when the audit was taken, the railway receipt register for that year was there and the auditor had, along with the other registers, inspected it. The inference is clear that he failed to hand over that register as it would show receipt by him of the railway receipt for the consignment in question.

27. Having been taken through the evidence by counsel, we have no doubt that being aware that if the registers were to be handed over to Haidri, the fact of the consignment not having been accounted for though received by him through Rameshwar would come out, he deliberately delayed handing over charge and when at last he did so after a long time, he purposely did not hand over the relevant railway receipt register. In our view, the Trial Court was not justified in holding that the delay was on account of a refusal by Haidri to take over the charge. The High Court was right in relying on the evidence as to the appellant's subsequent conduct which clearly showed a guilty consciousness that his responsibility in the matter of the consignment would at once come out if he were to hand over all the registers, particularly the said railway receipt register.

28. There was, in our view, ample evidence to justify the High Court to come to the conclusion which it did. It was also justified on a scrutiny of the evidence in refusing to accept the reasoning of the Trial Court. We, therefore, do not agree with the appellant's contention that in doing so the High Court failed to take into consideration any part of the reasoning of the Trial Court. In the result, the appeal fails and is dismissed.

Appeal dismissed.