

Mahendra Singh

Vs

State of Rajasthan

Criminal Appeal Nos. 13 to 15 of 1969

(A.N. Ray, D.G. Palekar JJ)

26.10.1971

JUDGMENT

PALEKAR, J. -

1. These are appeals by Special leave by on Mahendra Singh from an order of conviction under Sections 419 and 471 both read with Section 109 and 466, IPC recorded by the learned Additional Session Judge, Jodhpur confirmed in appeal by the High Court of Rajasthan so far as Section 466 and 471 read with Section 109, IPC are concerned. The sentences of imprisonment imposed by the learned Additional Sessions Judge were reduced by the High Court to the period already undergone.

2. The facts, so far as appellant is concerned, are that the appellant at the relevant time was working as a Cargo Clerk in the Indian Air Lines at Delhi. On January 23, 1954, three persons namely Pakhar Singh, Mehar Singh and Niranjana Singh went to Jodhpur Airport with passport for boarding in the plane going to Karachi from where they were to proceed to Great Britain. After examining the luggage and passport, they were allowed to board the plane but the Officer, Shri Sukhdeo Muni, entertained some suspicion about them and so before the plane left, he went inside the plane, examined the passport more closely and on interrogation realised that the passports were forged. He, therefore, made these three persons alight from the plane and took them to the Police Station. The passport in the possession of Pakhar Singh which is Ext. P.5A though it bore the photograph of Pakhar Singh had been issued in the name of one Shiv Singh. The passport Ext. P.15A which was carried by Mehar Singh had been issued in the name of one Harnam Singh though the Photograph thereon was of Mehar Singh. The passport Ext. P.11A which was carried by Niranjana Singh had been issued to one Kahan Singh though it bore the photograph of Niranjana Singh. The first one was originally valid for Indian and Philippines; the second for Singapore and Indonesia and the third for Uganda Protectorate via Kenya. The subsequent endorsements, however, purporting to be made by the Home Secretary, Delhi State Government, Delhi were found to be made on some dates in 1953 validating them for some of the Western countries including Great Britain, Egypt, Iraq, Iran etc. These endorsements, as also the signature of the Home Secretary and the seals affixed thereon are said to be forged.

3. On further investigation, the following facts came to notice :

3A. One Karam Singh from Punjab made it a business to procure forged passports for money consideration. He obtained Ext. P.5A from Shiv Singh, Ext. P.15A from Kahan Singh and Ext. P.11A from Harnam Singh and had them forged for the benefit of Pakhar Singh, Mehar Singh and Niranjana Singh respectively. The allegation is that the endorsements on all these three passports validating them for the Western countries were in the handwriting of the appellant, Mahendra Singh.

Karam Singh purchased rail tickets from Phagwara to Jodhpur for Pakhar Singh, Mehar Singh and Niranjana Singh and saw them off at Phagwara Railway Station assuring them that they will get their passports and the documents at Jodhpur.

4. After the trio got down at the Jodhpur Railway Station they were met by one Kartar Singh. Being "Sikhs" they were keeping beard but Kartar Singh arranged for shaving the beards and to give them a proper hair cut. Kartar Singh then took them to a local photographer, and in the meantime, lodged them in a part of the house of one Manohar Singh - the same having been hired by the appellant a few days earlier. Kartar Singh obtained the photographs and, thereafter, delivered the passports and the travel documents to the customers and himself took them to the Airport in a taxi. We have already referred to the fact that after Pakhar Singh, Mehar Singh and Niranjana Singh had boarded the plane, they were removed from it by Mr. Sukhdeo Muni.

5. After the investigation was over the Police sent in one charge-sheet against Pakhar Singh, Mehar Singh, Niranjana Singh, Karam Singh, Kartar Singh and the appellant Mahendra Singh. Out of the three genuine passport holders namely Shiv Singh, Kahan Singh and Harnam Singh, the first and the third were also included in the charge-sheet. The case in the charge-sheet was that there was a passport racket and the accused had been engaged in a criminal conspiracy. So they were all charged under Section 120B, IPC. Since the three travelers Pakhar Singh, Mehar Singh and Niranjana Singh had impersonated other persons and had either forged the passports or used them a genuine, they were charged under Section 419, 465, 466 and Section 471, IPC. The genuine owners of the passports, namely Shiv Singh and Harnam Singh were charged for the abatement of the above offences. Similar were the charged against Karam Singh, Kartar Singh and the appellant Mahendra Singh except that the appellant instead of being charged for the abatement of the offence under Section 466, IPC, was charged for the substantive offence under Section 466, IPC.

6. The learned Magistrate who committed these accused to the Court of Session dropped the charge under Section 120B, IPC. He split up the charges - each case being confined to one forged passport. The learned Additional Sessions Judge does not appear to have given any thought to the dropping of the charge under Section 120B and proceeded to try the accused in three separate cases. Passport Ext. P.5A was the subject-matter of Sessions Case 15 of 1961. Passport Ext. P.15A was subject-matter of Sessions Case 16 of 1961 and passport Ext. P.11A was the subject-matter of Sessions Case 17 of 1961.

7. In Sessions Case 15 of 1961 the accused were (1) Pakhar Singh (2) Shiv Singh (3) Kartar Singh (4) Karam Singh and (5) Mahendra Singh. In Sessions Case 16 of 1961 the accused were (1) Mehar Singh (2) Kartar Singh (3) Karam Singh and (4) Mahendra Singh. In Sessions Case 17 of 1961 the accused were (1) Niranjana Singh (2) Harnam Singh (3) Karam Singh (4) Kartar Singh and (5) Mahendra Singh. Niranjana Singh, however, was not available at the time of trial as he had, in the meantime, absconded.

8. The learned Additional Sessions Judge convicted all the accused before the Court on almost all the charges. The convicted accused, therefore, filed separate appeals which were, in all, ten in number. All of them were heard together by the High Court. The conviction of Pakhar Singh and Mehar Singh, the forged passport holders under Section 419 and 471 was confirmed. The owners of the passport namely Shiv Singh and Harnam Singh were acquitted. Kartar Singh who was alleged to have helped at Jodhpur was given the benefit of doubt and acquitted. Karam Singh was acquitted in the first two cases but his conviction under Sections 419 and 471 both read with Section 109 was maintained. The conviction of Mahendra Singh under Section 419 read with Section 109, IPC was

set aside but his conviction under Sections 466 and 471 read with Section 109, IPC was confirmed.

9. We have before us only Mahendra Singh, the appellant, and we have to see whether his conviction under Sections 466 and 471 read with Section 109, IPC is justified. The case against him is that he in his own handwriting made the endorsements marked 'A-B' in the three passports. In the passport Ext. P.5A the endorsement reads at page 7 as follow :

No. 1002 Date June 20, 1953. Also valid for all countries in Europe, Italy, Egypt, Iraq, Iran and all countries in Commonwealth.

In the passport Ext. P.15A the endorsement is at Page 15 and is marked A-B which reads as follow :

No. 2860 Date December 23, 1954. Also valid for United Kingdom, France, Switzerland, Italy, Iraq, Iran and Pakistan.

In the passport Ext. P.11A the endorsement is at Page 7 and reads as follows :

No. 2909, Date December 30, 1953. Also valid for All countries in Europe, Great Britain, Egypt; Iraq, Iran and Pakistan.

(The words underlined above are stamped in the originals).

These endorsements, it will be seen, had been made with a view to enable the passport holders to travel to some Western countries although they were not entitled to do so. It is not disputed that they have been forged and, therefore, an offence under Section 466, IPC has been committed. There can also be no doubt that the person or persons who committed the offence under Section 466 must have known that he or they were making these forged endorsements with a view to enable somebody to make use of them as genuine passports and hence the offence under Section 471 read with Section 109, IPC also has been committed. Mr. Mukherjee, appearing for the appellant, argued faintly that since the appellant was acquitted under Section 419 read with Section 109, IPC the conviction under Section 471 read with Section 109, IPC cannot survive. We are unable to accept that proposition. Whosoever made the endorsements extending the passports to countries to which the passport holders were not entitled to travels, could not have made the endorsements innocently. When the endorsements were made, the passports must have borne either the photograph of the genuine passport holder or the impersonator. In either case, the endorsement had been made with a view to help the person having his photograph on the passport to travel to countries to which he was not entitled to travel. The endorsements were obviously made dishonestly and fraudulently and, therefore, the offence under Section 471 read with Section 109, IPC must be deemed to have been committed.

10. It was next contended by Mr. Mukherjee that there was really no evidence in the case for a conviction. According to him, there was not charge under Section 120B, IPC. Therefore, the prosecution had to rely only on those pieces of evidence which directly implicated the appellant. No doubt the High Court has referred to five circumstances as having been proved against the appellant, but, according to Mr. Mukherjee, the first four cannot be regarded as incriminating and the evidence about the last was thoroughly unsatisfactory. Mr. Mukherjee submitted that the last circumstance was really the most important circumstance in the case and if it was satisfactorily proved, the conviction would be unchallengeable, the other four circumstances serving merely to support the conclusion. On the other hand, however, if the last circumstance was not proved, the first four circumstances would fall far short of proving the guilt of the appellant.

11. The High Court has held the following five circumstances as prove :

- (1) That Mahendra Singh visited Jodhpur on January 9, 1954;
- (2) That he took on rent a house belonging to Manohar Singh;
- (3) That 13 air tickets were purchased through him for 13 different persons from Karachi to London;
- (4) That he had a talk on telephone from Jodhpur with Raj Sachdev for the cancellation of four tickets; and
- (5) That the endorsement between 'A' and 'B' on all the passports was in the handwriting of the appellant.

12. We agree with the High Court that out of these five pieces of circumstantial evidence the first four circumstances have been established. The appellant was employed as a Cargo Clerk in the Indian Air Lines Corporation at Delhi. He applied for leave on the ground of illness on January 8, 1954 and was absent from duty on the next three days. Ext.64 is his application. According to the prosecution, the appellant utilized this leave for going over to Jodhpur where he hired part of the house of one Manohar Singh, PW 2. Manohar Singh has turned hostile but there is evidence including that of PW 1 Dhwaja Singh, the other tenant in the house of Manohar Singh, who has clearly proved that the appellant was present at Jodhpur on the 9th. In this connection, the evidence of Raj Sachdev PW 30 is also Important. This witness is the proprietor of a Travelling Agency named the Globe Travels Company and it was through him that the appellant had booked 13 seats by the BOAC company from Karachi to London. Out of these 13 tickets, four were to be utilized on January 13, 1954. But the same were cancelled by the appellant on the telephone on January 11, 1954. Sachdev says that on January 11, 1954 he received the telephone call of the appellant from Jodhpur instructing him to cancel the four tickets and to phone him back to the telephone No. 123 at Jodhpur confirming the cancellation. Sachdev says that he called the appellant on Phone No. 123 and informed him that he had cancelled the four tickets. There is no doubt, therefore, that the appellant was at Jodhpur between 9th and 11th. As an employee of the Indian Air Lines, it was against the rules for the appellant to book tickets for his customers for a commission. The fact that he acted against the rules, however, is not an incriminating circumstance because we have nothing to do in this case with these 13 tickets or the cancelled four tickets. It must, however, be noted that Pakhar Singh, Mohar Singh and Niranjana Singh were lodged in the house hired by the appellant before they emplaned at Jodhpur. So the circumstances referred to by the High Court establish no more than that the appellant had hired part of the house of Manohar Singh at Jodhpur on or about January 9, 1954 and some 10 days later, the forged passport holders had been lodged in this house before they emplaned at Jodhpur. The appellant himself had not accompanied these passport holders nor is there any evidence to show that he had any direct communication with them. The prosecution case is that it was Kartar Singh who had brought these travellers to this house and it was Kartar Singh who arranged for taking them to the Airport. Kartar Singh's connection with the appellant is not established. We do not know how Kartar Singh came into possession of the passports and how he delivered the same to the three travellers. In fact Kartar Singh has been given the benefit of doubt and acquitted. In these circumstances, it would not be possible to say on the evidence that these three travellers were lodging in Manohar Singh's house at the instance of the appellant or with his consent.

13. In the result we are left with only one circumstance, namely, that the endorsements on the passports already referred to were in the handwriting of the appellant. The High Court has held that these endorsements were in the handwriting of the appellant and, as already pointed out, if that finding is correct, the conviction will have to be upheld.

14. It is the submission of Mr. Mukherjee that the High court had no good evidence at all on which to proceed to hold that these endorsements were in the appellant's handwriting. On behalf of the prosecution, a handwriting expert named K. B. Lal was examined. At the time of the trial, this expert had died but his statement in the Committing Court was taken on record. According to this expert, the endorsements were in the handwriting of the appellant and that opinion was given by him on the basis of comparison with two admitted writings of the appellant. The admitted writing are Exts. 64 and 49. The first one is the leave application already referred to and the Second one is a letter written by the appellant on February 5, 1954 to Globe Travels for the refund on one of the four tickets of January 13, 1954 which had been already cancelled. As usual with experts, several reasons have been given by Lal for his opinion that the challenged writing in the three passports were in the handwriting of the appellant. To counter this opinion, the appellant examined his own expert one Yog Raj and this expert has sworn that the challenged writings are not in the handwriting of the appellant. He has also given several reasons for holding that opinion. The learned trial Judge does not seem to have attached importance to the opinions of these two experts because the experts cancelled each other's findings. The other evidence on which the prosecution relied was the evidence of one B. M. Puri who was at the relevant time Superintendent in the Indian Air Lines and was the official superior of the appellant. As against Puri's evidence, the appellant examined colleague Franklin who had greater opportunity to see the appellant write and sign. According to Franklin the challenged writings are not in the handwriting of the appellant. In this state of the evidence the learned Judge who heard with this appeal in the High Court examined for himself the challenged writings and compared them with the admitted writings and came to the conclusion that the expert Lal's opinion deserved to be accepted. Mr. Mukherjee submits that the learned Judge was in error in preferring Lal's evidence because the comparison made by the learned Judge with the help of Lal's opinion was wholly insufficient to come to a conclusion adverse to the appellant. The learned Judge thought that he had discovered some peculiar idiosyncrasy in the manner of writing the two letter 'b' and 'g' and since the letters 'b' and 'g' found in the challenged writings bore the same characteristics as 'b' and 'g' found in the admitted writings Exts. 64 and 49, he was persuaded to hold that the challenged writings must have been in the handwriting of the appellant. The letter 'b' is found twice in the three challenged endorsements and that is in the word 'December' in Ext. P.11A and Ext. P.15A. On the other hand, the letter 'b' is to be found in several places in Exts. P.64 and P.49. The learned Judge seems to be in agreement with expert Lal that the letter 'b' in the word 'December' had a very 'individualising feature' in that it disclosed an uncommon way of adding an oval to the preceding staff which is just a vertical stroke. The learned Judge also found that there was great similarity in the letter 'g' in the disputed writings and the letter 'g' wherever it was found in Ext. 64 and 49. It is submitted by Mr. Mukherjee that, in the first place, it was a futile exercise to compare one single letter in the disputed writings with that letter wherever it was found in admitted writings and secondly that on a scrutiny of the disputed writings for that purpose, it would be impossible to say that the letter 'b' and 'g' found in the admitted writings have any characteristics peculiar to the disputed letter 'b' and 'g'. It appears to us that there is force in Mr. Mukherjee's submission. The letter 'b' occurs in the word 'December' and before one can say that letter has any peculiarities of its own, one would like to see 'b' in the disputed writings more often than once. If a peculiarity in the writing had been established on a comparison of a few more 'b's in the disputed writing themselves, one would have something to go by. The second stage would come thereafter of

comparing any peculiarities so discovered with the peculiarities discovered in the admitted writings. In Ext. 64 we have 'b' in the words 'beg', 'submit', 'be', 'oblige' and 'better'. In Ext. 49, we have this 'b' in the words 'Globe', 'been', 'bought' and 'obliged'. When all these 'b' in the admitted writings are compared, one undoubtedly sees that there is some peculiarity about them. Pictorially they look like 'h' though in some places the vertical strokes lean to the right and in some other to the left. We must frankly confess that pictorially the letter 'b' to be found in 'December' in the disputed writings does not give us the same impression as the 'b' gives in the admitted writings. For one thing the vertical stroke looks shortish and the over attached to the proceeding stroke goes above more than half the stroke at least in Ext. P.11A. In any case it will be unfair to compare just one letter 'b' with the admitted writings, because in our view in order that any peculiar idiosyncrasy may be discovered, we should have that letter more than once in the disputed writings themselves and also in combination with different letters. So far as 'g' is concerned we have that letter in the word 'Egypt' in Exts. P.5A and P.11A and also in the word 'Kingdom' in Ext. P.15A. Out of these, the letter 'g' in the word 'Kingdom' has some resemblance with 'g' wherever found in Exts. 64 and 49. But the 'g' in 'Egypt' does not create the same impression. In other words, the material in the disputed writing is too scanty for a proper comparison and, therefore, we think that the learned Judge was not justified in holding, on his own comparison of the letters 'b' and 'g' in the disputed writings that they disclosed the same characteristics as those in the admitted writings.

15. Nor are we satisfied with the evidence of B. M. Puri. He has stated that the writing in the endorsements are the writing of the appellant. It is quite clear from his evidence that he was hesitant in giving his opinion and we are far from satisfied that Puri had such ample opportunity to see the appellant's handwriting as to be quite conversant with it. We have tried hard to see if the experts shed any significant light on the problem before us. But on our own scrutiny of the writings, we do not think that we can accept the reasoning of the learned Judge in this respect. The opinion of the expert examined by the appellant cannot also be excluded from consideration.

16. Since the conviction of the appellant is principally based on the finding that the disputed endorsements were in his handwriting, the same will have to be set aside on the view we have taken. The appeals are, therefore, allowed and the appellant acquitted. His sentence is set aside.

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