

Ganga Ram

Vs

The State of Madhya Pradesh

Criminal Appeal No. 161 of 1969

A. N. Grover, M. H. Beg JJ)

09.03.1972

JUDGMENT

GROVER, J. -

1. This is an appeal by special leave from the judgment of the High Court of Madhya Pradesh.
2. The appellant, Ganga Ram, was working as a village Postman at Porsa in District Morena in the State of Madhya Pradesh from July, 1963 to May, 1964. Fateh Singh, P.W. 2 was the Postmaster in-charge of that Post Office. It is not disputed that on November 14, 1963, three money orders were entrusted to the appellant along with four bearing letters and a sum of Rs. 90.30 for delivering the money covered by the money orders, the details of which were as follows :

- (1) Money order, dated November 5, 1963; the amount being Rs. 30/-.
- (2) Money order, dated November 6, 1963; the amount being Rs. 50/-.
- (3) Money order, dated November 6, 1963; the amount being Rs. 10.30.

The payment of these amounts was to be made by the appellant to the respective payees. He acknowledged the receipt of these documents in the book known as the Postman Book, Exhibit P-5. According to the prosecution the appellant did not disburse these amounts to the payees and also misappropriated the amount which was realised on account of the bearing letters which came to Rs. 1.20. He was, therefore, tried on a charge under Section 409 of the Indian Penal Code for criminal breach of trust. The learned Trial Magistrate acquitted him mainly on the ground that the Postmaster was inimical to him and that the appellant had maintained all the time that he had made the payment of these amounts to the Postmaster. This, it was claimed by the appellant, was done on November 18, 1963. Entries to this effect were made in the Book, Exhibit P-5 but the Postmaster did not sign those entries because his relations with the appellant were greatly strained. The appellant also submitted a report Exhibit D-1 to the Divisional Superintendent, Post Office, on November 19, 1963, in which he had mentioned that he had returned the money to the Postmaster on November 18, 1963, but the Postmaster did not acknowledge the receipt therefor. On the contrary the Postmaster had not submitted any report to the higher authorities prior to November 21, 1963, that the appellant had not returned the money to him till that date. The Magistrate was of the opinion that the case against the appellant was doubtful.

3. The State appealed to the High Court. The High Court considered the evidence of Fateh Singh, P.W. 2, the Postmaster, as also all the other witnesses and the documentary evidence which was

produced at the trial. Fateh Singh, P.W. 2 had stated that the appellant never reported himself on duty on November 18, 1963. In fact according to him he was absent from November 14, 1963 to November 21, 1963. According to the High Court the testimony of Fateh Singh was supported by the entries in the Error Book Exhibit P-7 and Exhibit P-10 as well as the report made by Fateh Singh on November 21, 1963, which was submitted to the Inspector of Post Offices. The High Court relied on the evidence of Harbilas Singh, P.W. 3, a Postman at Porsa at the material time and the evidence of Lakhansingh, P.W. 5. All that Lakhansingh had stated was that Ganga Ram had approached him with the request that he should ask the Postmaster in this behalf but the Postmaster told him that the appellant had yet to account for Rs. 91/- given to him in connection with the money orders and, therefore, his pay could not be given to him. Ganga Ram, the appellant, did not at that time allege that he had already returned the amount of Rs. 91/- to the Postmaster. According to the High Court, if there had been any truth in the defence of Ganga Ram that he had paid all the money to the Postmaster on November 18, 1963, he was bound to have made a good deal of noise about it and told everybody that the Postmaster was refusing to sign the relevant entries in the Book. P.W. 10 is another witness on which the High Court relied. That witness stated that in his presence the Postmaster had said that Ganga Ram had to account for a sum of Rs. 91.50 on account of money orders and in cross-examination he further stated that Ganga Ram kept quite and did not protest and say that the amount in question was not due from him. It is not necessary to refer to all other evidence on which reliance was placed. As regards the entries in the Postman's Book Exhibit P-5, the High Court pointed out that the appellant had admitted that the Book had remained with him till November 22, and was seized from him when he was placed under suspension. The High Court came to the conclusion that the appellant had not reported himself to the Postmaster on November 18, 1963, and had not handed over the amount in question to him. Nor he had asked him to acknowledge the receipt thereof in the Postman's Book. The High Court considered it significant that in the cross-examination of prosecution witnesses, other than Fateh Singh, no questions were asked on this point.

4. The main reliance on behalf of the appellant in the High Court was placed on his own statement and on the report Exhibit D-1 which he made on November 19 to the superior postal authorities. In that report his main grievance was that the Postmaster had not given him his pay and that he had also been abusing him and treating him in a very bad manner. He complained that with this kind of attitude on the part of the Postmaster it was becoming difficult for him to carry on with his work. It was then stated "Even after taking Rs. 90.30 nP. he did not put his signature on the books. Under such circumstances had I not approached your honour, then where I should have gone. Kindly issue orders for payment of my pay and for taking my return so that I may pass properly these days of soaring prices." The High Court, however, did not attach any importance to the allegations made in this complaint. After considering the entire evidence the High Court had no doubt that the appellant had not been able to satisfy the court that he had returned the amounts in question to the Postmaster.

5. On behalf of the appellant a good deal of attempt has been made to show that he was the victim of the machinations of the Postmaster who had been persistently hostile to him and had been making complaints chronologically the complaints which he had been making against the appellant. According to him he used to hand over money orders to the appellant which were received from the Department but the appellant refused to perform his duties. This was the position on September 5, 1963. On September 9, 1963, he called for his explanation but he did not submit his report regarding returning the mail. The appellant was censured on September 9, 1963. All these facts were written in the Error Book. On September 10, 1963, when the appellant did not return the mail in time he again called for his explanation. It is not necessary to go over all the details, but finally about the present incident he had made an entry in the Error Book on November 19. According to

that entry the appellant was declared absent from duty as he did not return after his beat. In this report it was stated that there was a good deal of hue and cry on the part of the public because the mail and money orders were not being delivered properly by the appellant.

6. It is true that the relations between the appellant and the Postmaster were strained. It is possibly so because the appellant was not carrying out his duties properly. It is equally possible that some kind of bad relationship had developed between him and his superior for reasons which are not quite clear from the record. But that circumstance alone is not sufficient establish that the appellant had paid the amounts in question to the Postmaster and that he was deliberately denying the receipt thereof to falsely implicate him. There is absolutely no evidence or material from which it could be established that this amount was paid by the appellant to the Postmaster. The evidence which was produced, particularly, relating to his conduct on November 18, and which has been fully considered by the High Court shows that he did not take any effective steps to protest against the attitude of the Postmaster by not signing the entry relating to the receipt of the alleged payment of the amounts in question. It is pointed out on behalf of the appellant that he went to lodge a report with the police but that report was not recorded. Apart from his own statement there is no material for evidence on which the Court can be satisfied that he made any such attempt. At any rate, he could have made some statement before the witnesses considered by the High Court or gone and informed other respectable people in the village that the Postmaster was behaving in that manner and that he apprehended some injury at his hands. We are satisfied that there is no such infirmity in the reasoning or conclusion of the High Court which would justify interference in exercise of our extraordinary powers under Article 136 of the Constitution. This appeal fails and it is dismissed. The appellant is on bail. He shall surrender to the bail Bond and serve out the remaining period of his sentence.

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