

Bajrang Lal (Since Deceased) and Another

Vs

State of Rajasthan

Criminal Appeal No. 198 of 1971

(R.S. Sarkaria, P.N. Shinghal JJ)

24.02.1976

JUDGMENT

SARKARIA, J. -

1. This appeal by special leave is directed against a judgment of the High Court of Rajasthan. It arises out of these facts.
2. There is an office of the Works Manager, Northern Railway at Bikaner. Among others, the duty of this office is to issue railway passes to the railway employees and their dependent family members for railway travel. Sita Ram and Ganesh Ram were at the relevant time working as pass clerks in the office of the Works Manager. Bajrang Lal and Ram Kishan, though posted as khalasis in the railway carriage shop, were associated with the work of issuing passes in the office of the Works Manager. The office used to receive applications from railway employees of the different sections under the Works Manager duly forwarded by the Foreman Incharge of the respective sections for issue of the railway passes. It was the duty of the office hands to check the correctness of the applications and the genuineness of the signatures of the forwarding officers before preparing the passes in the railway pass books maintained by them. After checking, preparing and initialing the passes they were put to the Works Manager. If the passes were meant for a local line, they were put to the Chief Clerk of the Works Manager's office for signature. Thereafter, it was the duty of the clerks to send the passes to the concerned sections with acknowledgment slips, and the Foreman of the section was expected to pass them on to the applicants concerned.
3. According to the prosecution case, during this period from December 23, 1961 to April 11, 1963, Bajrang Lal, Ram Kishan, Sita Ram and Ganesh Ram, all hatched a conspiracy for securing passes on forged applications. The scheme, as unfolded at the trial was that false and forged applications were prepared in collaboration by Bajrang Lal and Ram Kishan with the object of causing wrongful loss to the railway.
4. The prosecution has brought material on the record to show that 15 forged applications were prepared by them to secure such passes. Ex. P-46 is one of such applications prepared in the name of one Narain (PW 6). It is admittedly in the hand of Ram Kishan, appellant. It bears the endorsement purporting to be under the signature of the forwarding officer, Kishan (PW 20). The signature on this forwarding endorsement is in the hand of Bajrang Lal. The passes Exs. P-47 and P-48 were prepared by Ram Kishan. They were checked by Sita Ram. Ram Kishan prepared the acknowledgment receipt in respect of the passes, Exs. P-47 and P-48, on EX. P-140 to show that they had been delivered to the persons in whose names they were prepared.

5. Similarly, the forged application, Ex. P-78, was prepared by Bajrang Lal, while the pass, Ex. P-79, in respect thereof was prepared by Ram Kishan. The slip Ex. P-140 containing an entry about the pass Ex. P-79 was prepared by Ram Kishan.

6. The application Ex. P-87 was written by Bajrang Lal, while the acknowledgment receipt Ex. P-88 in the slip Ex. P-140 was prepared by Ram Kishan. Ram Kishan also prepared the false acknowledgment receipt Ex. P-76, and the acknowledgment receipt in respect of pass No. 812080 in the slip, Ex. P-140.

7. On the preceding facts, Sita Ram, Ganesh Ram Bajrang Lal and Ram Kishan were tried in respect of offences under Sections 120B, 420, 465, 471, Penal Code and under Section 5(1) (d), read with Section 5(2) of the Prevention of Corruption Act, 1947, by the Special Judge. Sita Ram and Ganesh Ram were acquitted of all the charges. Bajrang Lal and Ram Kishan were convicted on charges under Sections 420, 468 and 471, Penal Code and sentenced to one year's rigorous imprisonment and a fine of Rs. 200 each on each of these counts. They were further convicted under Section 120B, Penal Code and sentenced to 6 months' rigorous imprisonment each. They were also convicted under Section 5(1) (d), read with Section 5(2) of the Prevention of Corruption Act and sentenced to one year's rigorous imprisonment and a fine of Rs. 200 each. It was not thought necessary to record a separate conviction under Section 465, Penal Code. The sentences on all the counts were directed to run concurrently.

8. On appeal by the convicts, the High Court set aside their conviction under Sections 420, 468 and 471, Penal Code. It, however, maintained their conviction and sentence in respect of the offences under Section 120B, Penal Code and Section 5(1) (d), read with Section 5(2) of the Prevention of Corruption Act. It further altered the conviction of the appellant under Sections 468/471, Penal Code to one under Section 465, Penal Code, and reduced the sentence on this count to six months' rigorous imprisonment with a fine of Rs. 200 only.

9. Hence this appeal by the convicts, Bajrang Lal and Ram Kishan.

10. Bajrang Lal has since died. Ram Kishan's appeal only survives for decision.

11. The first contention of Shri A. N. Mulla appearing for the appellants is, that Ram Kishan and Bajrang Lal were not 'public servants' within the definition of the term in Section 21, Penal Code. It is urged that the High Court was wrong in assuming that at the relevant time every person in the service or pay of the Government was a 'public servant' within the meaning of clause (10) of Section 21, Penal Code. Sub-clause (a) of clause (10) of Section 21, it is pointed out was introduced by the Amending Act 40 of 1964 and not by Act 2 of 1958 referred to by the High Court in its judgment. In the alternative, it is submitted that clause (9) of Section 21 also, as it stood at the relevant time, did not cover the case of the appellants, Ram Kishan and Bajrang Lal, because they were mere khalasis or menial servants and not "officers in the service or pay of the Government" within the contemplation of that clause.

12. We are unable to accept these contentions. True, that the High Court has wrongly referred to the Amending Act of 1958. The relevant period is from December 23, 1961 to April 11, 1963. Clause (9) of Section 21 as it stood at that time was as follows :

Ninth. - Every officer whose duty it is, as such officer to take, receive, keep, or expend any property on behalf of the Government or to make any survey, assessment,

or contract on behalf of the Government or to execute any revenue-process, or to investigate, or to report, on any matter affecting the pecuniary interest of the Government, or to make, authenticate or keep any document relating to the pecuniary interests of the Government or to prevent the infraction of any law for the protection of the pecuniary interests of the Government and every officer in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty.

13. The question is whether the appellants, Ram Kishan and Bajrang Lal, were "officers in the service or pay of the Government" within the meaning of this clause ? The term 'officer' has not been defined by the Code.

14. Mr. Mulla contends that the appellants were not "officers" within the contemplation of this clause, because - (a) they were mere khalasis and, as such, were not exercising any delegated function of the Government, and (b) they were never appointed to perform any public duty in the office of the Works Manager. In this connection, reference has been made to Reg v. Ramajivrao ((1875) 12 Bom HCR 1) and Nizamuddin v. E (ILR 28 Cal 344 : 4 CWN 798).

15. In Ramajivrao's case, the Bombay High Court held that the word 'officer' in this clause means some person employed to exercise, to some extent and in certain circumstances, a delegated function of Government. He is either armed with some authority or representative character, or his duties are immediately auxiliary to those of some person who is so armed.

16. Ramajivrao's case was noticed by a Bench of the Calcutta High Court in Nizamuddin v. Queen Empress (supra) and it was ruled that an 'officer' within the terms of Section 21, clause ninth of the Penal Code is one who is appointed to some office for the performance of some public duty. Accordingly, it was held that a peon attached to the office of the Superintendent of the Salt Department was an 'officer' in the service or pay of the Government and as such was a public servant.

17. The meaning of the term 'officer' was considered by the Lahore High Court, also, in Ahad Shah v. Emperor (AIR 1918 Lah 152). It was opined that the term 'officer' in the aforesaid clause means a functionary or holder of some officium or office, however humble, to whom in some degree are delegated certain functions of the Government.

18. These cases were considered by this Court in G. A. Monterio v. State of Ajmer (1956 SCR 682 : AIR 1957 SC 13 : 1957 Cri LJ 1). Approving the law enunciated by the Calcutta High Court in Nizamuddin's case, the Court speaking through Bhagwati, J. explained the positions, thus :

The true test . . . in order to determine whether a person is an officer of the Government is :

- (1) whether he is in the service or pay of the Government, and
- (2) whether he is entrusted with the performance of any public duty.

If both these requirements are satisfied it matters not the least what is the nature of his office, whether the duties he is performing are of an exalted character or very humble indeed.

19. By the application of these tests, in the above case, it was held that a Class III servant working as a Metal Examiner under the control of the Railway Works Manager, was an "officer" of the Government within the meaning of Section 21, clause ninth, Penal Code.

20. The instant case is within the ratio of the decision in *G. A. Monterio v. State of Ajmer*. As was pointed out in that case, the Railway Works Manager is an officer of the Government, armed with some authority or representative character qua the Government. The appellants were holding the posts of khalasis in the railway carriage section, but were actually allowed to deal with the preparation and issuance of railway passes in the office of the Works Manager and as such they were, in fact, performing public duties and discharging public functions auxiliary to those of the Works Manager and his office. On "the strength of the evidence" and the statement of the accused, the trial Court unhesitatingly found it as an "established fact that Bajrang Lal and Ram Kishan worked in the pass section." This finding which is borne by the evidence of Sadhu Ram (PW 32), the Head Clerk of the Works Manager, Mohd. Sajjad (PW 19) and Mohd. Ibrahim (PW 34), was affirmed by the High Court. We also find no good reason to disturb this concurrent finding of fact.

21. Thus, the position that emerges is, that although Bajrang Lal and Ram Kishan were not formally appointed to work in the pass section, the posts held by them being of khalasis drawing pay from the railway carriage section, their services were actually utilised in the pass section of the office of the Works Manager. The appellant was, therefore, in actual possession of the situation of a public servant, and in view of Explanation II to Section 21, Penal Code, would be a 'public servant' notwithstanding the defect in his right to hold that situation.

22. We therefore negative the contention of Mr. Mulla and hold that the appellant Ram Kishan was a 'public servant' within the ninth clause of Section 21, Penal Code as it stood at the material time. Consequently, the appellant's conviction for 5 an offence under Section 5(1) (d) read with Section 5(2) of the Prevention of Corruption Act cannot be assailed on that score.

23. It is next contended on behalf of the appellant that he had admitted only the execution of the body writing of the application Ex. P-46, and not the signature thereon purporting to be that of Narain. The point sought to be made out is that without signature, the body writing of the application would not be a "document" as defined in Section 29, nor would the mere scribing of the application amount to "forgery" under Section 463 or to 'making a false document' within the meaning of Section 464, 'Penal Code.

24. The contention, must be repelled. There is no record before us to show that Ram Kishan appellant had specifically denied the execution of that part of the writing which purports to be the signature of "Narain" applicant. No request was made by the appellant for summoning the original record. On the contrary, from the judgments of the courts below, it appears that Ram Kishan had categorically admitted that the application, Ex. P-46, had been written by him. Narain (PW 6) testified that he had made no such application, nor had he ever asked the appellant to scribe it. The witness unequivocally stated that his application does not bear his signature. Narain's evidence has been believed by the courts below. There was thus no doubt whatever that this application including the signature thereon, is a false document. The passes, Exs. P-47, P-48, P-78, and the receipt P-88, were also proved to be in the hand of the appellant. The charge under Section 465 was thus fully brought home to him.

25. The charge of criminal conspiracy to prepare and obtain false railway passes with a view to cause wrongful loss to the railway, had been fully established against Ram Kishan and Bajrang Lal.

The forged passes Ex. P-47 and P-48 were admittedly in the hand of Ram Kishan, and the forwarding endorsement on the application Ex. P-46 pursuant to which these forged passes were prepared, was proved to be in the hand of Bajrang Lal. Kishan (PW 20) who was supposed to have made and signed this forwarding endorsement testified that this writing did not bear his signature. Again, Bajrang Lal made the false entries in the railway pass book in respect of the passes, Exs. P-47, P-48. Ram Kishan then prepared the acknowledgment receipt on Ex. P-140 showing that these passes had been delivered to the persons in whose names they were prepared. Similarly, the forged application, Ex. P-78, was prepared by Bajrang Lal and the pass relating thereto was prepared by Ram Kishan. The slip in respect of this forged pass is also in the hand of Ram Kishan. Another instance was furnished by the application, Ex. P-87 which was in the hand of Bajrang Lal, while the acknowledgment receipt, Ex. P-88, was prepared by Ram Kishan.

26. From the concerted conduct of Bajrang Lal and Ram Kishan in preparing these forged writings, it could unerringly be inferred that they had agreed to prepare forged railway passes with the intention of causing wrongful loss to the railway. And, in pursuance of the conspiracy they did prepare the forged passes aforesaid.

27. We therefore find no good reason to disturb the conviction of the appellant recorded by the High Court in respect of offences under Sections 120-B, 465, Penal Code and Section 5(2) of the Prevention of Corruption Act.

28. Lastly, Mr. Mulla submitted that the appellant was only a small fry. The bigger fish, the clerks had gone scotfree and therefore it was unfair to inflict so harsh a sentence on the appellant. Might be that some bigger partners in the crime have escaped punishment for want of proof. But the sentence awarded to the appellant is the minimum prescribed by law for an offence under Section 5(2) of the Prevention of Corruption Act. The Court had no discretion to inflict a lesser sentence on that count.

29. For the foregoing reasons, we dismiss this appeal and uphold the conviction and sentence of the appellant.

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