Om Prakash

Vs

State of Haryana and Another

Criminal Appeal No. 200 of 1972

Bhagwan Dass

Vs

State of Haryana and Another

Criminal Appeal No. 201 of 1972

(P. S. Kailasam, Jaswant Singh JJ)

23.01.1979

JUDGMENT

KAILASAM J.

1. These two appeals are by special leave by the first and the second accused respectively before the Judicial Magistrate, First Class, Gurgaon in Case No. 84/2 against the judgment of the High Court setting aside the order of acquittal and convicting them for offences under Section 465, 471 and 120-B, Indian Penal Code, and Section 9-A of the Central Excises and Salt Act, 1944 and sentencing them to varying terms of imprisonment. The first accused was also sentenced to four months' R.I. and a fine of Rs. 2000 or in default one month's R.I. under Section 9-B of the Central Excise and Salt Act. The second accused was also sentenced to four months' rigorous imprisonment and a fine of Rs. 2000 or in default one month's rigorous imprisonment under Section 9-B of the Central Excises and Salt Act. The first appellant died pending appeal and as he was sentenced the fine aggregating to Rs. 4000 his legal representatives were brought on record and the appeal was heard on his behalf. Section 394 of the Code of Criminal Procedure, 1973 provides that an appeal from a sentence of fine does not abate on the death of the appellant and further the proviso to that section enables any of the near relatives to obtain leave to continue the appeal. Leave having been granted, the legal representatives of the first appellant continued the appeal. As the two appeals are from the same judgment of the High Court, they were heard together.

2. The Central Excise Department authorities suspected large-scale illicit transactions pertaining to the sale and transport of unaccounted for tobacco by the tobacco dealers and avoidance of payment of duty leviable under the Central Excises and Salt Act. The first accused Om Prakash was carrying on the business in Sohara as a tobacco dealer in the name and style of Messrs. Yed Ram Om Prakash and the second accused was also carrying on business in tobacco in the name and style of M/s. Bhagwan Dass Gemini Dass in Ballabgarh. Shri S. M. Hazak, PW 4, Superintendent, Central Excise, Delhi raided two or three premises in Ghaziabad including those of Chhote Lal and Hira Lal in April, 1958. PW 4 took possession of tobacco of 'Patta' variety from the premises of Chhote Lal and from Hira Lal the original sale-notes nos. 40 and 22 dated March 28, 1958 which were issued

by the first accused. On April 3, 1958, PW 6, S. K. Sharma, who was Inspector Preventive Section visited the firm of the first accused and took possession of sale notebook containing the duplicate carbon copies and some T.P.I. forms and also recorded a statement from him. On a scrutiny he found the duplicates of sale-notes nos. 40 and 22 the originals of which he had recovered from Hira Lal. PW 6 also found certain other duplicate carbon copies and found that the originals were sent to the second accused. PW 6 then visited the firm of the second accused at Ballabgarh and recovered from his possession various sale-notes including sale-notes nos. 71, 9 and 26 dated December 2, 1957, December 27, 1957 and March 10, 1958, Exs. DA, DB and DC respectively. In the original sale-notes recovered from the second accused PW 6 found the entries pertaining to quality of tobacco and rate of duty erased. PW 6 confronted the second accused with these erasures and record a statement from him. We are, in this case, concerned with sale-notes nos. 71, 9 and 26, Exs. DA, DB and DC respectively. The sale-notes nos. 40 and 22 which were recovered from the house of Hira Lal are not of much significance as the prosecution relied on these documents only for the purpose of proving that the first accused was indulging in similar activities.

3. PW 3, K. C. Sharma, has given evidence relating to the levy of duty under the Act and the provisions for sale and transport of tobacco by the dealers. A person who holds a licence in form L-1 has to account for the quality and variety of the tobacco kept by him his curing yard. The first accused possessed a licence in form L-5 which enabled him to maintain a warehouse wherein he could store unmanufactured tobacco without payment of duty after purchasing the same from a dealer who is a licenced holder in form L-1. The first accused had also a licence in form L-2 which authorised him to carry on wholesale trade in tobacco, that is, to sell, transport or dispose of unmanufactured tobacco kept by him in his warehouse after payment of duty. The rules required that a licensee holding licence in form L-5 could remove unmanufactured tobacco from the curing yard to his bonded warehouse by a permit in form T.P.I. The transport of duty-paid unmanufactured tobacco is prohibited without a transport permit if the quantity exceeded two standard seers. But the licence also provided that a licensee possessed of a licence in Form L-2 can transport such unmanufactured tobacco to the extent of five standard maunds on a sale-note issued by such a licensed seller. The case for the prosecution is that the first accused availed of this concession and used to transport more than five standard maunds by issuing sale-notes to another firm Messrs Kishan Chand which was also launched by him and from there transfer it to other buyers. A further charge which is relevant in this case is that the first accused avoided paying of the duty lawfully payable by transporting first quality tobacco known as Patta and Patta Kutti tobacco leaves and crushed tobacco leaves which was subject to a duty of eight annas per pound by filling up sale-notes as for the second quality Lakri and Lakri Choora (stalk and crushed stalk) variety of tobacco on which duty of one anna per pound was payable. The allegation is that the first accused while drawing the sale-notes would indicate in the columns meant for variety of tobacco and the rate of duty thereon, correctly the variety of tobacco i.e. Patta or Patta Kutti, actually being sold and annas eight as the rate of duty thereon. However, he would do so in such a manner that the two corresponding columns pertaining to the quality of tobacco and the rate of duty in the duplicate copy of the original sale-note were left blank. The one column which even at the initial stage would be incorrectly filled both in the original and the duplicate sale-note pertaining to the number of transport permit in form T.P.I. on the strength of which the tobacco, that he would now be selling was brought into his warehouse. This number would be of form T.P.I. under which the variety of tobacco which had been brought to his warehouse. Further, he would also incorrectly show the actual sale of Patta or Patta Kutti as the sale of the "stalk" or "crushed stalk" variety of tobacco in the register which, under the rules, is required to be maintained for recording therein such arrival of tobacco in his warehouse and the sale therefrom. When the tobacco reached the premises of the

buyer, in this case second accused, he would show the purchase of Patta or Patta Kutti variety of tobacco as the purchase of "stalk" or "crushed stalk" variety of tobacco by making an entry to that effect in the register which pertains to the purchasing of that variety of tobacco and after a while, the buyer in question would rub off from the original sale-notes the entries in columns meant for the variety to tobacco and the rate of duty and substitute the original entries thereon with "stalk" or "crushed stalk" for the variety of tobacco and one anna for the rate of duty respectively. On the other hand the seller, the first accused, would record in the two blank columns of the duplicate sale-notes "stalk" or "crushed stalk" (Lakri or Lakri Choora) and the rate of duty as one anna and in this manner he would bring the entries in the duplicate sale-notes in line with the substituted and forged entries in the original sale-notes in accordance with an obvious pre-arranged plan. The reason for maintaining the correct variety of the tobacco and the duty paid thereon in the original sale-note is for avoiding the detection in transit by the Watch and Ward staff of the Central Excise Department because if in the original sale-note covering the tobacco in transit the variety of tobacco therein mentioned is different from the one which it is covering or if the rate of duty mentioned therein did not pertain to the variety which the sale-note was covering, then the Watch and Ward staff by merely seeing the variety of tobacco and these two entries in the sale-note would immediately discover the irregularity. When once the Watch and Ward staff found that the variety of the tobacco is property classified and the duty paid correctly noted the goods would be passed but according to the prior arrangement the buyer, after the goods were received, would alter the classification of the tobacco and make it second quality and the tax payable as one anna, per pound. After the goods reached the buyer on receipt of information the duplicate carbon copy would be changed in conformity with the original sale-note as corrected.

4. The question for consideration is whether the prosecution has made out its case. So far as the charge of conspiracy is concerned we see very little material. We do not see any common interest between the first accused and the second accused. There is no reason why the second respondent entered into the conspiracy with the first accused. It is not clear as to what gain the second respondent (Bhagwan Dass) obtained by becoming a party to the conspiracy. The first accused was a wholesale tobacco dealer and the second accused was a small trader in the same field. The only reason given by the High Court is that on the material it could be inferred that the price which was paid by the second accused for the tobacco, if it were the second quality, was higher than the market price and therefore the variety he received has been the first quality, and thus the inference is irresistible that both the first accused and second accused were acting in concert and were deriving profits. On examination it is clear that the inference of the High court is unsupportable for the whole basis for the conclusion is that the second variety which was priced at about Rs. 13 per maund was sold "at more than 4 times" the purchase price. The variety of tobacco which was marked as Lakri or Lakri Choora was second variety and was paid by the second accused at Rs. 32 to Rs. 36 per maund. The High Court found that the prevailing price of similar quality was Rs. 21 per maund and therefore the second accused himself was selling that variety at Rs. 30 and would not have paid Rs. 32 to Rs. 36 unless it was of the first quality. The High Court relied on Ex. PW 6-E wherein the second accused mentioned that he used to sell in retail the Lakri variety at Rs. 30 per maund. We find that this circumstance on which so much reliance was placed by the High Court was not put to the second accused when he was examined in the trial Court. Further, as rightly pointed out by the trial Court there is no evidence as to the prevailing market rates at the relevant time of the to varieties of tobacco. It may be that the second accused paid the higher price because he had a favourable market. We find that on the evidence on record there is no material at all for basing the conclusion that the first and second accused acted in concert or that the second accused derived any benefit by purchasing tobacco at Rs. 32 to Rs. 36 per maund or that what was actually received by

the second accused was first quality tobacco. In the circumstances, we leave out the charge of conspiracy as not having been established.

5. The case against the accused depends upon the sale-notes nos. 71, 9 and 26, Exs. DA, DB and DC. The carbon copies are Exs. DA 1, DB 1 and DC 1. It is admitted that the original sale-notes were recovered from the second accused. The duplicate sale notes were found with the first accused. The original sale-notes recovered from the second accused bear certain marks of erasure. The entries in the original sale-notes as recovered disclose that the variety of tobacco was entered as Patta Kutti which was the first quality and the tax payable as eight annas per pound. Thus the entry found by itself does not disclose any forgery or fraud. The duplicate sale-notes that were found with the first accused disclose that the carbon entries did not correspond to the entries in the original or, in other words, they did not bear the impression of the original, but the entries when the duplicates were recovered showed that the variety of the tobacco was first quality Patta Kutti and the tax payable thereon was eight annas. The contention of the prosecution that in the original which were recovered from the second accused the entry of first quality and tax of eight annas was erased and corrected as second quality and then again corrected into first quality and same is not established. So also the explanation for the prosecution for the corrections in the duplicate. It may be that the carbon entry in the duplicate might have been made later but that would not prove any offence. From these documents on which the reliance was placed by the prosecution we do not see any evidence of forgery or fraud. The case for the prosecution, that the two accused conspired to dispose of unauthorised stocks of tobacco or that after transporting first quality tobacco they created records to show that only second quality was transported the only the lower duty was payable is not borne out from any of the records.

6. The learned Counsel appearing for the State was unable to tell us the incriminating circumstances against the second accused. Apart from stating that the conduct of second accused in purchasing the second quality tobacco when the market price was Rs. 21 at Rs. 32 to Rs. 36 per maund establishes that he acquired only the first variety and that the erasures in the originals show forgery, he had no other material to bring home the guilt. As pointed out by us earlier the basis for coming to the conclusion that the second accused was selling at Rs. 30 per maund was on his own statement which was not put to him during trial. The original sale-notes recovered from the second accused bore the classification of the tobacco as first quality and the duty at eight annas per pound which was the higher duty payable. The entries as shown would not result in any loss of revenue. On a consideration of the evidence against the second accused we have to hesitation in agreeing with the trial Court that the prosecution has failed to prove any of the charges against him.

7. So far as the first accused is concerned the learned Counsel appearing for the State pointed out that regarding the sale-note T.P.I. No. mentioned does not pertain to Lakri variety but to Patta variety. As the dealer will have to show the T.P.I No. by which he acquired the tobacco in his sale-notes and as the sale-note DG to the second accused showed that it was the second variety it was not in consonance with T.P.I. which disclosed that the variety of tobacco acquired was not first quality. The statement that only second quality was transferred to the second accused is proved to be false. We were impressed by this argument but we find that the High court has noted that the practice of the first accused was to incorrectly fill up the column relating to the transport permit in form T.P.I. The High Court has observed :

The one column, which even at the initial stage would be incorrectly filled both in the original and the duplicate sale-note pertains to the number of transport permit in form T.P.I. on the strength of which the tobacco, that he would now be selling, was brought into his warehouse. Further he would

also incorrectly show the actual sale of Patta or Patta Kutti as the sale of the "stalk" or "crushed stalk" variety of tobacco in the register which, under the rules, is required to be maintained for recording therein such arrivals of tobacco in this warehouse and the sale therefrom.

When the case for the prosecution is that the first accused used to give false T.P.I. numbers in his sale-notes, the prosecution cannot rely on the number in T.P.I. form for showing that the quality of the tobacco transported was the first quality. It may be that the first accused gave a wrong number but that would not prove that he transported the first quality tobacco on which higher duty is payable under the guise of the second quality. Even taking into account this circumstance we are not satisfied that the case against the first accused has been proved beyond all reasonable doubt.

8. In the circumstance we are unable to confirm the conviction and sentence imposed upon the two accused. We set aside the judgment of the High Court and restore the order the acquittal on both the accused passed by the trial Court.

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