

ALLAHABAD HIGH COURT

Emperor

Vs

Balmakund

(H Richards, CJ. Banerji, J.)

19.12.1911

JUDGMENT

Richards, C.J. and Banerji, J.

1. This is an application in revision. The facts are undisputed and very simple. One Mr. Gotting sent a money order for Rs. 34, to the applicant Balmakund. Gotting intended that the Rs. 34 should go in part payment of a certain debt due on a bond. The money was received on the 14th of September, 1910, by Balmakund, who, in the usual way, signed in a duplicate receipt and delivered the same to the post office official. One receipt is in the following form:

ACKNOWLEDGEMENT.

This is a duplicate receipt which will be returned by the post office to the remitter. I acknowledge to have received payment of money order No. 8438, for the sum specified on the reverse.

Date...1910. Signature (in ink) of payee, or thumb impression of payee if illiterate.

2. The reverse side is in the following form:

ON POSTAL SERVICE.

Amount of order (in figures)--Rs. 34-0-0.

Name of remitter--Mr. A.W. Gotting.

Address--Locomotive Department, Stamp of the office of issue--Mokamah, Patna.

3. The other receipt is in the following form:

Received payment of the sum specified on the reverse.

Dated....1910, Signature (in ink) of payee or thumb impression if payee is illiterate.

Paid by me Rs....As...

Signature and designation of official who paid the amount.

4. On the reverse are the particulars of the amount of the order in words, the name and address of the payee in full. This latter receipt is kept by the post office officials. Mr. Gotting, for reasons of his own, (probably because he was anxious to have a receipt which would show on the face of it an acknowledgement from Balmakund of part payment of the particular debt which he intended in part to discharge) demanded from Balmakund a duly stamped receipt. Balmakund refused, contending that the receipt which he had given when he received the money order was sufficient. Later on, on the 30th of October, 1910, however, Balmakund did send a stamped receipt but more or less under protest, still contending that the receipt which he had signed was sufficient compliance with the law. Subsequently sanction was obtained for the prosecution of Balmakund under Section 65 of the Stamp Act. It was probably due to apprehension of such prosecution that Balmakund signed the stamped receipt to which we have just now referred. The result of the prosecution was that Balmakund was fined Rs. 50. An application was made to the Session Judge in revision which application, however, was refused. Hence the present application to this Court.

5. It is contended on behalf of the applicant that under the circumstances the conviction is illegal. Mr. Ryves, on behalf of the prosecution, admits that the punishment is somewhat severe, but contends that the conviction was quite legal, and that an offence was committed under the Stamp Act. The question for us to decide is whether or not the conviction is legal. Section 63 of the Stamp Act provides that any person who, being required under Section 30 to give a receipt, refuses or neglects to give the same, shall be liable to a fine which may extend to Rs. 100. Section 30 is as follows: "Any person receiving any money exceeding Rs. 20 in amount, or any bill of exchange, cheque or promissory note, for an amount exceeding Rs. 20, or receiving in satisfaction of a debt any movable property 'exceeding Rs. 20 in value, shall, On demand by the person paying or delivering such money, bill, cheque, note or property, give a duly stamped receipt for the same. It is clear that had Mr. Gotting made the payment himself or through an agent, he would have been entitled to get a receipt for the amount of money which he paid and that such receipt should be duly stamped. It is- also clear that under such circumstances Balmakund would have been liable to a conviction if he refused to give such duly stamped receipt. The money, however, was remitted through the post office in the manner to which we have already referred. Section 9 of the Stamp Act provides that the Governor General in Council may by rule or order published in the "Gazette of India" reduce or remit certain duties, including the duty payable upon certain instruments. By Notification No. 735-5. It., dated the 17th of February, 1899, the Governor General in Council in the exercise of the powers conferred by the aforesaid Section, remitted the duties chargeable on certain instruments which are specified at the foot of the order. No. 30 is "Receipt endorsed by the payee on a postal money order." It would thus appear that Balmakund gave a receipt in duplicate to the post office authorities, acknowledging the receipt of the money which Mr. Gotting had sent, and that that receipt is expressly exempted from duty by an order of the Governor General in Council duly made in

exercise of the powers conferred by the Stamp Act itself. The actual person who made the payment was not Mr. Gotting. It was the post office official, This official got, as he was entitled to get a receipt in duplicate, and the post office regulation provided that the duplicate was to be given by the post office authorities to Mr. Gotting. If it can be said that the money was paid by Gotting at all, it can only be upon the ground that the post office official was the agent of Gotting. It seemed to us most unreasonable that a person who receives money from an agent and gives a valid receipt to such agent, should be required to give another receipt to the principal. Had the money been sent by the hand of an ordinary agent instead of through the post office it could not, we think, be argued for one moment that the agent would be entitled to receive a duly stamped receipt, and that his principal would be entitled to receive a second duly stamped receipt. What reasonable object could be gained by the giving of a second receipt in the present case? Section 30 does not require a person receiving money to specify the particular purpose for which the money was paid. He is only required to give a receipt for the sum paid. Under these circumstances we think that Balmakund ought not to have been convicted under Section 65 for having refused to give a second receipt to Getting. We accordingly allow the application, set aside the conviction and sentence, and direct that the fine, if paid, be refunded.

Cases Referred.

1A.I.R. 1927 P.C. 108