

PUNJAB AND HARYANA HIGH COURT

Devi Ram Deep Chand

Vs

The State

(Falshaw, C.J. Dulat, J.)

01.02.1954

JUDGMENT

Dulat, J.

1. The petitioners are Goods Clerks employed by the Railway and they are being prosecuted in the Court of a first class Magistrate on charges under Section 408, Penal Code. It is contended on their behalf that the offences imputed to them are offences under Section 5 of Act II of 1947 triable by a Special) Judge alone and not capable of being tried by a Magistrate and it is therefore suggested that the cases may be transferred from the Court where they are pending to the Court of the Special Judge.

2. No evidence has been heard in these cases yet and it is therefore not possible to say with any precision what facts exactly the prosecution will succeed in proving. In a general way, however, the allegations against the petitioners are that they received from certain persons certain sums of money by way of deposits in connection with the booking of some goods wagons, the deposits being refundable, taut that the petitioners did not refund the entire amount that had to be refunded to the persons making the deposits but kept back some part of it with themselves & thus committed criminal breach of trust. At one stage, it appears that the suggestion was that these amounts of money were retained by the petitioners as bribes, but the learned 'Assistant Advocate-General has stated! before us clearly that that is not the case to be proved.

3. Mr. Sibal on behalf of the petitioners-contents that even on the facts sought to be established the offences would fall under Act II of 1947 because the breach of trust has been committed by public servants which would be an offence under Section 5 Of Act 2 of 1947, In reply, the learned Assistant Advocate-General states that the prosecution do not think and do not intend to prove that the petitioners are public servants within the meaning of Act 2 of 1947 and they cannot, therefore, undertake a prosecution under that Act. It is common ground that Act 2 of 1947 applies only to public servants. Section 2 of the Act says: For the purposes of this Act, 'Public Servant' means a public servant as defined in Section 21 of the Indian Penal Code so that

it is clear that if the petitioners are not public servants within the meaning of Section 21, Penal Code, they cannot be called public servants for the purposes of Act 2 of 1947 either. A reading of Section 21, Penal Code, would show that in the absence of any exception in respect of Railway servants a Goods Clerk in the service of Government would 'ordinarily be included in the definition, it appears, however, quite clearly that an exception has been made by the Indian Railways Act, 1890 in respect of Railway servants. Section 137 of that Act runs: Every railway servant shall be deemed to be a public servant for the purposes of Chapter IX of the Indian Penal Code and then Sub-section (4) adds: Notwithstanding anything in Section 21 of the Indian penal code, a railway servant shall not be deemed to be a public servant for any of the purposes of that Code except those mentioned in Sub-section (1). Chapter IX of the Indian Penal Code consists of Sections 161 to 171 only, and, it is for the purposes of these sections alone therefore that a Railway servant can be called a public servant within the meaning of Section 21, Penal Code, and he cannot otherwise be called a public servant for the purposes of Penal Code. If, therefore, the prosecution case is that the petitioners committed offences under Section 408, Penal Code, only they cannot call the petitioners public servants and no question of the application of Act 2 of 1947 arises. In my opinion, therefore, the petitioners are being rightly proceeded against in the Court of a Magistrate and there is no occasion for withdrawing these cases from that Court. These petitions fail and are dismissed.

Falshaw, J.

4. I agree.