NAGPUR HIGH COURT

State Government, Madhya Pradesh

Vs

Hifzul Rahman

Criminal Appeal No. 366 of 1950

(R. Kaushalendra Rao and Deo, JJ.)

13.06.1951

JUDGMENT

R. Kaushalendra Rao J.

1.This appeal is by the State Government against the acquittal of the first, second and the fourth respondents by the appellate Court of an offence under Section 464, Penal Code, and of the respondent 3 under Section 379, Penal Code, after conviction by the first Court.

2. The case of the prosecution as set forth in the challan is far from clear. The complaint was made that the four respondents to the appeal and two others committed offences under Sections 420, 465, 317 and 411, Penal Code, in the following circumstances. Respondent 1 was a member of the Hinganghat Local Board in charge of Girad and Nima Cattle-pounds for about 6 or 7 years. During that time with the help of "gang members" (presumably referring to the associates of respondent 1) at cattle pounds at Mangrool, Kora, Wasi and Girad, Hifzul Rahman used to seize free cattle of the entire public, put false dates, show their auction within 7 or 12 days and used to give the cattle either to his gang members for a low amount or retain them for himself for selling them afterwards with much profit.

3. It was alleged that in the present case four she buffaloes of Ramchandra (P. W. 1) were stealthily driven by Motiram during the noon of 24.4.1917. The buffaloes were kept at village Keslapar under the direction of respondent 1 Hifzul Rahman on the ground that the cattle-pound of Mangrool was under repairs at that time. Acting under the instigation of Hifzul Rahman the accused Govinda showed the arrival of the above cattle in the cattle-pound at Mangrool on 20.4.1947 by forging cattle pound receipt no. 6-9 (Ex. P. 50). Thereafter it was also alleged that he forged corresponding entries, dated 20.4.1947 in the fodder register (Ex. P-47) and the cattle-pound register (Ex. P-49). It was alleged that on or about 26.4.1947 all the accused acted together and declared that the cattle should be taken as ill and managed to fabricate auction papers (Exs. P-40 and P-41) with the above date after entering a few bogus bids in the names of their friends without any proclamation. They ultimately got the cattle knocked down in favour of the accused Kisna and Amrutia for Rs. 61 in all as against the alleged price of Rs. 730 or so. It was further alleged that the accused Hifzul Rahman posed as the member in charge of Kora Local Board

circle also and attested the above auction papers in the capacity of the officer-in-charge as if holding the auction. He managed to secure one of the two buffaloes received by Amrutia. Accused Govinda paid Rs. 25 as per Ex. P-54 dated 1.4.1947 to the accused Kisna and kept with him one of the two she-buffaloes procured by the latter in the above manner.

4. The trial Magistrate framed charges against Motiram under Section 379, Penal Code, against the other accused under Section 468, Penal Code. Hafzul Rahman was also charged with an offence under Section 411, Penal Code. The trial Magistrate convicted Motiram under Section 379 and the other accused under Section 468, Penal Code. Hafzul Rahman was acquitted of the charge under Section 411, Penal Code. As no appeal was filed against the acquittal under Section 411, Penal Code, within the time allowed by law, no further question arises under that section.

5. In appeal the learned Additional Sessions Judge acquitted the respondents on two grounds. Firstly, it was held that the accused Hafzul Rahman could not be prosecuted in the absence of a sanction under Section 197, Criminal Procedure Code. As the other accused were tried along with Hifzul Rahman the learned Additional Sessions Judge held that the whole trial was vitiated and without jurisdiction. Secondly, the learned Judge held that as the prosecution had failed to bring home the offence against any of the accused they were entitled to acquittal on merits.

6. The first point for consideration is whether sanction was necessary for the prosecution of Hifzul Rahman under Section 197, Criminal Procedure Code. The learned trial Magistrate held that though Hifzul Rahman was a public servant on the date of the alleged offence (26-4-47), he was not a public servant on the date of the prosecution i.e., on 31.7.1948. Hifzul Rahman was a member of the District Council and the Local Board at the time the offence is alleged to have been committed. But he ceased to be a member of either body at the time of prosecution. Relying upon the decision in *S.Y. Patil v. Vyankatswami*[1], the learned appellate Judge held that the protection given by Section 197 is available to a public servant in respect of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty though on the date of the prosecution he might have ceased to be a public servant. The decision in *S.Y. Patil v. Vyankatswami (supra)*, is of a single Judge of this Court. The only other decision in support of the view is *Suganchand v. Naraindas*[2],

7. On the other hand, it has been held by the Allahabad, Bombay and Calcutta High Courts in *Emperor v. Suraj Narain*[3], *Prasad Chandra Banerji v. Emperor*[4], and *Emperor v. P.A. Joshi*[5], that the protection given by Section 197 is not available to a person after he has ceased to be a public servant.

8. It is true, as Pollock, J., pointed out in *S.Y. Patil v. Vyankatswami*[7], that the object of the protection conferred on public servants by Section 197, Criminal Procedure Code, is to secure public servants against vexatious proceedings and to see that no proceeding is started against them unless there are good reasons to suppose that there is some foundation for the charges brought. See also *H.H.B. Gill v. The King*[7],

9. But the real question is about the extent of the protection given by the section. According to Pollock, J., under Section 197 prior to its amendment in 1923 a public servant was clearly protected even if he had ceased to be a public servant at the time the prosecution started and the section was amended in order to widen the protection conferred on public servants. The learned

Judge was of the view that the protection would be largely illusory if it were open to people to wait until the public servant had ceased to hold that position and then lodge their complaint, for generally there is no question of limitation in criminal proceedings. The learned Judge observed that a public servant on the verge of retirement would have no protection whatever. That is no doubt true. But unless the language used by the legislature is susceptible to more than one interpretation, the consequences that ensue on an interpretation of a provision are irrelevant to the discussion.

10. The words, "when any public servant . . . is accused of any offence" must necessarily be construed as requiring that the person accused must be a public servant at the time of the accusation. On the words used in the section there is no escape from that position "when the meaning of words is plain" observed Lord Atkin;

> "It is not the duty of the Courts to busy themselves with supposed intentions *Pakala Narayan Swami v. Emperor*[8], "

If the protection given by the section is rendered illusory, that may be an argument for the legislature to amend the provision. But that can afford no reason for the Court to depart from the plain words used in the section. We are, therefore, of the view that Section 197, cannot afford any protection to a public servant after he has ceased to hold office. We overrule the decision in *S.Y. Patil v. Vyankatswami*[9],

11. The learned appellate Judge held that the prosecution failed to establish whether Hifzul Rahman had ceased to be a member of the District Council and the Local Board on the date when the prosecution was launched. What is enacted in Section 197 is an exception to the general rule about the taking of cognisance of offences by Magistrates in Section 190. As the accused relies on a provision in the nature of an exception as a bar to the prosecution he had to establish all the facts which bring into play the exceptional provision. That is to say, he has not only to establish that the offence was committed while acting or purporting to act in the discharge of his official duty but he has to go further and establish that on the date of the prosecution he was a public servant. It was admitted before the trying Magistrate that on 31.7.1948 Hifzul Rahman ceased to be a member of the District Council as well as the Local Board : Vide order sheet dated 22.7.1949. The learned counsel for Hifzul Rahman was not able to show anything for disregarding the admission made.

12. That being so, no sanction was necessary under Section 197, Criminal Procedure Code, for the prosecution of Hifzul Rahman. It follows that the trial was not vitiated on the ground of the absence of sanction for the prosecution of Hifzul Rahman.

13. The Court framed charges against Motiram under Section 379, Penal Code, and against the other accused under Section 468, Penal Code. Respondent I was also charged with an offence under Section 411, Penal Code.

14. The charge against Motiram was that he on or about 24.4.1947 at Wadgaon committed the theft of four she-buffaloes belonging to Ramchandra by taking them out of his possession in order to hand them over to accused Hifzul Rahman and Govinda pound moharrir. The only

witness examined by the prosecution in proof of the allegation that Motiram drove away the cattle on 24.4.1947 is Maroti (P.W. 13). This witness stated that on the 24th April while the witness was going to Paongaon he passed via Wadgaon. He saw the accused Motiram driving away the she-buffaloes of Ramchandra.

15-18. [After discussing the evidence against the accused the judgment proceeds thus.]

19. The prosecution had however to prove that Motiram was in conspiracy with the other accused, that the cattle had not gone to his field but were taken from some other place, or that Motiram was to gain by the alleged wrongful act. The solitary evidence of Maroti (P.W. 13) that the cattle were taken from Wadgaon has been disbelieved by us.

20. There is nothing to show that Motiram had any connection with the accused or that he gained anything from the transaction which is the subject of the charge against him. The defense is not improbable, particularly in view of the admission of Dasrao (P.W. 3) that the cattle were allowed to graze freely and there was no grazier specially after them. Under these circumstances it cannot be held that the accused Motiram is guilty of theft.

21. We, therefore, held that there is no material for finding accused Motiram guilty of an offence under Section 379, Penal Code. His acquittal was proper.

22. Hifzul Rahman, Krishna and Govinda were all charged with forging the sale forms (Exs. P-40 and P-41). The accused were charged with committing forgery for the purpose of cheating. The offence of forgery consists in making any false document or part of a document with intent to cause damage or injury to the public etc. Under Section 464, Penal Code, a person is said to make a false document in three ways. The 2nd and 3rd clauses are not relevant here. The instant case can, if at all, be brought under clause (1). Under that clause, a person is said to make a false document who dishonestly or fraudulently makes, signs, seals or executes a document or part of a document, or makes any mark denoting the execution of a document, with the intention of causing it to be believed that such document or part of a document was made, signed, sealed or executed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed or executed, or at a time at which he knows that it was not made, signed sealed or executed.

23. As it is not the case of the prosecution that any of the signatures appearing on Exs. P-40 and P-41 are not those of the persons whose signatures they purport to be, the narrow point for consideration is whether either of these documents was made at a time which the accused knew it was not made, signed or executed. There is absolutely no evidence that the documents were made on any day other than 26.4.1947.

24. For the purpose of the charge of forgery it is immaterial that the document contains recitals which may be false in other respects. The question whether the sale did in fact take place on that day or not has no bearing on the question whether the document is a false document within the meaning of Section 464, Penal Code.

25. Reference may be made to the decision in *Gunjar Mahmommed v. Shuruz Ali*[10]*, (2)*. In that case a Muhammadan with the intention of making a claim to a woman's property alleged

marriage with her and executed a false kabin-nama in her favour to support his claim, it was held that the document was not a false document within Section 464, Penal Code.

26. The learned Government Pleader invited our attention to the evidence of Decree (P. W. 14). According to this witness, no sale at all took place on 25-4-47. When Krishna Kubde asked the accused Hifzul Rahman that he had no fodder for the buffaloes of Ramchandra brought by Motiram, Rahman replied that as after all the cattle were to be sold, arrangement should be made for sale in favour of himself and others. He said he would take two buffaloes. Amrutia said he would take two. Exs. P-40 and P-41 were not written by anybody in his presence. The evidence of this witness is quite contrary to the evidence of the other prosecution witnesses, P. Ws. 1, 2 and 3, which would suggest that the sale took place on 26th April. The learned counsel for the State contended that in fact no sale took place. But this is contrary to the complaints made by Ramchandra himself to the Chairmans of the Local Board and the District Council and the Deputy Commissioner. In all these complaints it was alleged that the cattle were auctioned on 26.4.1951 (vide Exs. P-2, P-3 and P-4). So it must be held that there is no proof that the documents Exs. P-40 and P-41 were made on any day other than 26.4.1947.

27. The learned Government Pleader invited our attention to the written statement filed by Govinda in his examination under Section 342, Criminal Procedure Code. This statement is remarkable for its length and covers 49 pages of the paper-book. The statement goes on to give a number of details for which there is little basis in the evidence adduced by the prosecution itself. It goes without saying that the statement made by Govinda is of no value against his co-accused Hifzul Rahman and Krishna. We would go further and say that the statement cannot be used against Govinda himself because as we have held, the prosecution failed to establish that Exs. P-40 and 41 were made on any day other than 26-4-47. That being so, there was no occasion to examine the accused under Section 342 and his statement cannot be used to fill in the gap in the case of the prosecution. See The State of *Madhya Pradesh v. Parasmal*[11],
28. The acquittal of Hifzul Rahman, Krishna and Govinda on the charge of forging Exs. P-40 and P-41 was proper.

29. The charge against Govinda for forging the receipt (Ex. P-50); the fodder register (Ex. P-47), and the cattle-pound register (Ex. P-49) now remains for consideration.
30. While the prosecution examined Gawande (P. W. 8) in proof of the signatures of Hifzul Rahman and Govinda on Exs. P-40 and P-41, no evidence whatsoever was adduced to prove that the entries in question in Exs. P-47, P-49 and P-50 to the effect that the buffaloes had been impounded on 20.4.1947 are in the handwriting of accused Govinda. It is indeed remarkable that the prosecution should not have given any evidence about such a vital point though the trial lasted for wellnigh 22 months. The record has gathered in bulk by the indiscriminate filing of documents, the significance of which was not made clear at the hearing. The case for the prosecution seems to have been conducted without any attention to the proof of points, necessary to establish the offence.

31. We were struck by the prolixity of the statement made by the accused Govind. We can only infer the reason for it from its contents, and the order sheets dated 6.5.1949, 31.5.1949 and 6.6.1949. It would appear from a reading of these order sheets that at one time the prosecution was contemplating the withdrawal of the case against Govinda. It is therefore not unlikely that Govinda himself made the statement in the hope that he would bo excepted. In fact he said so

towards the end of the statement. It is not also unlikely that the statement is the result of some ingenious move in the game of local party politics of which there are some indications in the record. However that may be, in the absence of any positive evidence adduced by the prosecution to establish the charge of forgery with respect to Exs. P-47, P-49 and P-50 no question of taking into consideration the statement made by Govinda arises. As we have already observed, the statement cannot be used to make up what the prosecution failed to establish.

32. We therefore hold that the charge of forgery against Govinda with respect to Exs. P-47, P-49 and P-50 is not proved. His acquittal was therefore proper.

33. The appeal is utterly devoid of substance and is accordingly dismissed.
Appeal dismissed.

Cases Referred.

[1] ILR 1939 Nag 419
[2] AIR 1932 Sind 177
[3] ILR 1938 All 776
[4] ILR (1944) 1 Cal 113
[5] AIR 1948 Bom 248
[6] ILR 1939 Nag 419
[7] AIR 1948 PC 128
[8] 18 Pat 234 at p. 248 (PC)
[9] ILR 1939 Nag 419
[10] AIR 1924 Cal 536
[11] Cri. Appl. No. 287 of 1950, dated 22.2.1951