Mohammad Riaz Vs. State of U.P.

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Court : Allahabad

Decided On : Oct-17-1979

Reported in : 1980CriLJ369

Judge : Prem Prakash, J.

Appellant : Mohammad Riaz

Respondent : State of U.P.

Judgement :
ORDER

Prem Prakash, J.

1. Mohd Riaz and Babu Lal have obtained these revisions against the order of III Additional Sessions Judge, Lucknow, maintaining their convictions under Sections 120B, 420 and 468 Penal Code. K, K. Srivastava, The Excise inspector, was however; acquitted by the learned Additional Sessions Judge. They had been tried along with Mohd. Iliyas. partner of firm M/s. Mahd. Iliyas and Brothers, who was also acquitted by the trial Court.

2. Briefly stated the charge against them was that they entered into a conspiracy to cheat the Central Excise Department in the course of which they caused loss to the Department by evading the payment of Excise duty in a sum of Rupees 2,53,000.00 and odd payable on non-duty paid tobacco. The Tobacco was shown

to have been despatched in 13 consignments to M/s. Babu Lal of Kumher district Bharatpur (Rajasthan). The consignor Mohd. Riaz had moved 13 applications for removal of Tobacco in form AR 3 in triplicate to K. K. Srivastava for issue of transport permission form T. P. 2 from his warehouse to that of Babu Lal in Kumher, The particulars of the AR 3 and T. P. 2 have been set out by the Magistrate to his 'judgment and I need not go over them again. The investigation revealed that Mohd. Riaz was an employee of Mohd. Iliyas. It also came to light that the non-duty paid tobacco was not despatched from the warehouse of Mohd. Riaz nor was the same rewarehoused in the premises of Babu Lal but Mohd. Riaz got false entries made in his warehouse records regarding its despatch. It was also discovered that Mazhar, the clerk of Mohd. Iliyas was deputed to make entries.. in A.R. 3s, Nos. 12 to 23 and its weighment charts were also prepared by him, False warehousing certificates on the back of A.R. 3 Nos. 12 to 18 were forged showing that the tobacco had been correctly warehoused in the premises of Babu Lal the signatures of Harbans Ram Yadav, Inspector of Central Excise were also forged. Although the tobacco was not warehoused in the .warehouse of Babu Lal he swore a false affidavit to that effect on 29-3-1976, before a Public Notary at Mathura. The investigation was made as a result of the First information Report which, was lodged, on 10-12-1975.

3. Mohd, Riaz refuted the allegation that no tobacco was in fact despatched from his warehouse. He, however, admitted to have obtained T. P 2s, on 13 AR 3s, Babu Lal maintained that he had obtained L5 licence and had a warehouse at Kumher. He denied that false documents were prepared to evade excise duty. He claimed that tobacco was received and warehoused in his warehouse and its entry had also been made but the tobacco and the records were washed away in the floods. Neither accused produced any evidence in defence.

4. At the trial the prosecution examined a number of witnesses, 14 in number. It was established on the evidence that Exts. Ka 37 to 45 had not been signed by the Excise Inspector of the destination; they bear his false signatures. Also it was found that in the register maintained in form No. WRG Part I the receipt of the tobacco at Kumher was not entered with reference to the ARs and the T. P. 2 issued by the consignor. It was proved that Babu Lal had obtained a licence. Ex.

Ka. 48Ct2 certificate was also issued to Babu Lal which is Ex. Ka. 49 on the basis of the bond Ex. 12 filed by Babu Lal. The Bond and the CT 2 -certificate enabled Babu Lal to obtain non duty tobacco from non duty paid tobacco warehouse. It was proved that Mohd. Riaz had obtained the licence in Form L 6, vide Ex. Ka-133 and bond filed by Mohd Riaz is ex. Ka-134. It was proved that K. K. Srivastava, the Excise Inspector, had certified that the consignment covered by particular AR conformed in all respects with the description given in Form A3 and in respect of which transport 'permit in Form T P 2 was issued. The trial court having regard to the fact that the applications had been submitted for removal of non duty tobacco by Mohd. Riaz on the basis of the TP 2 which were obtained, the fact that the tobacco was not received at the destination and disbelieving the plea of the accused that the tobacco was actually transported by Mohd. Riaz and further taking into consideration the fact that according to the evidence produced by the prosecution in the statement of Jagdish Prasad (P. W. 3) there was no warehouse of Babu Lal in Kumher arrived at -the conclusion that the entire transaction of submitting AR 3 was fictitious and that there was a conspiracy to which Babu Lal and Mohd. Riaz-were parties. The two revisionists were found guilty of the offences under Sections 120B, 420, 468 of the Penal Code.

5. Counsel for the revisionist, Mohd. Riaz, has, at the outset, contended that TP 2 having been issued by K. K. Srivastava, the Excise Inspector, in respect of the various consignments and there being no evidence on behalf of the prosecution that these goods did not reach Kumher and Babu Lal having sworn an affidavit to the effect that these goods had been received by him which were washed away in flood, the finding that there was a conspiracy to cheat the Government of the payment of excise duty suffers from a legal error. I am unable to agree with the submission. In this case there is no escape from the finding that the non duty tobacco covered by these consignments did not reach Kumher. There is no entry found in the register in Form 335L which is to be maintained by the Excise staff of the destination under the Instructions issued by the Department 'On Tobacco Excise Duty', The evidence was to the effect from the statement of Jagdish Prasad (P. W. 3) that Babu Lal had never any warehouse of tobacco in Kumher. This statement cannot be disbelieved. There is no escape from the finding that Babu Lal was carrying on a fictitious business under a faked licence, obtained from the

Excise Department. Further, certificates Exs. Ka 37 to Ka 45 were not signed by the Excise Inspector but his signatures were falsely made on such certificates endorsed at the back of Form AR 3. It may be stated that Forms AR 3 in all these cases were signed by Mohd. Riaz. It may be noted that Form AR 3 is prepared in triplicate and one such Form is sent to the Excise Inspector of the district to which the goods are being despatched. Another Form is sent with the goods to the consignee.' The consignee had not at any stage produced any such Form AR 3. He did not produce even the registers which he was required to maintain under the Manual. His plea was that the tobacco received by him as also his records were washed away in floods, a plea which is demonstrably false particularly when there is the evidence that no such warehouse of Babu Lal was there in Kumher. From these facts the inference that there was a conspiracy to evade the payment of excise duty to which Babu Lal and Mohd. Riaz were parties was rightly drawn. The finding does not suffer from any error. The finding could be properly and reasonably arrived at on the basis of the circumstances which unfolded themselves at the trial.

6. Further, it may be noted that the issue of form TP 2 is no doubt the duty of the Excise Officer on the basis of the application made in Form AR 3, but in a case where the issue between the parties is whether the goods were in fact transported to the destination in pursuance of TP 2 we should expect some evidence from the accused in what manner and how the goods were transported. It is a case in which there was evidence on behalf of the prosecution that no such goods were transported through Truck No. USD 9870. Madan Lal, P. W. 2, the owner of the truck said that his truck never transported any goods outaide U. P; The truck number is mentioned only in one AR 3 No. 11 which is Ex. Ka 2 and in the rest of ARs 3, no number of the truck is mentioned except in AR 3 No. 10 (which is Ex. Ka 10} in which Truck No. SUT 2024 is mentioned. Further, there was the evidence of the Toll Inspector Kripa Nidhan Srivastava (P. W. 10) to show that no truck No. USD 9870 passed through Unnao between 23-6-1975 and 2r7-1975. He had no doubt stated to the Investigation Officer that during 19th June and 31st August, 1975 a large number of trucks had passed. There being no truck numbers mentioned in other ARs 3, some burden rested on the consignor to show that the goods had actually been transported after TP 2 had been issued by the Inspector.

No evidence whatsoever was led on behalf of the accused in that behalf. Normally the burden of proof is on the prosecution to prove the ingredients of the offence but in a case where the accused is found shrouded in suspicion and is enmeshed in an incriminatory network of facts it becomes his duty to explain the circumstances yielding to an adverse inference against him and if he omits to do so or fails in creating a dent in the prosecution story his omission assumes a sinister significance.

7. TP 2 permits are issued for removal of non duty paid tobacco from one bonded warehouse to another. The permit bears an endorsement stating firstly the number, and date of the general or particular bond in force, and secondly in the case of inter-warehouse removals, the date of the first warehousing of the tobacco. If the unloading, possible detention and re-loading enroute is anticipated at the time of despatch a suitable remark has to be made on the permit. The TP 2 permit is prepared in duplicate; one is sent to the Range Officer of the destination and another is retained at the place of removal of non duty paid tobacco. The TP 2 permit is issued upon an application made in Form AR 3 by the consignor. The application is to be presented to the Range Officer in Triplicate; the application must be accompanied by a certificate in Form CT 1 from the Range Officer of destination. Such a certificate will indicate particulars relating to licences as well as bonds. The Range Officer-in-Charge of the warehouse of removal upon an application being made (will)? issue a transport permit in form TP 2 giving therein serial number of the application, identity of the goods with the application and take account of them as prescribed in paragraph 139, complete the removal certificates on all three copies -of the application showing in it in addition to the required particulars (a) the name of the range in which the bond has been executed and (b) the expiry date of the permit. He will attach the particular bond or the certificate in Form CT 1, if : any, to original application and retain the application securely in a file marked 'Pending original AR 3 applications'. If the warehouse of destination is situated in another range in the same circle the Range Officer shall send the duplicate direct to the Range Officer-in-charge of such range. He will record the despatch of the duplicate in his 'record of removals in bond to other Ranges' and shall hand over the triplicate to the consignor for despatch to the consignee for presentation by him to the Range Officer at the warehouse of destination. On

receipt of the duplicate application in the circle office at destination it must be immediately entered in the 'record of receipts in bond from other circle' and forwarded the same day to the Range Officer-in-charge of the warehouse of destination. On arrival of the goods at the warehouse of destination the consignee must present (a) the permit in Form TP 2 and (b) the triplicate application to the Range Officer who is required to compare the particulars of the goods on the triplicate application with those on the permits. He shall enter on the reverse of the permit the date of rewarehousing and file the permit in office on a file marked 'TP 2 permit Import'. Thereafter, he shall send the duplicate application to the Range Officer of the warehouse of removal. If the duplicate application is not received within a week of the arrival of the relative consignment he shall remind the Range Officer-in-Charge of the warehouse of removal, sending a copy of the reminder to his own Circle Officer. Immediately on receipt of the duplicate application from the Range Officer-in-charge of the warehouse of destination, the Range Officer-in-charge of the warehouse of removal must compare the duplicate application with the original; detach the original application from the original file and transfer it to the file marked 'Original and duplicate of completed AR 3 applications' (vide para 142 of the Manual of Departmental Instructions on Tobacco Excise Duty).

8. The AR 3 applications were made by Mohd. Riaz between 18-6-1975 and 6-8-1975. The TP 2 permits were issued between 19-5-1975 and 7-8-1975. Sri Harband Ram Yadav (P. W. 6) who was then the inspector, Central Excise of the Kumher Range has stated that certificates Exs. Ka 37 to Ka 45 on the back of AR 3s were not in his hand nor was there any such Inspector like Har Gyan Singh in that Range. He further stated that the tobacco relating to the AR 3s did not reach his circle and there is no entry made in Register 335L (Ex. 13) maintained by him. From these facts the conclusion is irresistible that a conspiracy was conceived and accomplished to defraud the Excise Department of the Excise Duty which otherwise was payable on the removal of tobacco from a bonded warehouse. The conspiracy had had its origin to the circle of which K. K. Srivastava was the Excise Inspector and it was executed as intended by the conspirators. The essence of conspiracy is that there should be an agreement between persons to do one or the other of the acts described in Section 120A Penal Code. The said agreement may be proved by direct evidence or may be inferred from acts and conduct of the

parties. There is no difference between the mode of proof of the offence of conspiracy and that of any other offence; it can be established by direct evidence or by circumstantial evidence. In the present case, there was overwhelming, strong circumstantial evidence to warrant a finding that there existed a conspiracy to defraud the public, revenue by evading the payment of excise duty payable on the tobacco.

9. Once there is a reasonable ground to believe that two or more persons have conspired together to commit an offence anything said, done or written by one of the conspirators in reference to the common intention, after the said intention was entertained, is relevant against the others not only for the purpose of proving the existence of the conspiracy but also of proving that the other party was a party to it. The evidentiary value of the said acts is limited by two circumstances, namely, that the acts shall be in reference to their common intention and in respect of a period after such intention was entertained by any one of them, If the said condition is fulfilled anything said, done or written by any of them in reference to their common intention will be evidence against the other; it can be used against a co-conspirator and not in his favour (vide Bhagwan Swarup v. State of Maharashtra AIR 1965 SC 682).

10. With this background let us now take the evidence against each of the revisionists and the .contentions raised by the learned Counsel appearing on behalf of Mohd. Riaz. II must be stated here that it is not possible to separate each of the accused in the matter of consideration of the evidence for in a case of conspiracy necessarily there, will be common evidence covering the acts of all the -accused. Mohd. Riaz made the applications in Form AR 3. The entries of the removal of the non duty paid tobacco from his godown were made in the books maintained by him. On evidence it cannot be gainsaid that the -transactions entered in the books of account and which had come into being on the making of application in Form AR 3 by Mohd. Riaz were bogus, brought about to defraud the State of public revenues. Also evidence was significantly lacking to show that the goods were actually transported from the godown of Mohd. Riaz or were on their way to Kumher. This indicates that the accused Mohd. Riaz was taking an active part in the manipulation of AR 3 applications. He was not an innocent agent but

the long interval which went on between these transactions would demonstrate that large quantity of non duty paid tobacco was shown as despatched in the account books. Further, it is revealing that to escape from the criminal liability Mohd. Riaz obtained .from Babu Lal three written receipts to show that tobacco consignments covered by TP 2 Nos. 45189, 45188, 45191 and 45190 had been received by Babu Lal, on the various dates, vide Exs. Ka 155 to Ka 158. These receipts were filed by Mohd. Riaz in the office of the Inspector, Central Excise (Rural) Lucknow, who happened to be K, K. Srivastava the acquitted accused. K. K. Srivastava filed these .receipts after making an endorsement 'seen'. There is no provision in the Manual for filing such receipts. It is the certificate from the Excise Officer of the place of destination which is the evidence of the receipt of goods in the godown to which it had been transported. If AR 3s with respect to these consignments had not been received by K. K : Srivastava and instead the receipts from Babu Lal were being filed it should have occurred to K. K. Srivastava as to what had happened to the AR 3s which had been obtained from him by Mohd. Riaz. Obviously there was a dereliction of duty on the part of K. K. Srivastava and had taken action , at that moment the : conspiracy would, have been nipped in bud. This is, however, a matter for the Central Government to consider. At any rate this much is obvious that Mohd. Riaz was party to the whole transaction of conspiracy inasmuch as to secure evidence about the removal of the goods he obtained receipts from Babu Lal. He being conscious of his guilt his endeavour vras to screen off the offence. Further, it is worthy of note that Babu Lal swore an affidavit before the Public Notary at Mathura Ex. Ka 2 to the effect that the tobacco covered by AR 3s, Exs. Ka 37 to Ka 45 had been warehoused at his godown. This was done with a view to create evidence in favour of Mohd. Riaz to satisfy the 'Central Excise authority who had issued demand notices to him, the counter-foils of which are Exs. Ka 163 to Ka 175. Procuring of false evidence is also a circumstance which may incriminate the accused in the crime. AH these things cumulatively considered would amply show that Mohd. Riaz was a party to the conspiracy and that the various acts committed in the course of conspiracy were the acts with reference to the common intention of the conspiracy.

11. Next, we turn to Babu Lal. Although he had obtained .the licence and also had submitted a bond which enabled him to obtain non duty paid tobacco from a

bonded warehouse but the evidence leads us to infer that no such godown ever existed in Kumher and that no tobacco said to have, been transported by Mohd. Riaz was received . by him in pursuance of AR. 3s and TP 2 permits. As I have already mentioned there is the evidence of Jagdish Prasad (P. W. 3) that there was no such godown of Babu Lal in the premises owned by his brother Vishnu Dayal. Accused Babu Lal without seeking verification on the back of the duplicates A. R. 3s himself issued receipts Exs. Ka 155 to Ka 158 that the tobacco had been received by him. It was told by him in his statement before framing the charge that his records had been washed away in floods but there is no evidence except a bare suggestion to substantiate that plea. When_ there was thus no warehouse of Babu Lal in Kumher his obtaining the licence and C. T. 2 forms in a fake name was an act .done to consummate the conspiracy. In the course of the conspiracy even the signatures, of the Excise Officer of receiving destination were forged. A. R. 3s did not even reach the Excise Officer Sri Har-band Ram Yadav (P. W. 6). Fraud perpetrated with an intention to cause wrongful gain to self and cause wrongful loss to the public exchequer is manifest from the conduct and the acts done in the course of the conspiracy. Babu Lal was not an innocent agent but he was all through actively associated with the conspiracy and during the stages through which it passed.

12. This being so Mohd. Riaz and Babu Lal shall be guilty not only for the offence under Section 120B Penal Code but also for the substantive offence committed in the course of the conspiracy;

13. Counsel for the revisionists has contended that no offence of cheating is made out against any of the revisionists. I am unable to agree with the submission. Section 415 of the Penal Code defines cheating, as also deceiving of any person (a) 'fraudulently or dishonestly, inducing that person to deliver any property to any person or to consent that any person shall retain any property,...' Section 417 Penal Code makes the offence of cheating punishable. In the present, there was deception. The deceiver's object was dishonest and fraudulent. The revisionists intended to retain wrongfully the excise duty to which the State under the Act and the Notifications made thereunder had a claim and which the State was entitled to recover under law from a person who removed non duty paid tobacco from a

bonded warehouse to another bonded warehouse which is non duty paid. In this manner they practised deceit and, therefore, the offence under Section 417 Penal Code is made out against both of them.

14. Counsel next contended that at any rate no offence under Section 468 Penal Code has been made out against the revisionists because it was not known as to who forged the certificates of the Excise Officer of the place of destination at the back of the form issued in A. R. 3. The argument is attractive but it does not bear a close scrutiny. When once it has been found that there was a conspiracy and in the course of the conspiracy and in order to achieve the object of the conspiracy, the certificates at. the back of A. R. 3s were forged in order to give an impression to the Excise Officer of the place from where the goods had been transported that the goods were received at the destination all the conspirators irrespective of the identity of the man who forged the certificates shall be guilty of the offence. To prove conspiracy it is not necessary that there should be direct communication between each conspirator and every other but the criminal design alleged must be common to all. Viewed in that light and having regard to the circumstance that the forging of the certificates was not extraneous to the object of the conspiracy, the two conspirators namely, Mohd. Riaz and Babu Lal shall be criminally responsible for the offence under Section 468 Penal Code.

15. Now, as to the question of sentence learned Counsel for the two revisionists has drawn my attention to the fact that Mohd. Riaz was the son of the servant of Mohd. Iliyas, the Proprietor of the firm M/s. Mohd. Iliyas and Brothers, from whose warehouse the tobacco is alleged to have been removed, and Babu Lal on the evidence had not derived any pecuniary gain as a result of the conspiracy. It is submitted that a lenient view of the matter may be taken. But at the same time we cannot ignore the fact that this is an instance in which the revisionists in collusion with the Excise staff posted at Lucknow (Rural) were instrumental in defrauding the Government and the public of a good amount of Excise Duty, in a sum of rupees two lakhs and odd. In this transaction the conduct of K. K. Srivastava is also not beyond reproach inasmuch as he continued to issue T. P. 2 permits for despatch of non-duty paid tobacco from the warehouse of Mohd Riaz to the warehouse of Babu Lal at Kumher in spite of the fact that no verified copies of A.

R. 3s had been received by him as enjoined by the Instructions contained in the Manual. Taking all these aspects into consideration it is not I a case in which the accused could be let off without directing them to suffer imprisonment for the various offences which have been brought home to them. Taking all these factors into consideration the two revisionists are sentenced to a term of six months' R.I. each under Section 120B to a term of one year's R. I. each under Section 417 and to a term of one year's R. I. each under Section 468 Penal Code. The sentences are directed to run concurrently.

16. With the above modification in sentence the revisions are dismissed and the convictions of the revisionists are maintained. They are on bail. They are to surrender to their bails to serve the unexpired portion of their sentence.

17. In case Babu Lal has already served the sentence of one year he shall be released forthwith unless required in connection with some other offence.