

Mohammad Umar Vs. State

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Court : Madhya Pradesh

Decided On : Jan-01-1986

Reported in : 1986(9)ECC223; 1986(26)ELT724(MP)

Judge : V.D. Gyani, J.

Acts : Indian Penal Code (IPC) - Sections 458, 468 and 471; [Central Excise Act, 1944](#) - Sections 9

Appeal No. : Criminal Revision Nos. 178 to 181/83

Appellant : Mohammad Umar

Respondent : State

Advocate for Pet/Ap. : Shri. Khan

Disposition : Revision allowed

Judgement :

V.D. Gyani, J.

1. All these criminal revisions are inter-connected. The nature of offences are the same, so also the basic facts are also identical.

2. The petitioner was prosecuted for offences under Section 468 and 471 I.P.C. as also Section 9 of [Central Excise Act, 1944](#). According to the prosecution, the

petitioner was a licensee for carrying business in tobacco from 1957 to 1962. On 25.11.1958, he obtained another licence in the assumed name of Mohammad Yusuf and got the same renewed by application dated 4.12.1959, eventually cancelled by another application dated 11.7.1960. The petitioner issued sale notes as and when required in the name of Mohammad Yusuf, thereby knowingly forged the document and used the same for avoiding payment of excise duties. These are broad facts on which charges under Sections 458 and 471 I.P.C. and also Section 9 of Central Excises and Salt Act, 1944 were framed against the petitioner, who pleaded not guilty, but he was convicted by the trial court and his appeal before the Sessions Judge, Indore also failed. Now, he has come in revision before this court. Except for the dates of issuance of sale notes, the prosecution case remains unchanged in its essence. The witnesses are also the same. The defence is also the same. It is for this reason that all these revision petitions are being decided by a common order.

3. The prosecution evidence consists of a retired Superintendent of Central Excise, Motiram Ahuja (P.W.1), another Excise Superintendent Narayan Patidar (P.W.2). Apart from this, there is the evidence of the handwriting expert Chandrashekhar (P.W.4).

4. A perusal of the impugned judgment goes to show that the conviction is, based mainly on the evidence of the handwriting expert. Learned Counsel Shri Khan appearing for the petitioner submitted that no intrinsic reliance should have been placed on the evidence of the handwriting expert, which is essentially opinion evidence. The learned counsel placed reliance on the following decisions: AIR 1973 SC 2200 and AIR 1979 SC 1091. These cases were also cited before the lower appellate court and the appellate court considering the submissions made by the learned counsel has come to the conclusion that the evidence of the handwriting expert is a reasoned one and found it to be worthy of credence.

5. The learned counsel for the petitioner submitted that the prosecution failed to produce material witnesses in order to connect the appellant with the alleged offence. For example, Jagannath Jadav and one Barkatali of Dhamnod to whom tobacco was allegedly sold by the accused have not been produced before the

court. It is also contended by the learned counsel that the excise authorities, who were required to deal with hundreds of applicants for licence, could not have remembered the applicants, decades after they were made.

6. With pointed reference to Ex. P.1, the application Ex. P.2., the licence Ex. P.4 and the evidence of P.W.2, P.W.3, the learned counsel contended that these witnesses in absence of any material endorsement as regards presentation of the application, could not have remembered as to who presented the application Ex.P.2 unless they were gifted with some superhuman memory. Now, this criticism needs to be probed into. Ex. P.1, which is an application for cancellation addressed to the Superintendent, Central Excise, Indore, purported to have been made by Mohammad Yusuf on 11.7.1960, does not bear any endorsement as to who presented it. Similarly Ex. P.2 the licence in Form No. L2 which bears certificate to the following effects.

'Certificate

Certified that the licensee has got no stock of tobacco.....All the transport documents have been withdrawn.....That no Government dues are pending against him.'

This has been issued by P.W.3 D.K. Dani, who was at the relevant time an Inspector, Central Excise, in the Central Excise Department. This witness has contradicted himself at numerous places. Ex.P.3 is the transport permit in the name of M/s. Jagannath Jadav of Dhamnod. The application for. licence is Ex. P.4 and Ex. P.5 is the application for issuance of permit. These applications bear the signature 'Mohammad Yusuf' and on the basis of which permit Ex. P.3 was issued. The moot question that a Yises for consideration is how the appellant could be connected with these applications Ex. P.4 and Ex. P.5 which are dated 26.11.1959 and 4.12.1959 and the permit P.3 (which) was issued on 8.3.1960. It is also significant to note at this stage itself that the witnesses were examined in the earlier part of 1970 and cross-examined in the later part of 1971. It is difficult for any public servant to remember after such a long lapse of ten years, as to who had come to present such applications for collecting the permits. The only reason for connecting the accused appellant with these documents is the evidence of

P.W.3 who was the Upper Division Clerk and according to this witness, as he used to come forward for collecting permits on behalf of others, he could remember and recognise him, the question again is not of recognising him, but whether it was he who had presented these documents in the name of Mohammad Yusuf, and if that was so, public servant such as P.W.3 would permit him to impersonate Mohammad Yusuf and yet knowingly issue a permit; if he does so, he would be undoubtedly betraying his own duty. The claim made by the public servant that he had in fact inspected the business premises stands fully betrayed by his conduct. There has been no honest approach either in the issuance of such permit and even in the subsequent investigation. At this stage, evidence of the handwriting expert may also be considered. In order to give an opinion, the expert must be furnished with the standards or admitted signatures so as to enable him to compare the same with the disputed. For this purpose, the signatures obtaining on the application forms for licence, for permit and for cancellation of licence have been compared with the standard signatures and the appellant Mohammad Umar as available on the sale notes issued by him being Ex.P.22 in the connected Criminal Case No. 1041 of 1976 and Ex.P.24 in the connected case 1041 of 1976. Going through the evidence of the handwriting expert P.W.4, it is to be observed that the opinion of the expert is mainly based on the similarities found in the two sets of signatures, without applying his mind to the dissimilarities as well. Such an opinion, of an expert, which excludes dissimilarities from consideration, does not afford a safe basis for conviction. The opinion must be received with great caution and it is unsafe to base conviction solely on the expert opinion without substantial corroboration - *Maganbihari v. State* - AIR 1979 SC 1019. In this connection, it is submitted by the learned counsel for the respondent, that P.W.3 Dani as also P.W.2 Narayan Patil afford ample corroboration. The lower appellate court has also placed reliance on these witnesses. So far as the testimony of P.W.3 Dani is concerned, all that he had said was that the accused produced the applications for permit and cancellation of the licence. But even if P.W.3 is to be believed, the question is not one of production of documents as to who signed it. There are innumerable inconsistencies and contradictions in his statement which render his testimony wholly unreliable. He pleaded ignorance about the writing in P.4 and on mere guessing concluded that it appeared to have been written by the accused.

He admits that the whereabouts of Mohammad Yusuf were not enquired even while issuing a certificate on P.2. He did not bother to ascertain the identity of the licence holder and yet issued a certificate. This dishonest conduct on his part itself destroys his testimony although the witness has admitted that he used to inspect the shop, but he never went to inspect the shop of Mohammad Yusuf. This witness is not merely self contradicted but self condemned as well. He has betrayed his duties as a public servant. Even while endorsing the certificate on the reverse of Ex.P.2, he does not say as to whom he had seen as Mohammad Yusuf. He claims to have inspected the register of Mohammad Yusuf and had obtained the same. This E-B-3 register has not been produced before the court. The witness has further admitted that as a token of having inspected the shop, he used to put his signatures and all this was done by him in the case of Mohammad Yusuf as well. He admits having made such signatures in the prescribed register known as E-B-3 register, and it was on the basis of the entries contained in this register, that he forwarded the renewal application Ex.P.5. He was a Tobacco Inspector in 1955 and while giving evidence in the court on 22.11.1971, he described his occupation as an Upper Division Clerk. This by itself speaks volumes for the reliability of such a witness.

7. The other witness whom the courts below had relied upon is P.W.2 Narayan Patil who was a Deputy Superintendent posted at Nagpur during the year 1958 to 1961. He is the witness who during the course of his inspection, found sale note in the name of Mohammad Yusuf, son of Nisamuddin, issued by the accused petitioner. On this basis, he further probed into the matter and did not find the shop of Mohammad Yusuf, which P.W.3 had certified to be in existence - Vide Ex.P.2. As he recorded his statement of Mohammad Umar which is Ex.P.6, he got suspicious with the name Mohammad occurring in Mohammad Umar and Mohammad Yusuf, appeared to be similar and it is this suspicion which resulted in the filing of complaint almost eight years after the enquiry which commenced on 19.2.1969. Suspicion, howsoever strong, cannot be made the basis of conviction, as in this case there is no convincing reliable evidence to connect the accused with the offence charged. The conviction recorded against him deserves to be quashed. It is accordingly quashed. The revision petitions are accepted. The fine, if deposited by the petitioner, shall be refunded to him.

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