

Mohd. Ibrahim Vs. State

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Court : Delhi

Decided On : Aug-14-1968

Reported in : AIR1969Delhi315; 1969CriLJ1377

Judge : I.D. Dua, C.J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 235, 240 and 243; High Court Rules and Orders; [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 516-A and 517

Appeal No. : Criminal Appeal Nos. 80-D and 85-D of 1962

Appellant : Mohd. Ibrahim

Respondent : State

Advocate for Def. : V.D. Misra, Adv.

Advocate for Pet/Ap. : Yogeshwar Dayal, Adv

Judgement :

1. These two appeals (Criminal Appeals Nos. 80-D and 85-D of 1962) are being disposed of together because they arise out of the same trial and have, therefore, been disposed of by one order by the learned Additional Sessions Judge.

2. Four persons were initially proceeded against by the police under Sections 235, 240 and 243, I. P. C. The learned Sub-Divisional Magistrate by his order dated 24-3-1961 discharged Sewa Singh and Lachhman Pershad for want of evidence, but committed Prem Chand, aged 32 years a tea-vendor of Jumna Bazar, Delhi and Ibrahim, aged 50 years, a mistri of Farash Khanna, Delhi, to stand their trial in the Court of the Sessions Judge.

Prem Chand was tried on two charges: --

(1) That on 25-12-1959, in Naya Bans, Delhi, he with intent that fraud may be committed was in possession of 85, four anna pieces of counterfeit Indian coins, knowing at the time he came into their possession that they were counterfeit and thereby committed an offence punishable under Section 243. I. P. C., and

(2) that on the same date at the same place he fraudulently attempted to deliver those counterfeit coins to Mohan Lal and Des (illegible) thus committed an offence punishable under S. 240, I. P. C. The charge against Ibrahim accused was that on 29-12-1959 at Lal Kuan Bazaar, Delhi, he was found in possession of five dies and a ring and also a punching machine fitted on a wooden plank and also had three wrenches for the purpose of using these instruments for counterfeiting Indian coins and knowing that these instruments were intended to be so used and thereby committed an offence under Section 235, I. P. C.

3. According to the prosecution story, on 25-12-1959 at about 6 P.M., Bakshi Isher Dass, who was at that time attached to the Police Station, Lahori Gate as Sub-Inspector was, while on patrol duty in Khari Baoli, area, informed Charan Dass, A. S. I., that someone was trying to deliver false four anna pieces in Naya Bans. A raiding party was immediately organized which included Harish Chander P. W. 1 and Puran Chand P. W. 10. Partap Singh and Chuni Lal. Assistant Sub-Inspectors, also joined this party. They reached Naya Bans and at the pointing out of the informant, Sub-Inspector Isher Dass apprehended Prem Chand accused with a bicycle in his hand. Some bidi bundles were tied on the carrier of the bicycle and a bag was hanging on the bicycle's handle. On the search of the person of Prem Chand 85 pieces of counterfeit 25 np. coins of 1957 were recovered from a pocket of his shirt. These were formed into a sealed packet and taken into

possession. From the other pocket of his shirt, some currency notes and Lose change were recovered. These articles were also seized by the police. On interrogation, Prem Chand disclosed the name of Sewa Singh, whose workshop in Krishan Nagar, Delhi-Shahdara was searched but nothing incriminating was found there. Sewa Singh, after being taken into custody, revealed the names of Lachhman Pershad and Ibrahim.

On 29-12-1959, at about 2 P. M., Sub-Inspector Isher Dass organized a raiding party with Chuni Lal A. S. I., Ramji Dass and Kanwal Nain as members thereof and they stood in front of Khanna restaurant in Lal Kuan Bazaar. When Ibrahim arrived there he was stopped. He was holding the bag Exhibit P. 1 and from this bag, underneath the vegetables, an oil cloth bag Exhibit P. 3 was found which contained five dies (Exhibits P. 5 to P. 9) and an iron ring. A pair of dies, according to the order of the Court below, was meant for manufacture of 8 anna coins and another pair for 4 anna coins of 1955, whereas the fifth die was meant for preparing the obverse side of 25np., coins. The articles were taken into possession and put into a sealed parcel.

Ibrahim's shop in Galli Qasim Jan was searched and from there the police recovered a punching machine Exhibit P. 14 fitted on a wooden plank Exhibit P. 15 and also the wrenches (P. 16 to P. 18). According to the opinion of the Mint Master, Calcutta, the 25np. coins numbering 85 taken from Prem Chand were counterfeit of Indian coins and the obverse die obtained from Ibrahim could be used for the manufacture with the aid of corresponding reverse die. It was on this material that the police challaned four persons and out of four, two were discharged and two committed for trial in the Sessions Court.

4. In so far as the charge under Section 240. I. P. C. against Prem Chand is concerned, the trial Court did not find the charge to be substantiated and acquitted him. In regard to the charge under Section 243, I. P- C., after considering the evidence on the record, the Court concluded that the counterfeit coins in question were recovered from the possession of Prem Chand accused in the manner alleged. The fact that four anna pieces were 85 in number, induced the Court to hold that the accused knew at the time he came into their possession that they

were counterfeit and that he remained in their possession with intent that fraud may be committed. It may be pointed out that out of 85 coins, 75 were exhibited in the case as P. 2/1-75. From the impugned order, it is not clear as to what happened to the remaining 10 coins.

5. As against Ibrahim accused, an objection to his joint trial with Prem Chand was taken, but overruled by the trial Court. In regard to the punching machine and the articles recovered from Ibrahim's shop, stated to belong to Ibrahim the trial Court came to the conclusion that these articles could not be deemed to be incriminating, but the dies Exhibits P. 5 to P. 9, said to have been recovered from the possession of Ibrahim, were considered by the Court below to be capable of being used for manufacture of counterfeit Indian coins, including 85 pieces of 25 nP. recovered from Prem Chand accused. In the opinion of the learned Additional Sessions Judge, Ibrahim accused obviously knew or had reason to believe that the dies in question were intended to be used for such a purpose of counterfeiting Indian coins. On this conclusion, Section 235, I. P. C., was held to be attracted. On these findings, Prem Chand was convicted for an offence under Section 243, I. P. C., and sentenced to four years rigorous imprisonment and Ibrahim convicted of an offence under Section 235, I. P. C., and also sentenced to four years rigorous imprisonment.

6. On appeal, on behalf of Ibrahim, in which main arguments have been addressed by Shri Yogeshwar Dayal, it has been submitted that the recovery of the dies from Ibrahim has not been proved beyond the possibility of a reasonable doubt and that these dies do not fall within the purview of Section 235, I. P. C. After hearing the arguments of the counsel for the parties, I wanted to have a look at the dies, but to my utter surprise, the dies were not available in this Court. Shri V.D. Misra took time from me on 13-8-1968 for making enquiries about the dies. After making enquiries, the learned counsel was constrained to admit that these dies are no longer in existence with the police and have in all probability been destroyed. The result, therefore, is that I am unable to form any opinion about the offending character of what has been described by the prosecuting agency to be dies which were alleged to be in possession of Ibrahim for the purpose of using them for counterfeiting coins or knowing or having reason to believe that the said

dies were intended to be used for that purpose. It must never be forgotten that before an offence can be made out under Section 235, I, P. C. it is obligatory on the prosecution to prove not only the possession of the instrument or the material mentioned therein, but also to prove that the possession was with the intention of using the same for the purpose of counterfeiting coins or with full knowledge and belief that it was intended to be used for that purpose. If the necessary intention, knowledge or belief is not proved, a person cannot be convicted under this Section by a mere proof of physical possession of an instrument or material.

But this apart, the Court has to be convinced of the fact which may of course be by a necessary inference (but the inference must be the only possible inference) that the dies are capable of striking a complete coin which the accused intended to manufacture. The fitness of the material for the purpose of counterfeiting coin has also to be proved by the prosecution.

According to the High Court Rules and Orders. Vol. Iii, Chapter 11-E, articles like counterfeit coins together with implements for their manufacture such as dies, moulds, etc. have to remain in the custody of the police department pending the disposal of the case and at the end of the case and not till after the appeal or revision, if any, the Court shall send them to the Treasury or Sub-Treasury together, with a short description of the case. The reason for this rule is obvious. The Appellate Court and the revisional Court is entitled, while scrutinising the case against the accused, to have complete material before it on which the prosecution relies for proving the case against the accused persons. In the present case, to deprive this Court of the benefit of looking at the dies, is a serious infirmity which must be held to be fatal to the prosecution case. The record without the moulds is not complete and it is difficult for me to appreciate the circumstances in which an order for disposal of the moulds and the coins should have been, made by the Court below.

7. Apart from the absence of these moulds on the records, I am far from convinced that an offence under Section 235, I, P. C. has been brought home to Ibrahim beyond the possibility of a reasonable doubt. Ibrahim is stated to be a mistri and the possession of the moulds etc. might well be meant for some other purpose. My

attention has not been drawn to any material on the record which should exclude the possibility of their innocent possession. The conviction of Ibrahim must, therefore, be set aside and I hereby so order.

8. In regard to Prem Chand, no independent arguments were addressed on behalf of the prosecution to sustain his conviction. In this case also, the alleged counterfeit coins have not been retained for this Court to examine them while deciding the appeal. It is not understood why out of 85 coins recovered from the accused, only 75 were produced in Court. All the coins which were alleged by the prosecuting agency to be counterfeit, should have been placed before the Court and they had no power or authority to utilise them for any other purpose except with the permission of the Court. In any event, if something beyond their control had happened, it should have been reported to the Court and the Court should have dealt with the matter as a Court.

But this apart, the manner in which the recovery of the counterfeit coins is alleged to have been made from Prem Chand has not impressed me very much. But when all is said and done, for an offence under Section 243, I. P. C., it has to be established by the prosecution that Prem Chand fraudulently or with intent that fraud may be committed, came into possession of counterfeit coins which were counterfeit of Indian coins, having known at the time he became possessed of them that they were counterfeit. Merely because the number of counterfeit coins was 85 would not, in my opinion, be conclusive) for proving beyond a reasonable doubt that Prem Chand had come into possession of those coins knowing that they were counterfeit and that he was in possession of those coins fraudulently or with Intent that fraud may be committed. It must not be forgotten that Prem Chand is a tea-vendor and if customers have been coming to him to tender these coins for buying tea, and the coins were not so clearly counterfeit as to make him suspicious of these coins he may well be considered to have come into possession of those coins innocently. It is unfortunate that the learned Additional Sessions Judge did not apply his mind fully to all the facts of the case. The Explanation of the accused might also be not liable to be rejected unceremoniously as it has been done by the trial Court.

9. I do not by any means intend to lay down that the offence of possession of counterfeit coins or of tendering counterfeit coins should not be considered to be a very serious offence, but at the same time, persons in the position of Prem Chand and Ibrahim should not be convicted on the kind of unsatisfactory evidence which has been produced on the present record and which is available before me at this stage.

10. Before concluding, I must draw the attention of all concerned to the mandatory requirement of preserving all the necessary exhibits till the appellate or revisional Court disposes of the appeal or the revision, as the case may be, and also of forwarding all those exhibits to such Court so that justice is properly administered.

11. Before finally closing, there is one aspect to which I consider it necessary to advert. This case was set down for hearing during the summer vacation before a learned Single Judge, but unfortunately on 25-6-1968 neither side was represented by counsel in this Court. From the order of the learned Single Judge, it appears that the counsel for the State did not expect Single Bench regular criminal work to be taken up during the vacation. The result therefore, was that this case was not heard. I am unable to appreciate how this impression went round. During the summer vacation, the Vacation Judges do the normal criminal work and it is only in civil matters that urgent cases alone are set down for hearing. This was the practice in the High Court of Judicature at Lahore, and after partition, in the East Punjab High Court and thereafter in the Punjab High Court. I find it difficult to understand the reason for the impression that during the vacation, no Single Bench criminal work would be done. I have made these observations merely to remove this erroneous impression. During the summer vacation the criminal cases are heard in the normal way.

12. For all the foregoing reasons, both these appeals are allowed and the accused persons acquitted. Another unfortunate result which now must follow is that these articles which have been recovered from the accused persons cannot be directed to be given back to them in spite of their acquittal.

13. Appeals allowed.

