

**Krishan Lal Vs. the State**

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**Court :** Delhi

**Decided On :** Feb-24-1971

**Reported in :** 1971CriLJ1610

**Judge :** Pritam Singh Safeer, J.

**Appellant :** Krishan Lal

**Respondent :** The State

**Judgement :**

**Pritam Singh Safeer, J.**

1. The appellant was employed as a lower division clerk in the Excise Department.
2. The narration of events is contained in the deposition of P.W. 8 Mahabir Singh. It is alleged that the appellant contacted him on the 2nd of March, 1968. There was a subsequent contact on the 9th and the sum total of the testimony on that aspect is that P.W. 8 was apprised by the appellant of the circumstances in which money orders were to emanate, from the Employees State Insurance Corporation which were to bear addresses within the beat of P.W. 8 (Postman Beat No. 65) and were to be received fictitiously offering to the postman a sum of Rs. 20/- or 22/- per money order. There was an element of conspiracy in the negotiations between the appellant and P.W. 8. P.W. 8 is stated to have informed Inspector Ashok Kumar who has appeared as P.W. 11 at the trial. He in turn informed his

higher authorities. The 'venture was not discouraged.

3. The ultimate occurrence in consequence whereof the appellant was tried on four distinct charges took place on the 8th of March, 1968. - Before that date the postmaster had on the 7th of March, 1968, addressed a communication which gave birth to the raid in which P.W. 15 Shri B. R. Handa a Deputy Superintendent of Police, and P.Ws. 9, 10 and 14 participated. P.Ws. 9 and 10 Shri M.L. Sharma and Shri Ram Rakha Mai were functioning during those days as Assistant Settlement Officers in Jaisalmer House. P.W. 14 who investigated the case was the author of the raiding party, Information had been furnished by the Postmaster by enclosing along with his communication the statements in writing made by P.Ws. 8 and 11. He has argued at one stage that the information as given by the Postmaster constituted the first information report. The events of the 8th of March, 1968, took place subsequently. Information given prior to that date could not have been the first information report regarding them. It is true that the communication sent by the Postmaster disclosed that there was a conspiracy but then it is Exhibit P.W. 14/B which details the events of the 8th of March, 1968, and can be termed as the first information report.

4. The postman P.W. 8 had given certain addresses. He received the money order Exhibit P.W. 2/B. The appellant had met him and it had been determined between them that on the 8th of March, 1968 the appellant will be collecting the amount covered by Exhibit P.W. 2/B, which had been remitted by the Employees State Insurance Corporation in the name of one Madan Sain. Even though the postman knew the persons who will be impersonating, he would not have paid out the amount until and unless he obtained the signatures on the money order form.

5. Four charges were framed against the present appellant:

CHARGE- I, V. N. Chaturvedi, Sub-Divisional Magistrate Hauz Qazi, Delhi, hereby charge you Krishan Lai son of Shri Thakur Das resident of 4/49, Rajinder Nagar, Delhi, as follows: CHARGE NO. 1.

That you, on or about 2-3-1968 at Delhi, agreed with some unknown officials of Employees State Insurance Corporation, New Delhi, to do any illegal act, to wit- to

cheat the E.S.I.C., New Delhi, by receiving the amounts of some money orders to be sent by the office of Employees State Insurance Corporation, after these amounts were sanctioned on the basis of false medical claims and that you thereby committed an offence punishable Under Section 120-B, I.P.C. read with Section 420, I.P.C. and within the cognizance of the Court of Session.

#### CHARGE NO. 2.

That you, on or about 8-3-1968, at Delhi, pretending to be Shri Madan Sain cheated E.S.I.C. by inducing Shri Mahabir Singh Postman G.P.O., New Delhi to make the payment of Rs. 100/- to you in respect of money order No. 2590 dated 6-5-1968 in the name of Shri, Madan Sain and you thereby committed an offence punishable Under Section 419, I.P.C. and within the cognizance of the Court of Session.

#### CHARGE NO. 3.

That you, on or about 8-3-1968, at Delhi, cheated E.S.I.C. by dishonestly inducing Shri Mahabir Singh, Postman, New Delhi to deliver the amount of Rs. 100/-to you, in respect of money order No. 2590 dated 6-2-1968 sent by E.S.I.C., New Delhi in the name of Shri Madan Sain and which amount was the property of E.S.I.C. and that you thereby committed an offence punishable Under Section 420, I.P.C. and within the cognizance of the Court of Session.

#### CHARGE NO. 4.

That you on or about 8-3-1968 at Delhi forged certain documents to wit, the money order paid receipt on money order form No. 2590 dated 6-3-1968 by forging the signatures of Shri Madari Sain in whose favor the aforesaid money order was sent by E.S.I.C., New Delhi and that you thereby committed an offence punishable Under Section 467, I.P.C. and within the cognizance of the Court of Session.

And I hereby direct that you be tried by the Court of Session on the above said charges.

Sd/- x x

(V. N. Chaturvedi)

Dt: 20-12-1968.

Sub-Divisional Magistrate,

Hauz Qazi,

Delhi.

Where an accused person is so distinctly charged by mentioning separate offences, the prosecution has to establish the guilt under each of them. The accused, on the other 'hand, has at every stage to meet the allegations. He can shake the testimony of the prosecution witnesses by cross-examination. He may prove his defense by adducing evidence.

6. The prosecution case is that the raiding party reached Pahar Ganj at about 1-15 P.M. The members of the raiding party took tea. The deposition of P.W. 11 Ashok Kumar is that while at the crucial moment he had to stay back to pay the bill for the tea which had been taken, the others had left the tea stall and gone out. P.W. 11 according to his own averment, was not an eye-witness, to what actually transpired between P.W. 8 and the appellant. P.W, 8 Mahabir Singh offered P.W. 2/B to the appellant. His deposition is:

Then on the fixed day, i.e., 8-3-1968 at the fixed hour I reached Main Bazar, Pahar Ganf, near 'Chhai Tuti'. The accused was already present there. I gave him the money order form. The accused told me that he would receive the amount at some shop and then took me to a shop of a cloth merchant. The accused then signed on the M.O. for a 'Madan Sain' at mark Q. 1. He also wrote words 'Received Rs. 100/- at my asking. He made this writing in my presence. The accused also signed at place Q. 2, in my presence. I always take signatures of the payees at two places on money order form. The entire endorsement Q. 2 on M.O. form P.W. 2/B was made by the accused in my presence and he signed on it. I gave him 10 currency notes of Rs. 10/- each.

It is noteworthy that P.W. 8 was not cross-examined and his statement that the accused had, signed on the money order form as Madan Sain and he had written the words 'Received Rs. 100 has gone unchallenged.

7. The accused was stated to have been apprehended, while trying to escape. P.W. 8 is supported by P.Ws, 10, 14 and 15 in respect of the assertion that Exhibit P.W. 2/B the money order form was signed by the accused. The witnesses mentioned above, one after the other deposed that the very person who was being tried (accused) had in their presence signed at the various places on Exhibit P.W. 2/B and then received the money. It is contended on behalf of the appellant that the testimony of P.W. 8 is so tainted that it does not deserve to be relied upon. The criticism leveled is well merited; Mahabir Singh was encouraging P.W. 8 at every step. I cannot understand why during the very first meeting he did not repel the suggestion of the accused. I am not prepared to classify him as an interested or a partisan witness. Although P.W. 8 has denied that he actually received Rs. 20/- out of the sum of Rs. 100/- he counted out and gave to the accused, there is enough<sup>1</sup> of evidence in the deposition of other witnesses namely, P.Ws. 10, 14 and 15 that Rs. 20/- were actually recovered from P.W. 8. I would take the evidence of P.W. 8 as that of an accomplice. I would not depend upon it as apart from the evidence of other witnesses for sustaining any conviction. Taking that view I am left with the evidence of P.Ws. 10, 14 and 15. I accept the contention raised by the learned Counsel for the appellant that since P.W. 9 had deposed that his statement had been immediately recorded after the raid and that statement has never been made available to the accused his testimony is one which the accused has been unable to test by resorting to the proviso to Section 162 of the Code of Criminal Procedure. It would not be safe to rely on the testimony of P.W. 9. P.W. 10 happens to be an Assistant Settlement Officer. He was exercising certain judicial powers. He has clearly stated that Exhibit P.W, 2/B was signed by the accused in his presence. His deposition is:-

We found that the accused Krishan Lai present in court and a postman were present near a cloth shop.

8. The witness had reached along with his companions after P.W. 11 had indicated that they should leave the tea stall, while he stayed behind to make the payment of the bill. In court the witness pointed out Krishan Lai, accused and used the words that it was he who was present along with the postman near the cloth shop. The deposition then proceeds;-

On one side D.S.P. stood and on the other the Inspector. I was standing behind them. Mr. Sharma P.W. was standing behind me. The postman gave the money order form to the accused. The accused signed on it. I do not remember on how many places the accused signed. The postman then delivered some currency notes to the accused.

There is no effort at any tutored accuracy. Since he did not remember the witness clearly stated that he could not say as to at how many places the accused had signed. He also confined himself to the deposition that some currency notes had been given to the appellant. There is a ring of truth in his testimony. He was certain as to the person who signed Exhibit P.W. 2/B. That is clear from the opening part of his deposition. He was firm that it was the accused present in court who did that. No pointed cross-examination was made touching the deposition reproduced above. The aspect was, however, not away from the mind of the learned Counsel cross-examining the witness. That is clear from the trend of the cross-examination:

I was not shown any money order form before I reached the spot. No money which was to be passed to the accused was shown to me before. I do not know if the money which the postman was carrying before raid was checked. I do not know if the postman was having the same amount after the raid which he had before the raid, I do not know how many currency notes of Rs. 100/- each the postman had with him. I was standing at a distance of 8 to 10 feet from the accused. I was facing little towards south east of the shop.

The witness was asked to prepare a rough site plan. He prepared it and then without going further stated that S. M. L. Sharma was standing behind him.

9. I have kept out from consideration the testimony of Shri M. L. Sharma who appeared as P.W. 9.

10. Confining myself to this witness it is significant that while he was asked as to where he was standing and while he answered that he was at a distance of 8 to 10 feet from the accused and even when he had in pursuance of the requisition in the cross-examination prepared the rough site plan Exhibit D.B. no question was directly put to him making an effort to shake his testimony that he had actually seen the appellant signing the money order form in question and then receiving the payment.

11. The next witness who comes in for consideration is P.W. 15. He happened to be the Deputy Superintendent of Police. He had participated in the raid. Touching the crucial incident he said in his examination-in-chief:

I myself saw the postman and the accused going to that side. I was. at that time 40 to 50 paces from them. We followed them. Then the postman and the accused stood near a phatta, which was in between the two shops. The postman then gave the money order form to the accused present in Court. (Emphasis added). That money order form is Exhibit P.W. 2/B. In the meantime I stood immediately behind the accused. The accused signed on this form at Q. 1 and Q. 2 in my presence. The postman asked the accused also to write the words 'received one hundred rupees'. The accused then made the writing also at both the places Q. 1 and Q. 2' on the form Exhibit P.W. 2/B in my presence. The postman then gave ten currency notes of Rs. 10/- each to the accused.

The cross-examination elicited from the witness:-

I do not now remember the contents of the money order form Exhibit P.W. 2/B. The date under the endorsement Q. 1 on P.W. 2/B reading 8-3-1968 is in the handwriting of the accused. The signatures and the date underneath at place A were written by Mahabir Singh postman after the accused had written Q. 1 and Q. 2 but this had been written before the money order form was taken into possession as far as I remember. Signatures at A were made after about four or five minutes of the execution of the writing Q. 1 and Q. 2. It is wrong to suggest

that the signatures at A were written much earlier in the post office. The money order form was not seized by me before the signatures were made by Mahabir Singh as I got busy in apprehending the accused.

The evidence coming from P.W. 15 affirms that it was the appellant who had signed the money order form at points Q. 1 and Q. 2 and had received, the payment. The testimony is of an eye-witness. It cannot be ignored. Even if it be said that P, W. 1 was the investigating officer and P.W. 8 was an accomplice the evidence of P.W. 10 and 15 falls in a different category.

12. It is abundantly clear in this case that the prosecution has failed to prove any offence under Charges 1, 2 and 3. The first charge was for proving an offence Under Section 100-B read with Section 420 of the Indian Penal Code. Bearing in mind the circumstances on the basis of which the decision was recorded in State of Bihar v. Kailash Prasad Sinha : AIR1961 Pat451 , and the ratio of that case and being conscious of the observations made by Hidayatullah, C. J. in the course of the judgment he recorded while disposing of Cri. Appeal No. 24 of 1938, D/- 24-3-1970 : : 1971 CriLJ793 wherein he discussed Sections 34, 109 and 120-B of the Indian Penal Code, I am of the view that the prosecution has not led sufficient evidence to prove any prior concert or conspiracy between the appellant and 'some unknown officials of the Employees State Insurance Corporation, New Delhi'. It is surprising that according to the prosecution case it was the Employees State Insurance Corporation whose officials were necessarily to be concerned with the remittance of the amount. No effort was made to trace out the culprits in the Corporation. It is nowhere proved who forged any application by Madan Sain in whose name Exhibit P.W. 2/B had been sent covering the remittance of Rs. 100/-. There must be a procedure which the officers in the Corporation follow before authorising the sending out of payments through money orders. The case was that the payment related to a medical claim. Who verified that Madan Sain had really undergone arty illness? No papers recovered from the office of the Corporation have been made available. The investigation in this case shows a type of dereliction in the performance of duty, which Mr. Avtar Singh appearing for the State assures me will be looked into. As I have no evidence to sustain charge No. 1, I have next to turn to charge No. 2. That was framed for an offence Under

Section 419 of the Indian Penal Code, which is:-

419, Whoever cheats by personation shall be punished with imprisonment of either description for a term which may extend to three years, or with fine or with both.

The defining provision is Section 415:-

415. Whoever by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived and which act or omission causes or is likely to cause damage or harm to that person in body, mind reputation or property, is said to 'cheat.

Explanation. A dishonest concealment of facts is a deception within the meaning of this section.

13. Whom did the appellant deceive through impersonation? Mahabir Singh P.W. 8 knew him. He had been told by the appellant that he will have to pay the money to him and will get his share. He knew the appellant was a fictitious person. It is urged on behalf of the State that it was the Corporation which had been deceived. The argument is that the money order form after receiving the signatures of the appellant was of necessity to be remitted back to the Corporation. The argument is neither attractive on its surface nor when subjected to any probe. In case the Corporation had deferred any action which it may have otherwise taken on receiving back the money order fictitiously signed by the appellant, the argument may have still been untenable. The payment of Rs. 100/- according to the prosecution's own stand had taken place on the 8th of March 1968, at a given moment, The deception was over then. The receipt of the remainder of the money order form by the Corporation became irrelevant to the offence of cheating through impersonation. It is significant that while in charge No, 1 Section 420 of the Indian Penal Code is combined with Section 120-B thereof the said provision is absent from charge No. 2. It remains un-established as to who impersonated as Madan Sain for initiating the remittance from the Corporation. Some employees of the Corporation, who certainly were guilty, have received enormous benefit either

through the fault of the investigating officer or because they were themselves clever.

14. Charge No. 3 is the one Under Section 420 of the Indian Penal Code and falls through along with charge No. 2.

15. The prosecution, however, has succeeded in bringing home the guilt to the accused so far as charge No. 4 is concerned. The offence of forgery is defined in Section 463 of the Indian Penal Code:-

463, Whoever makes any false document or part of a document with intent to cause damage or injury, to the public or to any person or to support any claim or title, or to cause any person to part with property or to enter into any express or implied contract or with intent to commit fraud or that fraud may be committed commits forgery.

16. Dissecting the provision for the purpose of considering the guilt of the accused and confining it to one of its ingredients, I may place it as under:-

Whoever makes any false document or part of a document with intent to support any claim.

17. Certainly the appellant not being Madan Sain signed the money order form as Madan Sain and scribed the receipt thereupon regarding the receipt of Rupees 100/- in order to support the claim that he was entitled to receive the amount covered by the money order. There is no getting away from the fact that in terms of the evidence of P. Ws. 10 and 15 he committed the offence of forgery defined in Section 463 and punishable Under Section 467 of the Indian Penal Code. It has been vehemently contended, and very rightly, by the learned Counsel for the appellant that there was no justification at all for P.W. 14 to record the statements of the material prosecution witnesses after such a lapse of time which becomes visible from the admission:-

I recorded statement of Shri Handa D. S. P. on 21-8-68. I recorded statement of Madan Sain on 28-8-1968, Ashok Kumar on 16-8-1968. I recorded statement of R. R. Mai on 29-6-1968 i.e. after about 3 1/2 months, Sharma's statement was also

recorded on the same day. I do not know if the postman continued coming on duty after this incident, I examined Mahabir Singh postman after 5½ months of this incident.' But for the assurance given to me by the State counsel that the State itself will move in the matter I might have directed an enquiry into the conduct of the investigating officer. I cannot understand why he had the time for recording the statement of Ashok Kumar on 16th of March, 1968 i.e. within 8 days of the incident but he had no time to record the statement of Madan Sain till the 28th of March, 1968. Why at all did he not record the statement of the D. S. P. till the 21st of August, 1968? What comfortable situation was the investigating officer seeking? Why was the statement of P.W. 10 recorded only on the 29th of June, 1968? Mahabir Singh was a very important witness. Why was his statement recorded after five and a half months of this incident? In this context the Courts have to bear in mind the connected provisions contained in Sections 160, 161 and 162 of the Code of Criminal Procedure.

160. Any police officer making an investigation under this Chapter may by order in writing, require the attendance before himself of any person being within the limits of his own or any adjoining station who from the information given or otherwise, appears to be acquainted with the circumstances of the case and such person shall attend as so required:

Provided that no male person under the age of fifteen years or woman shall be required to attend at any place other than the place in which such male person or woman resides. 161. (1) Any police-officer making an investigation under this Chapter or any police officer not below such rank as the State Government may, by general or special order prescribe in this behalf acting on the requisition of such officer may examine orally any person supposed to be acquainted with the facts and circumstances of the case.

(2) Such person shall be bound to answer all questions relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

(3) The police officer may reduce into writing any statement made to him in the course of an examination under this, section, and if he does so he shall make a

separate record of the statement of each such person whose statement he records.

162. (1) No statement made by any person to a police officer in the course of an investigation under this Chapter shall, if reduced into writing be signed by the person making it. Nor shall any such statement or any record thereof, whether in a police-diary or otherwise, or any part of such statement on record, be used for any purpose (save as hereinafter provided) at any inquiry or trial in respect of any offence under investigation at the time when such statement was made:

Provided that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid any part of his statement, if duly proved, may be used by the accused, and with the permission of the Court by the prosecution, to contradict such witness in the manner provided by Section 145 of the Indian Evidence Act 1872, and when any part of such statement is so used any part thereof, may also be used in the re-examination of such witness but for the purpose only of explaining any matter referred to in his cross-examination.(2) Nothing in this section shall be deemed to apply to any statement falling within the provisions of Section 32, Clause (1) of the Indian Evidence Act, 1872,, or to affect the provisions of Section 27 of that Act.

The proviso in Section 162 is a conferment of a right that can legitimately be utilised to contradict the evidence which may be given in Court. Section 145 of the Evidence Act mentioned in the proviso is:

145. A witness may be cross examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question without such writing being shown to him or being proved. But if it is intended to contradict him by the writing, his attention must, before the writing can be proved be called to those parts of it which are to be used for the purpose of contradicting him.

It is apparent from a perusal of this provision that a witness is liable to be cross-examined in respect of his previous statements reduced to writing in respect of the alleged matters and that right is given for purposes of contradicting the witness. The phraseology employed in the proviso contained in Section 162 of the Code of

Criminal Procedure, if carefully considered contains an advancement on the provisions of Section 145 of the Indian Evidence Act. That is so because the statement recorded Under Section 161 made available in terms of Section 173 of the Code of Criminal Procedure is purposefully available for testing the veracity of the witness produced at the trial. Whereas Section 145 provides that a witness may be cross-examined regarding the statements made by him and reduced to writing without showing such writing to him but the same writing may be proved to contradict him, the proviso, mentioned above, gives straight off the right to establish the contradiction by proving the statement recorded Under Section 161 (3). Sub-section (3) of Section 161 was added by Act 2 of 1945. The word 'may' used therein does not come in for comment in this case. That is so because the statements were certainly reduced to writing. The discretion was so exercised by the investigating officer.

18. The legislative intent in adding Sub-section (3) to Sub-sections (1) (2) of Section 161 of the Criminal Procedure Code would stand jeopardized if the statements are not recorded at the earliest in order to be available for testing the veracity of the witness by resorting to the proviso to Section 162 and putting to him the earliest version given regarding the occurrence. The Statute desires that to check any embellishments or additions or subtractions which the witness may choose to make while deposing at the trial, his statement made to and recorded by the investigating officer be utilised. The recording of the statements at the convenience of an investigating officer after the lapse of inexplicable delay injures the legislative intent contained in Section 162 of the Criminal Procedure Code. In a particular case such a lapse may seriously affect the accusation leveled against an accused. Had I not been convinced by considering times without number the testimony of P. Ws. 10 and 15 that the appellant did forge the signatures of Madan Sain Exhibit P.W. 2/B I may have taken a serious view of the lapse on the part of the investigating officer in recording the statements of the witnesses on the dates mentioned above. Being convinced however, that the guilt has been brought home to the accused I maintain his conviction Under Section 467 of the Indian Penal Code. Looking to the circumstances of the case I am of the view that it would meet the ends of justice if the sentence is reduced to six months rigorous imprisonment. With that modification the appeal is dismissed.

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