

Ram Singh Vs. State

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Court : Delhi

Decided On : Apr-18-1991

Reported in : 44(1991)DLT541

Judge : R.L. Gupta, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 474

Appeal No. : Criminal Appeal No. 203 of 1976

Appellant : Ram Singh

Respondent : State

Advocate for Pet/Ap. : D.N. Vohra,; P.C. Dhingra,; A.P. Chaudary and;

Judgement :

R.L. Gupta, J.

(1) This appeal Is directed against the judgment dated 24.5.76 of the Additional Sessions Judge, Delhi by which he found the appellant guilty under Section 474 of the Indian Penal Code on two counts and sentenced him to undergo Ri for 3 years on each count. The sentences, however, were directed to run concurrently.

(2) The appellant Along with four other accused persons was prosecuted for offences under Section 120B read with Sections 420, 467/471 and 474 IPC. The

Director General, Postal Services, Delhi Circle received intimation from the British Postal Authorities, Chesterfield through the Director of Audit and Accounts P & T, Delhi that British Postal Orders (BPOs for short) of Pounds 5 denomination each having series Ff 48, Ff 51 and Ff 69 received by that office for payment were forged. They were 1076 in all which were received by the Agent, State Bank of India, Okhla Industrial Estate, New Delhi on 21.1.1966 and 22.1.1966 from Okhla Industrial Estate Sub-Post office. New Delhi. The coaccused Daya Singh, O.P. Chadha, D.R. Behl and Urmila Rani were found to have presented the aforesaid BPOs for encashment. A case was registered and during the investigation, the aforesaid BPOs along with statement of account and Pay-in-slips etc. were collected. The investigation was then transferred to Jot Ram, Dsp PW19 who on 17.7.66 visited Jullundur and collected documents of case Fir No. 773 of Ps Jullundur which had been registered there at the instance of D.R. Behl, accused, because he said that they had acquired the BPOs from Ram Singh, appellant. On 10.7.66, the Punjab Police in pursuance to Fir 773 allegedly recovered 28 forged BPOs from the house search of the appellant Ram Singh. On a reference being made to the concerned authorities in the United Kingdom the aforesaid 28 BPOs were also found to be forged. Thus it was found that there was a criminal conspiracy to cheat the postal Authorities and in pursuance thereof D.R. Behl, Urmila, O.P. Chadha and Daya Singh obtained payment to the tune of Rs. 71285.00 in their bank accounts while Ram Singh. appellant was in league with those persons. The factum of recovery of 28 BPOs from him indicated that he knew the same to be forged and his coaccused dishonestly used 1076 BPOs as genuine. The prosecution further alleged that D.R. Behl in order to create false evidence and to hoodwink the authorities got the Fir 773 registered at P.S. Jullundur City under Sections 420/474 Ipc against the appellant on 9.7.66. The prosecution further alleged that the accused persons other than the appellant made a fraudulent and dishonest attempt to obtain bank certificates in order to establish their import entitlement under the defense Remittance Scheme in respect of the encashment of the forged BPOs by making misrepresentation to the effect that the BPOs had been obtained by them as gifts from U.K. although they knew that the same had never been received as gifts from U.K. and the same were also not genuine.

(3) After a prolonged trial the learned Asj acquitted the appellant and other accused persons of the charges of conspiracy. He also found that the charge under Sections 420, 467/471 and 474 read with Section 120B IPC were not proved against the appellant and other co-accused persons. However, he held that although a charge had not been framed under Section 417 Indian Penal Code against the remaining four co-accused but it was always permissible to convict an accused of a lesser offence even if no specific charge was framed. thereforee, he convicted those four accused persons under Section 417 Indian Penal Code while he convicted the appellant under Section 474 Indian Penal Code on account of the alleged recovery of 28 BPOs from his residence in village Atta, District Jullundur.

(4) Learned counsel for the appellant assailed the findings of the trial Court qua the appellant in respect of the alleged recovery. He has taken me through the evidence of the prosecution qua the alleged recovery from the appellant. The witnesses of recovery examined by the prosecution are PW7 Gurcharan Singh Asi, then posted at Ps Phillaur, PW10 Roop Singh, Lambardar of village Atta, PW11 Pritam Lal then posted as Si in Ps Kotwali, Jullundur City and PW12 Sohan Singh working as Inspector Cid, Crime Branch at Chandigarh at the relevant time. It is admitted by PW7 that public witnesses Bhulla Ram, Gurbux Singh and Harbans Lal were also present at the time of the alleged recovery but they have not been examined. Before attempting to appreciate the evidence of recovery from the appellant, it is important to note that even according to the Investigating Officer Jot Ram PW19, the case Fir 773 of July, 1976 was lodged by accused Des Raj to create a defense for himself and the partners of M/s Oriental Industrial Corporation, Okhla and to hoodwink the postal Authorities as also the Investigating Agency. It was only in pursuance of the aforesaid Fir by Des Raj Behl that a search was conducted by the police at the house of the appellant in village Atta. The Fir of that case has not been proved on record and, thereforee, it is not known as to what was actually reported in that Fir by Des Raj Behl, co-accused. But it is the positive case of the prosecution that Fir was lodged by Behl not only to create a defense for himself and others but also to hoodwink the postal authorities and the investigating agency. It is not disputed before me that the search at the house of the appellant was conducted only in pursuance to that FIR. thereforee, the very foundation of the search at the house of the appellant is tainted.

(5) Now coming to the evidence of the alleged recovery. PW7 says that 28 BPOs, Ex.P-1077to P-1104 were recovered from top floor of Ram Singh's house kept in an almirah in a room which was locked and the key of which was also supplied by Ram Singh, appellant. Recovery memo Ex. PW7/A was prepared. He admitted in cross-examination that Pritam Lal and Sohan Singh police officers had come to their police station that day at about 9.00 or 10.00 AM. When they were going to village Atta, the appellant had met them on the way and he was accompanied at that time by one Ch. Bhagat Ram of village Goraya and two sardars. He also admitted that after the search of the house of the appellant, the police party had gone to the house of Bhagat Ram at Goraya and also searched his house for about an hour. The only public witness about this recovery, PW10 Roop Singh admitted in cross-examination that he knew Bhagat Ram and on the date of the recovery Bhagat Ram had met at about 8.00 A.M in front of his own house which adjoins the house of the appellant. Bhagat Ram was accompanied by two persons and he accompanied them to the house of appellant prior to the search. They had gone to the third floor of the house of the appellant. He and the appellant came down stairs to arrange some refreshment for Bhagat Ram. It was also a fact that Bhagat Ram had been absconding since the search of the house of the appellant to avoid police detection. He further admitted that at the time of the search of the house of the appellant, one of the two companions of Bhagat Ram had also arrived there and it was at his pointing out that a book containing BPOs was recovered by the police. He further stated that the appellant had immediately told the appellant after recovery that he was innocent and that Bhagat Ram and his companions had planted those BPOs to implicate him. PW11 admitted in cross-examination that the house of Bhagat Ram was searched on the information of the appellant and Bhagat Ram could not be traced as long as the investigation remained with him. PW12 stated in cross examination that only Asi Gurcharan Singh had gone inside the room from where the BPOs were recovered. He is also emphatic in his cross-examination that only the appellant had met him at a distance of about 150 sq. yards from G.T. Road. There are many infirmities which are at once detectable from the alleged evidence of search and recovery of BPOs from the house of the appellant. It may be noted that after the acquittal of the appellant in the alleged charge of conspiracy, only piece of evidence that

remained against him is the recovery of BPOs. therefore, the evidence will have to be examined very closely. As already stated, it is the case of the prosecution itself that Fir was lodged by D.R. Behl at Jullundur in order to hoodwink the prosecution as well as the postal authorities. Other public witnesses of the alleged recovery are not examined by the prosecution. According to the only public witness who is Lambardar of the village; Bhagat Ram had visited the house of the appellant two or three hours prior to the search of his house and the appellant had immediately stated after the recovery that the BPOs must have been planted by Bhagat Ram. Since the recovery of the BPOs from the book was made at the instance of a companion of Bhagat Ram, the possibility of the BPOs being planted upon the appellant at the instance of Bhagat Ram cannot be ruled out. The reason for the disappearance of Bhagat Ram from the scene is also quite intriguing. If he was not actually responsible for planting these BPOs upon the appellant, I do not see any reason why he should make himself unavailable to the police either at the time of the search of the house of the appellant or at the time of search of his own house or even subsequently till the investigation remained pending with Jullundur Police. It may be noted that even Des Raj Behl co-accused was admittedly present at the time of the alleged recovery, from the house of the appellant. therefore, possible some connection existed between Behl and Bhagat Ram in order to harm the appellant. PW10 Roop Singh practically supported the case of the appellant but in spite of that he was not declared hostile by the prosecution. The appellant in his own statement under Section 342 of the Code on 28.11.75 in answer to question 6 regarding recovery explained that before search of his house Harpal Singh and two or three more persons had come to his house. He left them in his house and went himself out to arrange refreshment for them and in his absence Harpal Singh planted these postal orders in his house. It may be noted that Harpal Singh was dropped by the prosecution although his statement under Section 161 is admitted to have been recorded. The cumulative effect of all these circumstances is that the possibility of the planting of these BPOs upon the appellant cannot be ruled out. Otherwise there seems to be no possible reason as to why the appellant should have kept these BPOs in his house for about a period of six months after the recovery of the bulk of the same series in January, 1966.

(6) It is a pity that the remaining four co-accused who actually seem to have master minded the entire operation of the encashment of the BPOs were let off by the learned Asj with a very light sentence of a fine of Rs, 2000.00 each or in default to undergo Si for four month each. It were actually they who presented four BPOs one day for encashment before the Authorities and when they found that those BPOs had been encased they presented the bulk of the BPOs on the very next day to encash all of them. They also gave Explanationn earlier that they had received them as gifts from their relations abroad and if that was so, there seems to be no season about the complicity of the appellant in the alleged offence.

(7) I am, thereforee of the view that the charge against the appellant under Section 474 Indian Penal Code was not at all made out. The appeal is accepted and his conviction and sentence are set aside.

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