

Prem Parkash Vs. the State of Rajasthan

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Court : Rajasthan

Decided On : Apr-10-1971

Reported in : 1971WLN408

Judge : L.S. Metha, J.

Appeal No. : S.B. Criminal Appeal No. 533 of 1970

Appellant : Prem Parkash

Respondent : The State of Rajasthan

Disposition : Appeal dismissed

Judgement :

L.S. Metha, J.

1. The appellant, Prem Prakash Bhatia, was working as Senior Telephone Operator in the Public Call Office, Kaman, Dist. Bharatpur, from 14-10-1965 to 4-10-1967. During that period Moti Lal, PW 3 & Panchu Ram, PW 4 worked as his assistants. In the course of performance of their duties the three employees received certain telephone charges on account of calls made by the public. The Junior Telephone Operators used to deposit the collections with the accused who was incharge of the P.C.O. The accused was required to deposit the collections of the day as and when the amount exceeded Rs. 10/- with the nearest post-offices

in terms of Rules 201 and 203 of the Posts and Telegraphs Financial Hand Book Vol. 1, (hereinafter referred as the Hand Book) The prosecution story is that the accused Prem Prakash received a total amount of Rs. 1576.40P. directly and from his assistants from October 14, 1966, to April 10, 1967, He, however, failed to remit the collections as and when they exceeded Rs. 10/-. When the matter was brought to light of the superior authorities, an inquiry was made. Thereafter the accused deposited Rs. 1559.35P. in 2 instalments of Rs. 1154.00 and Rs. 404.35 on March 29 and April 18, 1967, respectively. According to the prosecution Rs. 1.205P. in respect of 15 calls still remained unpaid by the accused. It was further alleged that the accused realised Rs. 3.15 and Rs. 8.15 against 2 receipts No. 61/222 dated 16.12.66 & No. U/44 dated December 31, 1966 from Angarilal PW 1. The accused accounted only for Rs. 2.15P and Rs. 1.15P. respectively and thereby he derived a wrongful pecuniary gain of a sum of Rs. 8/-. by the abuse of his official position. On the basis of the above allegations. Special Police Establishment, Jaipur, registered and investigated the case Eventually, the police filed a challan in the court of the Special Judge, Jaipur City, for the prosecution of the accused under Section 409, I.P.C and Section 5(2). read with Section 5(1)(c), and Section 5(1)(d), Prevention of Corruption Act, 1947 (hereinafter referred to as the Act), after having obtained sanction from the Divisional Engineer, Telegraphs, Jaipur, in accordance with the provisions of S,6 of the Act. The accused did not plead guilty to the charge and claimed trial. In support of its case the prosecution examined 13 witnesses. In his statement recorded under Section 342, Cr.P.C., the accused admitted that he worked as Senior Telephone Operator. Kaman He further admitted that the amount on account of the telephone charges was received by him and his assistants and that he used to collect telephone charges from his assistants after 2 or 3 days. His defence was that he was not aware of the Posts and Telegraphs Rules, requiring him to deposit the money as and when it exceeded Rs. 10/-, with the nearest post-Office. The accused also admits that Rs. 1576.40P. remained with him and that he kept the money in the almirah, lying in the telephone exchange office. He did not transmit the money to the post-office as he was ignorant of the rules The accused also stated that Babulal, P.W. 9, did not take over charge from him and, therefore, he could not give Rs. 1576.40P. to him. He did not dispute the fact of having deposited Rs. 1154 00 and Rs. 404.35P. on

different dates, as alleged by the prosecution. He did not raise any objection in regard to the sanction alleged to have been obtained by the prosecution from the competent authority. He, in his defence, produced 2 witnesses. Gopeshwar Dayal, D.W. 1. and Karan Singh, 2. W. 2, The trial court, by its judgment dated August 1970, gave the following findings:

1. that the accused worked as Senior Telephone Operator, Kaman, from October 19, 1966, to April 10, 1967, and that he collected telephone charges, amounting to Rs. 1576.40P on account of telephonic calls;

2. that the accused knowingly and intentionally withheld the Government money, amounting to Rs. 1576.40P, for a long time and retained the same dishonestly or fraudulently in contravention of Rule 203 of the Hand Book with the intention of misappropriating or converting it for his own use;

3. That the accused could have handed over the entire amount to his successor Babulal (P.W. 9). when he made over the charge to him on April 10, 1967, but that was not done and when the matter was brought to the notice of the superior authorities; he deposited the amount in two instalments; and

4. that the accused did not make wrongful gain in respect of Rs. 2/-.

2. On the basis of the above findings, the trial court convicted the accused under Section 409, I.P.C. and under Section 5(2) of the Act and keeping in view the young age of the accused, it sentenced him to undergo two months rigorous imprisonment and to pay a fine of Rs. 100/-, in each count, in default of payment of which to undergo further rigorous imprisonment for one month. Both the sentences were made concurrent.

3. Dissatisfied by the above judgment, the accused has preferred this appeal. The contentions of learned Counsel for the appellant are:

1) that no valid sanction for the prosecution of the accused as required by S.6 of the Act is forthcoming:

- 2) that the charge read over and explained to the accused does not specify Rules 201 and 203 of the Hand Book and, therefore, the accused has been prejudiced:
- 3) that the accused was a new entrant and was not conversant with the rules contained in the Hand Book and, therefore, he did not deposit the collections with the post-office as and when they exceeded Rs. 10/-;
- 4) that the ingredients of the offence under Section 409, I.P.C., and Section 5(1)(c) of the Act have not been brought home to the appellant.
4. Learned Counsel for the State supported the judgment of the court below.
5. As regards the first point regarding sanction, learned Counsel for the appellant submits that the alleged sanction Ex. P.943 was accorded by Mr. S.C. Saxena, Divisional Engineer Telegraphs, Jaipur Division, Jaipur. The Divisional Engineer has not been examined as prosecution witness. The prosecution has only produced P.W. 11, D.M. Chopra, Stenographer attached to Mr. Saxena. His evidence is not enough to prove the sanction. The sanction Ex. P. 943, therefore, according to learned Counsel, cannot be said to be valid.
6. Ex. P. 943 is a detailed document. It contains that the accused was required to deposit the total collections when it exceeded the amount of Rs. 10/-, with the nearest post-office for crediting the same, in terms of rules, Rules 201 and 203 of the Hand Book and that the accused collected from October 14, 1966, to April 10, 1967, a total amount of Rs. 1576.40P. towards the telephonic charges, but he did not deposit the amount as and when it exceeded Rs. 10/-. The sanction further embodied that after the matter was brought to light the accused deposited the amount of Rs. 1559.35P in 2 instalments. The first instalment of Rs. 1154.00 was paid on March 29, 1967. and the second one of Rs. 404.35P. was deposited on April 18, 1967. The sanction also mentions that the accused committed an offence of criminal breach of trust and criminal misconduct and, therefore, he was punishable both under Section 409, I.P.C., as also under Section 5(2), read with Section 5(1)(c) and (d) of the Act. Lastly, the sanction speaks that the sanctioning authority fully and carefully examined the material relating to the alleged allegations and it considered that the accused should be prosecuted in the court of

competent jurisdiction A perusal of the above document shows that Rules 201 and 203 of the Hand Book have been specifically mentioned in the sanction The intention of the Legislature in enacting provision for sanction in respect of the offences covered by Section 6 of the Act is merely to afford a reasonable protection to the public servants in the discharge of their official duties. It is not the object of the section that a public servant, who is guilty of a particular offence, should escape the consequences of criminal act by raising the technical plea of invalidity of the sanction. Section 6 affords safeguard for the innocent people. It cannot be used as a shield by the guilty. The sanction as stated above fully suits the material facts and the offences disclosed by these facts. There is a presumption about the official acts having been regularly performed. In the absence of evidence to the contrary, it cannot be held that the officer granting the sanction acted mechanically without applying his mind to the material placed before him.

7. Counsel for the appellant had taken another legal objection to the validity of the trial. He contends that for the prosecution of the accused-appellant, the sanction, though tendered in evidence and exhibited, was not duly proved by producing into the witness-box, the officer, who accorded it. Under Section 74 of the Evidence Act any writing may be proved by the opinion of any person who is acquainted with the handwriting of the man alleged to have written the document. A person may be acquainted with the handwriting of another person, (1) when he has seen that person write, (2) when he has received communication purporting to be written by that person in answer to documents purporting to be written by himself or (3) when in the ordinary course of business documents purporting to be written by that person have been habitually submitted to him. The technical requirement of proof of handwriting is satisfied if a person alleges that he had seen another person writing and that in his opinion the writing to be proved is that of the other person In the present case Mr. D.V. Chopra, P.W. 11, has stated that he has worked as Stenographer to Mr. S.C Saxena and he recognises his signatures as he used to sign papers in his presence. The order of sanction Ex. P. 943 contains the signatures of Mr. S.C. Saxena at portion marked A to B. This evidence has not been controverted on behalf of the accused It cannot, therefore, be said that the prosecution has not proved the genuineness of the signature of Mr. S.C. Saxena,

Divisional Engineer Telegraphs, Jaipur. That apart, the sanction allowing the prosecution is a document which falls within the ambit of Section 74 of the Evidence Act and, therefore, it requires no formal proof. Production of its copy or original is a sufficient compliance of the law: vide *Ravi Datt v. State* A.I.R. 1956 Pepsu 12. Thus, the objection raised on behalf of the appellant is over-ruled & it is held that the sanction Ex. P. 943 is perfectly valid. It discloses all the material facts of the case. It further reveals that the sanctioning authority did apply its mind before according it.

8. I now switchover to the next point relating to the charge. Learned Counsel for the appellant submits that in the charge read over and explained to the accused Rules 201 and 203 of the Hand Book have not been specifically mentioned. This omission, counsel adds, has caused prejudice to the accused. The charge-sheet precisely states that during the period from 14-10-1966 to 10 April 1967, at Kaman, the Senior Telephone Operator Prem Prakash Bhatia was entrusted with Rs. 1576.40 (as telephone arrears) & that he dishonestly or fraudulently misappropriated or converted the same to his own use & thereby committed an offence under Section 5(1)(c) & 5(1)(d), read with Section 5(2) of the Act. The charge-sheet further reads that the accused also committed criminal breach of trust with respect to the said amount and was liable to be punished under Section 409, IPC. It is true that the charge does not disclose the relevant provision of the Hand Book but this circumstance does not invalidate it. The accused understood the case against him and adduced the evidence which he wanted to be placed before the court. Section 225, Criminal Procedure Code reads:

No error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence or those particulars, shall be regarded at any stage of the case as material, unless the accused was in fact misled by such error or omission, and it has occasioned a failure of justice.

The appellant never raised any objection before the Special Judge on the score that the charge was defective on the ground that no particulars of the rules referred to above were inserted therein. No prejudice has caused to the accused on account of non-mention of the alleged rules. In this connection reliance is

placed on N.G. Mitra v. State of Bihar : 1970 CriLJ1396 . In that case their Lordships of the Supreme Court pointed out that even if the charge-sheet does not disclose the amounts taken as bribe and the person from whom the accused had taken bribes, it would not invalidate the charge, although it may be a ground for asking for better particulars. In the light of the above discussion, the argument of learned Counsel for the appellant that the charge is defective is devoid of substance.

9. I will now pass on to the third point in the matter of ignorance of the accused in respect of Rule 201 and 203 of the Hand Book. Learned Counsel for the appellant submits that the accused Prem Prakash was hardly 21 years of age when he was working at the Public Call Office, Kaman. He was not aware of the above rules and, therefore, he could not deposit the money in time. The accused has admitted in his statement, recorded under Section 342, Cr.P.C., that he was working as Senior Telephone Operator. The amount on account of the telephone charges was received by him and his assistants. He used to collect the telephone charges from his assistants after 2 or 3 days. The amount of Rs. 1576.40P. remained with him. He did not deposit the money with the post office as he was ignorant of the rules of the Department. It is in the evidence of P.W. 3 Motilal, Telephone Operator, that in March, 1967, he asked the accused if he had deposited the amount which was with him, but he replied that he should not bother, when he had already handed over the amount to him. The witness further says:

As the accused was a new man and he might forget to deposit the amount so I had asked him only once about depositing the amount.

P.W. 5, Narsingh Narayan, Telephone Operator, states that he was in charge of the telephone Exchange Kaman, in the year 1966. In the month of October 1964, he was transferred from Kama. He handed over charge to Prem Prakash. He had instructed the accused that amount in excess of Rs. 10/- should be deposited in the post-office. In the cross-examination the witness says that the accused was a new man in the Telephone Exchange, Kaman, and he was not conversant perfectly with the rules. The part of the evidence of Narsingh Narayan, P.W. 5, that he had instructed the accused that the money in excess of Rs. 10/- should be

deposited with the Post-Office has not been assailed in the cross examination. The evidence of the witness that the accused was not perfectly aware of the rules is only the opinion of the witness. It does not prove that the accused was not conversant with the rules. The accused was working as a Senior Telephone Operator and was expected to know the relevant rules contained in the Hand Book. Even if it is presumed that he was not aware of them, he ought to have followed the advice given to him by Motilal, PW 5. It is, therefore, wrong to suggest that the accused was unaware of the rules or, at any rate, of the practice that as soon as the total collection exceeded Rs. 10/-, it should be sent to the nearest post-office together with appropriate challan.

10. As for the last point, the accused admits in his statement that he was working as a Senior Telephone Operator, Kaman during the relevant period. He also admits that he used to collect telephone charges from his assistants after 2 or 3 days. He further admits that he did not deposit in time Rs. 1576.40P. with the post-office. The accused, in the end, admitted that he deposited Rs. 1154/- on March 29, 1967 and Rs. 504.35P. on April 18, 1967. Motilal, PW. 3. says that when he became suspicious he made a complaint to the Engineering Supervisor of Telegraphs on March 21, 1967. P.W. 10 Mr. Rameshwar Dayal Rawat, Sub-Divisional Officer, Telegraphs, states that the amounts in question were deposited by the accused after the inquiry. From this evidence it is clear that the accused with held the money and latter on he deposited it after the inquiry had been launched against him.

11. Had the plea of the accused that he kept the money in the Public Call Office been correct, there was hardly any necessity for him to split the amount in 2 instalments and deposit the same in the post-office. He admittedly paid Rs. 1154 00 on March 29, 1967 and Rs. 404.35P. on April 18, 1967, with necessary challans. Learned Counsel for the appellant urged that the latter amount was received by the accused after March 29, 1967. He drew the attention of the court to the 2 receipts on which the following endorsements have been made:

(1) Upto receipt No. 66 collections from Mr. Motilal, Operator, received.

(2) Upto receipt No. 68 collection, from Motilal and Mr. Pancha Ram Mina received upto date.

These endorsements do not show that Rs. 404.35P. were recovered subsequently. The accused himself admits in his statement that he collected the telephone charges from his assistants after 2 or 3 days. Motilal P.W. 3, says that he used to hand over the money to the accused at the time when he was off his duty. The witness used to tally the amount with the receipts. No amount in respect of the receipts prepared by him remained with him. Pancha Ram, P.W. 4, says that he retained no amount in respect of the receipts prepared by him. Thus, the accused has wrongly pleaded that the amount of Rs. 404.35P. was received by him subsequent to 29.3.1967.

12 There is another important fact which merits consideration. Had the plea of the accused that the entire money was kept with the Telephone Exchange Office been plausible, he would have handed over that amount to his successor Babulal, P.W. 9, on April 10, 1967, when he took over charge from him under the orders of the Post Master General, Rajasthan Circle, Jaipur. Babulal has explicitly stated that the accused did not hand over the revenue collection to him. This fact further strengthens the belief that Rs. 404.35P. were not available in the Public Office, Kama, on April 10, 1967, when the accused handed over charge to Babulal.

13. Learned Counsel for the appellant relied on a Division Bench judgment of this court, reported in *The State of Rajasthan v. Satya Narayan Singh* I.L.R. (1969) (18) Raj. 950 wherein it was observed that the temporary retention of money does not by itself constitute the offence of criminal breach of trust in the absence of other circumstances of dishonesty. In that case it has further been laid down that even in cases of criminal misappropriation it is the duty of the prosecution to prove misappropriation either by direct or circumstantial evidence which might lead to such an inference. Satya Narain's case is clearly distinguishable from the facts of the case in hand. In that case Satya Narain was a Municipal Employee from August 13, 1958 to March 18, 1959. During that period he realised Rs. 620. 12 on account of auction money and Rs. 424 5 as penalty and provisions for cattle. He realised a total amount of Rs. 1044.62P. It appears that by resolution, dated March

16.1959. the Municipal Board, Ratangarh, dispensed with the services of the accused Satya Narain. Some notices were sent by the Municipal Board to the accused to deposit the amount lying with him, but they could not be served. Ultimately, notice dated May 26, 1959, was served on him, its service was effected on May 30, 1959. Soon after, i.e. on June 1, 1959, he made an application that he had brought the amount of Rs. 1044.62P. which might be deposited. He further submitted that he was on leave from March 21, 1959, and that he was not in a sound state of health. He then stated that the notice, dated May 26, 1959, had been served on him only on the previous day. On this application the amount of Rs. 1044.62P. was deposited in the Municipal Board's office on June 2, 1959. On June 4, 1959, the matter was placed before the Municipal Board, Ratangrah and the local body was of the view that no criminal proceedings should be launched against the accused as he had given reasonable explanation for depositing the amount late in as much as his wife and father were ailing and he himself was not in a sound state of health. However, some one made a complaint against Satya Narain and the police registered a case against him under Section 409, IPC, and put up a challan in the court of the Sub Divisional Magistrate, Ratangarh. The accused was convicted by the Sub-Divisional Magistrate for the offence under Section 409 IPC. In appeal his conviction was set aside by the Additional Sessions Judge, Churu, on the ground that prosecution failed to prove that the accused misappropriated or converted amount in question to his own use. The State appealed against the above judgment to this Court and it maintained the judgment of the Additional Session Judge, Churu. In Satya Narayan's case the very next day of the service of the notice the money had been deposited by him. Satya Narain remained absent because of the illness of his wife and his father during the relevant period. Besides, there was no clear evidence on the record to show whether there was an established practice in the Municipal Board, Ratangarh. as to the time for depositing the money in the Municipal Board's office. These circumstances are not analogous to those present in the case in hand. In the instant case besides Rules 301 and 303 of the Hand Book, there was the established practice that as soon as the money exceeded Rs. 10/-, it should be deposited with the nearest post-office. The practice has been proved by Motilal, PW. 2, and Narsingh Narain. PW 5. Again, in this case money was remitted in 2 instalments

and the same had not been given to the successor-in office at the time of handing overcharge. Analogous facts are not found in Satya Narayan's case. Therefore, that case I.L.R. (1369) (18) Raj. 950 is of no assistance to the accused-appellant. In J.M. Desai v. The State : [1960]3SCR319 his Lordship Shah J speaking for the court observed:

To establish a charge of criminal breach of trust the prosecution is not obliged to prove the practise mode of conversion, misappropriation or mis-application by the accused of the property entrusted to him or over which he has no dominion. The principal ingredient of not offence being dishonest misappropriation or conversion which may ordinarily be a matter of direct proof, entrustment of property and failure in breach of an obligation to account for the property entrusted, proved, may in the light of other circumstances, justifiably lead to an inference of dishonest misappropriation or conversion. Where he (accused) is unable to account or renders an explanation for his failure to account which is untrue, an inference of misappropriation, with dishonest intent may readily be made.

Again in Krishna Kumar v. Union of India : 1959 CriLJ1508 it has been laid down that it is not necessary or possible in every case to prove in what precise manner the accused person has dealt with or appropriated the goods of his master. The question is of direct proof, but giving a false account of what he has done with the goods received by him may be treated a strong circumstance against the accused person. It is not the law in this country that the prosecution has to eliminate all possible defences circumstances which may exonerate him. Of course, the prosecution has to establish a prima facie case in the first instance. It is enough to establish facts which give rise to suspicion and by reason of Section 106 of the Evidence Act the onus is thrown on the accused to prove his innocence. In a recent decision of the Supreme Court in Hargun Sunder Das v. State of Maharashtra A.I.R. S.C. 1516, His Lordship Dua, J., pointed out:

If the circumstantial evidence is trust-worthy and establishes facts and circumstances the combination of which does not admit of any safe inference other than that of the guilt of the accused then there can hardly be any escape for him and the Court can confidently record a verdict of guilty beyond reasonable

doubt.

In the present case it is an admitted position of the appellant that he was working as a Senior Telephone Operator during the relevant period. He also admits that he received the amount of Rs. 1576.40P. He has further admitted that his assistant Motilal, P.W. 5 and Pancha Ram P.W. 4, who collected the amounts, gave the same to him after 2 or 3 days. How he kept with him an amount of Rs. 1576. 40P. from October 14, 1966, to April 10, 1967, has not been satisfactorily explained by him. It is also clear from the record that the above amount was deposited by the accused after the inquiry was conducted. It is also not easily understandable why the accused paid the above amounts in two instalments, i.e., he paid Rs. 1154.00 on March 28, 1967, and Rs. 404.35P. on April 18, 1967. Had this money been in the Public Call Office he should have handed it over to his successor Babulal, P.W. 9, who took over charge from him on April 10, 1967, but he did not pay that amount to him. I have gone through the evidence, to which my attention was invited to see whether or not the conclusions of the court below are unsupportable. I am not persuaded to hold that in this case there is any cogent ground for interference with those conclusions.

14. The appeal accordingly fails and is dismissed. The accused is on bail. District Magistrate, Jaipur, is directed to arrest Prem Prakash and send him to jail to undergo the sentence awarded to him.

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