In Re: J.S. Dhas and anr.

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Court : Chennai

Decided On : Sep-26-1939

Reported in : AIR1940Mad155

Appellant : In Re: J.S. Dhas and anr.

Judgement :

Lakshmana Rao, J.

1. Appellant 1 was the ledger clerk of the Tea Licensing Oommittee at Coonoor and appellant 2 is the proprietor of the Kudikadu Estate. Both have been convicted under Section 120-B read with Section 420, I. P. 0., of the offence of conspiracy to cheat and obtain tea export quotas of the value of Rs. 22,523-15-0 and sentenced to rigorous imprisonment for two years. The Tea Licensing Committee was constituted in 1933 for regulating the export of tea from India to foreign countries, and the Office of the Committee for Southern India was located at Coonoor. It consisted of P.W. 5, the joint controller, and P.W. 7, the assistant joint controller, with an establishment, and it was the function of the committee to distribute the right of exporting the quantity allotted to Southern India to the various estates in Southern India according to productive capacity, and issue licenses to export the tea. Sales of export quota rights were permitted and it was part of the duty of the committee to facilitate them. The vendor had to submit an application in the prescribed form signed by himself and the vendee, and on receipt, the application would go to the transfer clerk to ascertain whether the transferor and transferee

were on the books of the committee. The application would then go to the accountant to verify whether the necessary fees had been paid by the parties and it would then be sent to appellant 1, the ledger clerk, to ascertain whether the transferor had to his credit the export quota rights intended to be transferred. It was the duty of appellant 1 to write the word 'available' on the form if the transferor had to his credit the export quota sought to be transferred, and the application would then go to the transfer clerk for preparing the quota transfer certificates in triplicate. The transfer certificates and the application would then be sent to P.W. 7, the assistant joint controller and he would initial the certificates if the word 'available' is found written on the application by appellant 1. The transfer certificates without the application form would then go to P.W. 5 and they would be signed by him if P.W. 7's initials are seen there. The certificates-would then be sent to the despatching clerk and one copy of the certificate and duplicate copy of the application would be sent to the transferor. Another copy of the certificate would be sent to the transferee and; the third copy and the original application would be retained in the office. The necessary debit and credit entries would be made in the ledgers and a cursory glance at the ledgers would show the amount of export quota to the credit of the respective estates. Appellant 1 was in sole charge of these-ledgers and the transactions had also to be entered in a transfer register, Ex. P. There was also 'the main controlling account' which used to be written by appellant 1, and P.W. 7 used to act as joint controller during the absence of P.W. 5 on leave. Appellant 1 used to act as assistant controller in addition to his duties as ledger clerk and the dealings of Kudikadu Estate were carried on by appellant 2.

2. The joint controller went on leave from: April to October 1937 and P.W. 7 was acting for him. Appellant 1 was acting as assistant joint controller in addition to his duties as ledger clerk and Exs. B-3, B-5, B-7, B-9, B-11, B-13, B-14, B-16, B-17, B-19, B-21, B-23 and B-25, the transfer applications, were received from appellant 2. The word 'available' was written on them by appellant 1 though the estate had not the necessary quota to its credit and Exs. B-6, B-8, B-10, B-12, B-13, B-20, B-22 and; B-24, the quota transfer certificates, were' prepared. Appellant 1 initialled them as acting assistant joint controller, and they were signed in the usual course by P.W. 7 the acting joint controller and issued to the parties. P.W. 5, the joint controller, called for the ledgers for his customary cheek, on his return in October,

and appellant 1 stated that he was writing them up. They were called for again a few days later and appellant 1 replied that it would take some days to bring the balance up to date. Appellant 1 reported later that the ledgers had disappeared from the office, and a new set of ledgers were compiled under his direction from the office records including Ex. F, the transfer register which was not in his custody. The balance would not tally and appellant 1 went on leave. P.W. 6, the accountant, was asked to verify the figures and Ex. A-1, the wrong credit entry for 63,597lbs. of export quota rights transferred by the Achankoil estate to the Denington Estate on 4th June 1937, was discovered in the re-constructed ledger of the Kudikadu Estate. The relative folio number was found altered in the transfer register, and Ex. C-2, the credit entry for 63,597lbs. of export quota rights in the handwriting of appellant 1, was found interpolated in the reconstructed ledger of the Denington Estate. The failure to balance the figures was due to Ex. A-1, the wrong credit entry in the reconstructed ledger of the Kudikadu Estate, and it transpired that appellant 2 had been enabled to transfer 48,249lbs of export quota rights in excess of the quota to the credit of the Kudikadu Estate and make a wrongful gain of Rs. 22,523-15-0. Appellant 1 was summoned by the joint controller but he made himself scarce.

3. That appellant 2 transferred 48,249lbs. of export quota rights on behalf of the Kudikadu Estate in excess of the quantity to the credit of that estate and made a huge wrongful gain is beyond question, and it was not suggested that the account was overdrawn by any arrangement with the Tea Licensing Committee. That some others were permitted to transfer quota rights in anticipation of acquisition of rights has no bearing and it was not disputed in this Court that P.W. 7, the acting joint controller, would not have signed the quota transfer certificates but for the word 'available' written on the application forms by appellant 1 as ledger clerk and his initials thereon as acting assistant joint controller. It was not suggested hitherto that appellant 1 wrote the word 'available' and put his initials in ignorance of the state of accounts and his statement in answer to a Court question that he must have got the permission of the joint controller to do so is unfounded. The disappearance of the accounts, not to mention the subsequent conduct of appellant 1 belies it, and there is no ground for dissent from the conclusion of the learned trial Judge that the quota transfer certificates were obtained by cheating.

There was no occasion for such fraud except it be for consideration, and the fraud must have been committed at the instance of the person benefited by it. Appellant 2 had dealings with appellant 1 direct as appearing from Ex. M-1 and he had contracted to transfer 59,000lbs. of export quota rights in excess of the quantity to the credit of his estate on 31st May 1987. Copies of the quota transfer certificates used to be sent to the parties and Ex. H aeries show that appellant 2 knew the state of the account of the Kudikadu Estate in June 1937. But the contracts entered into without the necessary export quota rights to the credit of the estate had to be fulfilled and as pointed out by the trial Judge in para. 21 of the judgment appellant 2 was in desperate straits. The conclusion is therefore irresistible that the fraud was committed at his instance and the appellants would undoubtedly be guilty under Sections 415 and 120-B, I.P.C. : vide Aswini Kumar Gupta v. Emperor : AIR1936 Cal403 . The quota transfer certificates are by themselves property vide In re Packinathan (1920) 7 A.I.R. Cal. 403 and Ramaswami Ayyar v. Vaithilinga Mudali (1901) 1 Weir. 28 and even otherwise, what was transferred was not a 'power' and the evidence is that export quota rights have an independent value. The quota transfer certificates would also be documents of title, and the appellants would be guilty under Sections 420 and 120-B, I.P.C. The conviction is therefore correct and it would make no difference in the sentence even if the conviction should be under Sections 415 and 120-B, I.P.C. The conviction of the appellants is therefore confirmed and having regard to the nature and extent of the fraud the sentence is not excessive. The sentences too are therefore confirmed and the appeal is dismissed.