

In Re.: Biswanath Das

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Court : Chennai

Decided On : Aug-06-1926

Reported in : AIR1927Mad533

Appellant : In Re.: Biswanath Das

Judgement :

1. The appellant in this case is a member of the Legislative Council and President of the Taluk Board, Chatrapur, and he has been convicted of criminal breach of trust in that he in his capacity as President of the Taluk Board dishonestly disposed of two sums of Rs. 1,385 and Rs. 725, being items of Taluk Board Funds, in violation of the Local fund Rules under which he was entrusted with these moneys. The first sum was general Taluk Board funds and the second was part of a provincial grant made by the Local Government to relieve water scarcity. It is admitted that for Rs. 1,385 the appellant drew contingent bills on 15th March, 1922, which were cashed at the Treasury next day, and that for Rs. 725 he drew contingent bills on 15th March, 1922, which after objections were cashed on 23rd March, 1922. It is also not disputed that appellant was leaving the District for a few days on 15th March, 1922, and that he left instructions in writing Ex. H with his Head Clerk to pay over these sums when realised to one Narayana Panda said to be his brother-in-law. It is not disputed before us that these moneys were eventually spent on works of utility, such as a President of the Taluk Board is authorised to finance, or that the Board or Government has not got full value in the end for the moneys. But the prosecution contention is that the appellant handed

over the moneys to Narayana Panda to remain with him temporarily in order, to finance him in the matter of the purchase of khaddar cloth and that the real intention from the beginning in the appellant's action was that purpose and, therefore, was dishonest and contrary to rules.

2. The prosecution relies on four main lines of argument to prove the criminal breach of trust, firstly, that the appellant obtained the money from the Treasury by breaking the rules; secondly, that he delayed long in making the payments after he got the moneys; thirdly, that he had no right to hand over public funds to Narayana Panda and fourthly, that Narayana Panda about that time was making large purchases of khaddar, he being a man who would not ordinarily have enough money for such purchases. The gist of the appellant's defence is that he was anxious that the moneys, should not lapse at the end of the financial year on the 31st March, and in order to prevent that he followed what is a common practice, namely, he drew out the money to be kept until the works were complete and ready for payment, that as he was going to Madras he directed his Head Clerk to hand over the moneys to Narayana Panda for safe custody, that his Head Clerk handed over the Rs. 1,385 but not the Rs. 725, that when he returned he got back the Rs. 1,385 from Narayana Panda and applied it in payment for works done, that there was no undue delay in paying for the works after completion and that Narayana Panda's purchase of khaddar has nothing whatever to do with this money.

3. As to the first point that the appellant obtained the money irregularly and by misrepresentation, that the works were complete and would be paid for by 31st March, 1922, it is admitted. It is against the rules to draw on contingent bills for moneys due on works. These have to be paid at the Treasury on a contract certificate bill after the work is checkmeasured and passed. The Sessions Judge is of opinion that at least it was unnecessary to draw the Rs. 1,385 because being Taluk Board funds, they could have been re-allotted at the next year. That would depend on whether they were re-allotted to the Taluk Board by the District Board which was, of course, uncertain. Now such a method of preventing moneys lapsing at the end of the financial year is not uncommon. It is stated by P. W. No. 3 the Assistant Examiner of Local Funds, and it is admitted by Government, see Ex.

Q 3. Therefore, this fact in itself raises no presumption of dishonest intention nor in any way indicates that the appellant intended to apply the money to any other purpose than the purpose for which he could legitimately use it. If this were the only point proved against the appellant, we should not be prepared to hold that it imports dishonest or criminal intention.

4. As to the second point, a proper consideration of it has been greatly hampered by the extraordinary procedure of the prosecution. In the original complaint certain dates were given as the dates on which the payments were actually made. For some of these dates receipts were filed showing when the moneys were received by the persons who had constructed the works. These persons or some of them, were examined as prosecution witnesses. Then apparently the prosecution quietly and gradually dropped these receipts and witnesses as part of their case. Some receipts seized were never exhibited at all, some were exhibited in the committing Court and some witnesses were examined there and these were not subsequently exhibited or examined in the Sessions Court. But at one stage of the trial, which so far as we can gather was at the time of the arguments, these dates, witnesses and receipts were thrown overboard. That evidence was characterised as unreliable, if not false, and it was sought to persuade the Judge that the true dates of receipt were the dates given on the back of the completed 'contract certificates' passed by the Treasury after the works had been completed and checkmeasured. The prosecution was able to persuade the learned Sessions Judge to accept this contention, but a very short consideration will show that it is fallacious. Payments made on these contract certificates would be made at the Treasury and not by the President. It is not part of the prosecution case that the contracts were paid once by the President in 1922 and again by the Treasury in 1924. That the appellant paid them is the prosecution case; it is not their case that the Treasury paid them. It is thus obvious that the receipts on the contract certificates are mere paper receipts, taken after the actual payments in order to regularize the transactions for Treasury routine purposes, and that the dates of the receipts on the contract certificates bear no relation to the actual dates of payment. No inference of the actual date of payment can be drawn from these receipts or from the stamps upon them, and the learned Sessions Judge has erred gravely in drawing such an inference.

5. The prosecution then, having already repudiated its original dates of receipts and witnesses to these, and having rested its case in the lower Court on an argument which is wholly fallacious, is now in the unhappy position before us of having case at all on this point. The contractors examined by the prosecution, P. Ws. Nos. 18 to 22, have none of them been examined as to whether there was any long delay between the completion of the work and the payment. The prosecution will not accept the receipts exhibited: in fact, in the lower Court it did not produce some which it had in its possession. The excuse given for that before us, namely, that it did not press them before the Sessions Judge because the committing Court had refused to allow them to be filed, is puerile. They were obviously not pressed in the Sessions Court, because the prosecution thought it had a better card up its sleeve. We are constrained to comment strongly upon this unfair method of conducting a prosecution. It was not open to it to put forward receipts and witnesses as genuine and then at the last moment, at the time of the argument, to repudiate them all and start a new case altogether. It is impossible that an accused can be prepared to meet such tactics. The learned Judge ought to have seen that the prosecution put forward from the beginning its real case and that it stuck to it throughout. (The judgment further examined the evidence and proceeded). We are unable to hold it proved that the appellant grossly delayed payments for works actually done, and obviously he would not have been acting properly if he had paid up works before they were fully complete. The second contention, therefore, fails.

6. As to the third point, that is, whether the moneys were handed over to Narayana Panda to finance the latter's business, or for safe custody, if the latter is the truth, even though Narayana Panda had no concern with Taluk Board moneys, it would not be a sound conclusion that the appellant's intention was dishonest, nor does the prosecution go so far. It is admitted that the Rs. 1,385 was handed over to Narayana Panda and a note to that effect by the appellant to the Head Clerk, Ex. H. was apparently kept among the Taluk Board records, although the Special Public Prosecutor asserts that he cannot say from where the prosecution obtained it. It is at least arguable that a deliberate swindler would not leave such a paper behind him. (The judgment examined the evidence regarding Rs. 725 and proceeded.) There is thus no satisfactory evidence that this money was handed

over to him. The prosecution case as regards the sum, therefore, collapses.

7. As to the Rs. 1,385 it would be convenient to consider here the fourth contention, viz., that Narayana Panda made large purchases in khaddar after this money was handed over to him, i. e., after 19th March, 1922, because, if that part of the prosecution case is not established and we think it is not - then it is more probable that the money was only handed over for safe custody. (While examining the evidence the judgment continued). The prosecution has again adopted a most curious procedure on this point. It examined the Station Master and filed Ex. HH as its own exhibit and then promptly discredited it. We cannot understand this procedure of filing for the prosecution documents which the defence relies on for the purpose of discrediting them before the defence has had a chance to file them for itself. It is a practice which the learned Sessions Judge should never have permitted. It amounts to this, that when an accused has put forward his defence in the committing Court it is open to the prosecution to call evidence in the Sessions Court to rebut and discredit the appellant's defence, before it is even known whether or not the accused intends to put forward that defence in the Sessions Court. It is in effect permitting the prosecution to call evidence in rebuttal of the accused's defence a practice wholly unauthorized and not admitted by the Criminal Procedure Code. The Sessions Judge should have been more alert in this matter and should not have allowed the prosecution to put forward evidence for the mere purpose of discrediting documents which it anticipated the defence was going to put forward. The prosecution in effect says:

I am going to put forward witnesses and documents which I intend to prove are false because I think the defence is going to put them forward as true.

8. Such a procedure violates not only the principles but even the decencies of proper procedure. (The judgment further discussed the evidence and found that money was not handed over to Narayan Panda for khaddar purchase). No doubt the appellant's irregular practices and neglect gave an infinite amount of trouble to Government and may have led to the concoction of spurious receipts. There may have been some delay in check measuring and paying for works actually completed and the appellant may be, and probably is a person whose methods

render him eminently unfit to hold the charge of Public Funds; but there was any dishonest intention to cause wrongful loss to Government or wrongful gain to anyone else we have not been able to find proved. In our opinion the prosecution in this case has been conducted in such a fashion as to betray a consciousness that it had a weak cause. It has endeavoured to weigh the case against the appellant by charging against him every mistake or disobedience of office routine that it can get hold of in the hope that the Court would accept that as proof of criminality. In these circumstances we are unable to support the conviction and sentence and reverse it and direct the appellant to set at liberty and his bail bond cancelled and the fine, if paid, will be refunded.

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