

In Re: Biswanath Das

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Court : Chennai

Decided On : Aug-06-1926

Reported in : 100Ind.Cas.365

Judge : Wallace and ;Madhavan Nair, JJ.

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 loth 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 checked and measured 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 check measured. 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 no part of the prosecution case that the contractors 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 regularise 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 no ease 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 (sick) ts 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 net, result is that the only witnesses as to the actual dates of payment are witnesses which the prosecution itself has not relied on. The Special Public Prosecutor who appeared before us on behalf on the Public Prosecutor, asks us in these circumstances to presume that there must have been gross delays in payment. Why in the absence of reliable evidence we should draw this presumption against the appellant rather than in his favour we do not see. Such evidence as there is goes to show that all payments were made by the middle of August, 1922. No evidence is relied on before us to show that any payment was delayed long after the work was completed and measured. In the case of Ex. F-3 it would appear that the Overseer check measured on 8th October, 1921, but it does not appear that there is any final check measurement by the President long before the payment. The Sessions Judge also singles out the case of Ex. F-9 and accepts the date 25th June, 1921, as the date of the check measurement, when the figure, therein has obviously been superimposed on the figure 2, without any proof as to which is the correct

figure, and when the measurement by the President was on 20th June, 1922. It is not necessary to refer to other cases in detail. There is no proof that the payment in these cases was delayed long after the works were complete. There is no doubt some suspicion attaching to the receipts Exs. E and W to connect with the work Ex. F 6; Ex. XVI would seem to show that these receipts had been subsequently got up, but unless something definite is established against the appellant to make it likely that it was necessary for him to cover up his tracks, we see no reasons why the responsibility of those documents should be fastened upon him. 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.

7. It would be convenient to consider the question whether the Rs. 725 was also handed over. That the Head Clerk got it from the Treasury on 23rd March, 1922, is clear from Ex. G and it may be remarked here that the final stage in this matter was carried through by the Vice-President and not by the appellant. The Vice-President has not been put into the witness-box. Apparently he saw nothing wrong in the appellant's action at the time in getting the moneys from the Treasury. The only evidence that Rs. 725 was handed over to Narayana Panda is that of P.W. No. 2 the Head Clerk. A perusal of his evidence with its shifty evasions and lies is sufficient to discredit it utterly for proving anything. It is a significant circumstance that whereas there is no receipt from Narayana Panda for either sum, the receipt Ex. N executed by P.W. No. 2 for the return of Rs. 1,385 by Narayana Panda is

exhibited. There is also a note by P.W. No. 2, Ex. J, that he received the Rs. 1,385 and handed it over to Narayana Panda and got his receipt but there is no similar note regarding the Rs. 725. While swearing to Ex. N in the Committing Court P.W. No. 2 impugns it as a forgery in the Sessions Court and says that the appellant compelled him to draw it up. But if the appellant had handed the Rs. 725 also over to Narayana Panda who would hardly have boggled at a further forgery of a receipt for the return of that sum also. All the probabilities seem to us to indicate that the Head Clerk did not part with the Rs. 725 to Narayana Panda but kept it himself. Prosecution witness No. 7 the peon who cashed the bill Ex. G for Rs. 725 says he gave the money to P.W. No. 2 and there is no reliable evidence that P.W. No. 2 handed it on to any one else, The learned Sessions Judge thinks that the appellant on his return would have made sure that the Rs. 725 had been handed over to Narayana Panda. That is to assume the dishonest intention pleaded. If the money was only to go to Narayana Panda for safe custody while the appellant was out of the District, there was no particular point in seeing that it was handed over to him after the appellant returned. It is not denied that a sum of Rs. 200 paid towards the construction of a Sanskrit School was paid out of this Rs. 725 temporarily. Now P.W. No. 2 admits that he paid that Rs. 200 on 1st June, 1922. See his evidence and the receipt Ex. K-1. This payment was afterwards recouped and diverted to its proper purpose. All this indicates that the Rs. 725 were with the Head Clerk. Exhibit F-14 which is the receipt inter alia for Rs. 50 out of this Rs. 725 so far as it goes implies the same. The prosecution which has examined P.W. No. 6 to prove this receipt refrained from asking him who paid him the money. In cross-examination he said he thought it was the Head Clerk. The prosecution relies on this document and Ex. L to indicate that the appellant was dealing with the Rs. 725. Even if we accept Ex. L, the notes thereon have not been proved to have been in the handwriting of the appellant. It proves no more than that he was dealing with the money as he would deal with any Taluk Board Funds. These documents afford no evidence that the money was handed over to Narayana Panda. There is thus no satisfactory evidence that this money was handed over to him. The prosecution case as regards the sum, therefore, collapses.

8. 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. The consideration of this matter turns upon the evidence and accounts of certain khaddar merchants P.Ws. Nos. 9, 10, 11, 13 and 14 who assert that, when they made large consignments of khaddar to Narayana Panda in March, 1922, they did not send him the Railway receipts for clearance until they got the full price from him, and that it was only about the 20th March or so that they sent the Railway receipts. In passing we may remark that there is also the evidence of P.W. No. 16 that he took charge of certain bales for Narayana Panda on 23rd March, 1922, but there is no evidence as to when or how the money for this was paid. So his evidence does not assist the prosecution case. Now the entries in the account-books of these khaddar merchants are relied on as evidence of the dates of despatch of the Railway receipts. They are all dates subsequent to 9th March, 1922. But the Railway parcels inward delivery book, Ex. HH. shows that these consignments were delivered to Narayana Panda on 9th March, 1922. The prosecution after putting forward in the Committing Court and abandoning in the Sessions Court a tale by the Head Clerk that he went with Narayana Panda to the Railway Station on 16th March, 1922, and got the bales, attempts to get over this awkward conflict of evidence by urging that the Railway might have delivered the bales on 9th March, 1922, without the Railway receipts or that the Railway books have been faked. Neither of these arguments appeals to us. There is absolutely no reason put forward why we should suspect the Railway accounts in this case or suppose that the Railway was foolish enough to hand over large bales of khaddar without the Railway receipts. It appears even that there was a Railway Audit between 21st March, 1922, and 23rd March, 1922, which would surely have disclosed any such whole-sale release of goods without payment of the Railway charges if that had taken place. 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 unauthorised 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. Such a procedure violates not only the principles but even the decencies of proper procedure.

9. The accounts put for ward by these witnesses do not inspire much confidence. They are kacha books and appear to be only ledgers which can be written up at any time. Of the five witnesses P.Ws Nos. 10, 13 and 14 have not themselves made the entries to which they speak, P.W. No. 9 is not certain that the entries were made then and there, P.W. No. 11 cannot give similar details of the receipt of the next sum he received from Narayana Panda's Company. The dealings of these persons were not with Narayana Panda by name but with the Swadeshi Trading Company of Chatrapur. There is no evidence that Narayana Panda was a partner in that Company, and he is styled by the witnesses as agent or manager. Why the Court is to assume that the Company itself did not finance its agent for these transactions, and why we should presume that the money received by these persons should come from the agent Narayana Panda himself, is not clear. In these circumstances, and having regard to the fact that the Railway receipts do not bear out the theory that Narayana Panda could have taken the khaddar from the Railway Station until after the dates given in the register, we are not prepared to accept the prosecution case in this matter that the moneys were not paid for these purchases until after the appellant had entrusted the Taluk Board sum of Rs. 1,385 to Narayana Panda. It has therefore, not been proved to our satisfaction that Narayana Panda used this money for his khaddar purchases for the Swadeshi Trading Company; it follows, therefore, that there is nothing to justify an inference

that the appellant handed the money over to him for that purpose, and the foundation of the prosecution case with reference to appellant's dishonest intention breaks down.

10. In the Committing Court the appellant put in certain Exhibits in order to show that Narayana Panda returned the Rs. 1,385 to the Taluk Board Office on 2nd April, 1922. There again the prosecution has dealt with in the same curious fashion as it dealt with the Railway receipts; that is, in the Sessions Court it put in these Exhibits for the prosecution which are Exs. M,N,O and P adducing correlative evidence that they were forgeries or at least false documents, in that they are not drawn up on the dates given in them. In this case in order to establish that the documents are false it relies upon the Head Clerk, P.W. No. 2, whose evidence we have already held to be unfit to prove anything at all. He is obviously out to save his own skin at the expense of appellant. This P.W. No. 2 in the Committing Court admitted that these documents were genuine, in the Sessions Court he maintained that they are concoctions. We must repeat our remarks on the unfairness of such a procedure by the prosecution which anticipates and attempts to rebut the accused's defence before it has been given. We do not think it is unnecessary to go in detail into the question of the genuineness of these documents. Prosecution witness No. 5 speaks to them, but on his evidence there is no doubt a certain mystery, about these documents, but we do not appreciate the learned Sessions Judge's reasons for concluding that they must be spurious. He seems to think it astonishing that the appellant should require copies. Such a desire for copies seems to us to be an ordinary and usual thing. Again he comments on the fact that the appellant did not rely on these in his explanations to Government. But that explanation was called for regarding the unauthorised withdrawal of funds and delayed payment for works. We fail to see how these documents would be relevant at that stage. His other criticisms on these seem to us to overlook the usual formality of routine of offices. His argument would condemn all office notes as spurious, because when the writer is in the next room to the Head Clerk there is no use writing at all. There has been far too much in this case of making mountains out of such molehills.

11. Of these documents Exs. M,O and P are said to be certified copies of records in Taluk Board Office and Ex. N is receipted by P.W. No. 2, the Head Clerk for the return of Rs. 1,385 from Narayana Panda. We found it difficult to pin down the Special Public Prosecutor to a definite case about these documents. He was not sure whether his case was that no originals ever existed for Exs. M,O and P or whether there were originals in the Taluk Board Office. That there were originals seems clear since the copies bear certificates of Mr. Venkata Rao a respectable gentleman, retired Government servant and once Vice-President of the Taluk Board whom the prosecution has not examined; but does not before us claim to discredit. If there were originals, where are they? They ought to be in the Taluk Board Office, but the prosecution which has had access to the Taluk Board Records has not produced them. The only point in this contention against the appellant is the fact that he has not explained how Ex. N which is in favour of Narayana Panda came into his possession and that he has not examined Narayana Panda himself to prove the return of the money. But this seems relatively unimportant as the prosecution case is not that this sum was permanently misappropriated but that it was temporarily handed over to Narayana Panda for a particular purpose. That we have held has not been made out. And if it was not handed over for that purpose we see no reason to suppose that it was not handed back in time for payment to be made for works when payments were due.

12. 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 any one 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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