

V. Kandasami Ayyar

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Court : Chennai

Decided On : Dec-17-1926

Reported in : 102Ind.Cas.488

Judge : Wallace, J.

Appellant : V. Kandasami Ayyar

Judgement :

ORDER

Wallace, J.

1. The petitioner was the Sub Post Master of Nandikotkur and he has been convicted of offences under Sections 409 and 477-A, Indian Penal Code.
2. The facts found by the lower Court are that having received a V.P. letter to be delivered to P.W. No. 4 on payment of the V.P. amount of Rs. 192 he handed over the letter to him without getting payment on or before 20th October, 1925, and then altered his accounts so as to make it appear that he only handed over the letter on 24th October 1925, On these facts the lower Appellate Court has held that he was guilty of criminal breach of trust and falsification of accounts.
3. It is contended here that on the facts these criminal offences have not been made out, and, therefore, the conviction cannot stand. As regards the criminal breach of trust it is argued that the mere handing over of a V.P. letter to the

consignee without getting the money does not amount to criminal breach of trust. I do not think the contention is sound.

4. The rules regarding V.P. articles in the Postal Guide lay down--See Rule 141--that a V.P. article is not to be delivered by the Postal Authorities except on payment of the amount entered in the form. The post office receives the article from the consignor to be sent on this condition, and impliedly contracts with him that the article shall be sent on this condition, and for its services in that connection the post office charges and receives a fee. It does not appear to me to be open to the post office employees to say that they are not under an implied contract with the consignor to obey the V.P. Rules and see that the V.P. article is delivered in accordance therewith. Any delivery contrary to the rules is, therefore, a breach of this implied contract.

5. The next question is whether this breach was dishonest, that is, whether it was made with the intention of making wrongful gain or causing wrongful loss. Intention is to be inferred from acts and the natural consequences of acts. The natural consequence of petitioner's act in handing over the V.P. article without the money is that the consignee gets the article without paying the price to the consignor. That is wrongful gain to the consignee. The petitioner's contention here is that he handed over or may have handed over the letter without the money under a promise that the money would be forthcoming later and that this is not a dishonest intention. But such an intention should have been specifically put forward and proved as a fact and such was not petitioner's defence in the trial Court. Prima facie the natural consequence of his act, and, therefore, his intention, was to cause wrongful gain to the consignee, and that prima facie intention has not been rebutted. Illustration (c) to Section 405, Indian Penal Code seems to me an illustration in point. I have, therefore, no doubt that Section 405 and, therefore, Section 409 apply to the case.

6. As to Section 477-A, the entry in the petitioner's accounts that the V.P. letter was handed over on 24th October, 1925, is false, and he, therefore, falsified his accounts. The question is whether he did so with intent to defraud, that is, with intent to deceive and thereby injure. Here again, I think in the absence of any

reasonable explanation by the appellant--and his defence was a denial of any alteration--his intention in breaking the rules and making false entries was an intention to deceive his superiors and by such deception prevent his original criminal breach of trust from coming to light, and thus to benefit the consignee by allowing him to continue to retain the V.P. article without payment of the sum. The petitioner refers me to Jyotish Chandra Mukerji v. Emperor 4 Ind. Cas. 416 : 36 C. 955 : 14 C.W.N. 82 : 10 Cri. L.J. 581 and Kotamaraju Venkatarayudu v. Emperor 28 M. 90 : 1 Weir 538A : 2 Cri. L.J. 283. The Public Prosecutor on the other hand cites Emperor v. Rash Behari Das 35 C. 450 : 13 C.W.N. 581 : 7 Cri. L.J. 378. The case in Jyotish Chandra Mukerjee v. Emperor 4 Ind. Cas. 416 : 36 C. 955 : 14 C. W.N. 82 : 10 Cri. L.J. 581 is hardly in point. There the account entries had been re-written and were true and not false; and the distinction between that case and Emperor v. Rash Behari Das's case 35 C. 450 : 13 C.W.N. 581 : 7 Cri. L.J. 378 is pointed out. In Kotamaraju Venkatarayudu v. Emperor 28 M. 90 : 1 Weir 538A; 2 Cri. L.J. 283 there was nothing from which an intention to defraud could be inferred in the circumstance. The Emperor v. Rash Behari Das's case 35 C. 450 : 13 C.W.N. 581 : 7 Cri. L.J. 378 seems to me to be in point. In that case the falsification was in furtherance of a prior fraud.

7. I am, therefore, of opinion that the conviction of the petitioner on both the Courts was correct and in the circumstances the sentence is not too heavy. I am not, therefore, prepared to interfere and dismiss this petition.

Cr. R.C. No. 576 OF 1926.

8. As petitioner is bound to lose his appointment on this conviction, I consider no action on this is called for.

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