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Court : Himachal Pradesh

Decided On : Jul-27-1972

Reported in : 1973CriLJ1030

Judge : Chet Ram Thakur, J.

Appellant : Salig Ram

Respondent : State

Judgement :

Chet Ram Thakur, J.

1. Saligram has preferred this appeal against his conviction under Sections 409 and 466, I. P. Code and sentence of six months' rigorous imprisonment and a fine of Rs. 100/- under each count passed by the Additional Sessions Judge, Kangra at Dharamsala on 31st December, 1970.

2. The appellant was employed as a Postman in the Post Office, Nurpur during the months of March and April, 1967. Ram Lai (P.W.) was the Postal Clerk and Ram Parkash (P.W.) was the Postmaster of that Post Office. One money order for Rs. 40/-was booked from Subathu Post Office on 21st March, 1967 by Prem Singh Pathania (P.W.) payable to his son Rajeshwar Singh (P.W.) at Nurpur. The said money order was received in the Nurpur Post Office on 23rd March, 1967. Necessary entries in the register known as 'M.O.-3' were made by Ram Parkash

Clerk (P.W.). Thereafter he gave the amount with the money order to the accused for disbursement to Rajeshwar Singh who was then a student in the Government Higher Secondary School, Nurpur, and was living in the hostel. The payee could not be found so he handed over the cash amount of Rs. 40/- along with other money orders to Ram Lai, Postal Clerk. He was again given the money by Ram Lai, Postal Clerk along with other money orders for disbursement to the various payees. The accused on his return handed over the money order paid voucher of the disputed money order to Ram Lai Postal Clerk with an endorsement made by the accused that the payment of Rs. 40/- had been made to Rajeshwar Singh. This endorsement also carried the signatures of Rajeshwar payee as also of Sawan Mai the attesting witness about the payment of the amount. Necessary entries in the register thereafter were made. Prem Singh Pathania came to know at the end of March, 1967 from his som Rajeshwar Singh that he had not received the money. Rajeshwar Singh made enquiries in the month of April from Nurpur Post Office and was advised that he should report the matter to the Post Master Subathu from where the money order in question was booked.

On this Prem Singh Pathania made a complaint with the Postal Authorities and an enquiry was conducted into the mattes and it was found that the accused had not delivered the cash amount of Rs. 40/- to Rajeshwar Singh and that he had forged the signatures of Rajeshwar Singh as alse of Sawan Mai on the money order paid voucher and he thus falsely showed the payment of Rs. 40/- to Rajeshwar Singh. Om the report of the Superintendent of Post Office, Dharamsala, a case was registered against the accused and after due investigation he was challaned under Sections 409 and 466, I. P. Code, and the case was committed to the Sessions Court at Dharamsala. The accused admitted the receipt of Rupees 258.57 P. inclusive of the money order for Rs. 40/- payable to Rajeshwar Singh oa 25th March, 1967 for disbursement. However, his defence was that he had made the payment to the right person and the signatures were those of Rajeshwar Singh and Sawan Mai witness. The learned Sessions Judge on the testimony of Sarvshri Rajeshwar Singh, Sawan Mai and Prem Singk Pathania found that the accused had not made the payment of this amount to Raja-shwar Singh on 25th March, 1967 and that he had forged the signatures both of the payee as also of Sawan Mai the attesting witness on the money order receipt (Ex. PG) and he, therefore,

convicted and sentenced the accused.

3. It has been urged by the learned Counsel for the appellant that the learned Sessions Judge has wrongly convicted tha accused. The accused had. in fact, paid the amount of Rs. 40/- to Rajeshwar Singh in the presence of Sawan Mai and that it was fully proved from the evidence but th conclusion drawn by the learned Sessions Judge was quite wrong. I do not agrea with the learned Counsel for the appellant on this point. After going through the evidence, I am of the view that the learned Sessions Judge was right in holding that it had been proved from the statements of Sarvshri Rajeshwar Singh, Prem Singh Pathania and Sawan Mai that the signatures on the money order were not those of Rajeshwar Singh and Sawan Mai. Rajeshwar Singh had denied the receipt of the money. He was a student in the Government Higher Secondary School, Nurpur, and Sawan Mai (P.W.) who is alleged to have signed the Money Order Receipt as an attesting witness in token of payment of the money was a teacher in that school. There is nothing brought on the record by the defence as to why these persons should have been interested in deposing against the accused. It is also pertinent to note that the specimen handwriting of the accused was taken in the presence of the Magistrate, who had appeared as a witness for purpose of comparison and the same was sent to the Handwriting Expeft who had not been examined as a witness although a report has been received from him. The prosecution had prayed for examination of the handwriting expert to prove the report but the learned Sessions Judge on the objection of the counsel for the accused rejected the application for examination of the handwriting expert as the name of the handwriting expert did not figure in the list of the witnesses and that the prayer was made at a very late stage and the case was pending since a very long time.

In this Court the learned Counsel for the appellant has taken up this objection that in the absence of examination of the handwriting expert it could not be said whether the signatures were forged or were those of Rajeshwar Singh and Sawan Mai. That is true but this fact is quite apparent from the record that the accused stated that he did not know English. But on the endorsement he has put down his signatures in English and again when the specimen signatures which have been proved by the testimony of the Magistrate as also the Investigating Officer were

written by the accused and that belies the stand of the accused that he does not know English. The learned Sessions Judge, no doubt, has wrongly rejected the prayer of the prosecution for examining the handwriting expert. But in the absence of non-examination when the necessary material is there the Court under Section 73 of the Indian Evidence Act can also examine the disputed handwriting with the specimen handwriting which is taken by the Magistrate and is admitted by the accused to have been written by him.

From the comparison of the same I find that the disputed signatures are also in the same hand of the same person who has written the specimen writing. The accused has furnished a very funny explanation about the specimen handwriting. According to him he does not know English and that the Investigating Officer had written down on one paper and he asked him to copy the same. He copied out the same with the specimen. It is really unbelievable that an illiterate person can copy the writing and I think the learned Sessions Judge was r right in not accepting this explanation given by him about the specimen signatures and I am of the view after comparison of the specimen handwriting with the disputed one that they are written by the same person, i.e., the accused. Therefore, the non-examination of the Handwriting Expert is not going to make any difference.

4. The further contention raised by the learned Counsel for the appellant is that the trial was vitiated inasmuch as the accused had not been furnished the documents accompanying the challan as stated in Section 173 read with Section 251-A of the Code of Criminal Procedure. Non-compliance with these mandatory provisions had caused prejudice to the accused and on that very basis he was entitled to acquittal. Section 173 provides for the report of the Police Officer and Sub-section (4) of this Section reads as under:

After forwarding a report under this section, the officer in charge of the police station shall, before the commencement of the inquiry or trial, furnish or cause to be furnished to the accused, free of cost, a copy of the report forwarded under Sub-section (1) and of the first information report recorded under Section 154 and of all other documents or relevant extracts thereof, on which the prosecution proposes to rely, including the statements and confessions, if any, recorded under

Section 164 and the statements recorded under sub-sec-(3) of Section 161 of all the persons whom the prosecution proposes to examine as its witnesses.

5. The object of the provision is to put the accused on notice of what he has to meet at the time of the inquiry or trial and, therefore, to expedite the disposal of the case. The accused did not raise this objection either before the Committing Magistrate or before the Sessions Judge and he let the trial continue without any objection and it is now at this late stage that he had raised this objection. But I find that no prejudice has been caused to the accused by the non-suppliance of the documents, if any. He was fully aware of the case that he was to meet and, therefore, this non-supply of the copies will not be of any consequence. Moreover, this is a provision which is only directory and not mandatory and it has been held by the Supreme Court in Noor Khan v. State of Rajasthan : 1964 CriLJ167 that non-compliance with those provisions has not necessarily the result of vitiating the proceedings and subsequent trial. The accused has to show the pre-j judice, if any, caused to him. In the instant case, the accused was not able to show any prejudice caused to him because of the non-compliance with the provisions of Section 173 (4).

6. In so far as Section 251-A is concerned it speaks about the duty which is performed by the Court at the commencement of the trial. Under Sub-section (1) of Section 251-A the Court has to satisfy itself that copies of documents referred to in Section 173 (4) have been granted and if not the Magistrate shall cause them to be furnished to the accused. The underlying reason behind these provisions appears to be to enable the accused to have an all round picture of the case against him even at the commencement of the inquiry and in order to enable him to cross-examine the witnesses on such defence as he may set up and to avoid delay which occurred formerly. It would, however, be evident that there is no express prohibition in this section against the use by the prosecution of documents, copies of which have not been furnished. The mere fact that a duty is imposed upon the prosecution and the Magistrate does not necessarily entail the consequences of precluding the prosecution from using later any documents of which a copy has not been furnished, and it would further be evident that it is not the intention of the Legislature to bar prosecution from examining any evidence

other than that based on documents referred to in Section 173 (4). According to AIR 1950 Cal 28 it is obvious that even if there is an entire omission to carry out the provisions regarding supply of copies of documents in the beginning of the trial to the accused, it will not be fatal so as to vitiate the trial but will be merely an irregularity urable under Section 537. The word 'shall' in Sub-section (1) will thus appear to be mere directory and not mandatory. Therefore, the argument advanced by the learned Counsel for the appellant that for non-compliance with the provisions of Section 173 (4) and Section 251-A the entire proceedings have been vitiated and the ac-eused is entitled to acquittal is not tenable.

7. It is admitted by the accused that he paid Rs. 40/- to the mother of Shri Rajeshwar at a later stage when a complaint had been filed to the Postal authorities by Prem Singh Patbania, the father of Rajeshwar Singh regarding the non-payment of the money order. The accused paid Rs. 40/- to his mother. Thereafter the accused went to Prem Singh at Subathu and told him about this fact of the payment of Rs. 40/- to his wife at a subsequent date and he obtained a receipt from Prem Singh and which Prem Singh has also admitted. This subsequent payment by the accused is a clear indicator to the guilt of the accused. The accused has misappropriated the amount and the same was paid to the mother of Rajeshwar Singh at a subsequent stage. It establishes that the accused acted with a criminal intent in this case.

8. It has further been contended by the learned Counsel for the appellant that the case fails for want of sanction as required under Section 197, Cr.PC But I am afraid if this section has got any relevancy in the case of the accused, who is a Class IV employee and who is removable by an authority of the Senior Superintendent of Post Offices. This section comes into play only if the Governmnent servant is of such a status who cannot be removed except with the previous sanction of the State Government, but that is not the case here. Hence this contention also fails. These were the only points which had been raised.

9. In the light of the above, I, therefore, find no substance in the appeal which is hereby dismissed.

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