

(1886) 08 AHC CK 0006

Allahabad High Court

Case No: None

Queen-Empress

APPELLANT

Vs

Girdhari Lal

RESPONDENT

Date of Decision: Aug. 24, 1886

Acts Referred:

- Penal Code, 1860 (IPC) - Section 25

Citation: (1886) ILR (All) 653

Hon'ble Judges: John Edge, C.J

Bench: Single Bench

Final Decision: Allowed

Judgement

John Edge, C.J.

The prisoner in this case has been convicted of offences described in two sections of the Indian Penal Code, namely, Section 465 and Section 218. Against these convictions he has preferred this appeal, and in order to deal with the same, it will be convenient if I deal first with the conviction, u/s 465 for forgery. It appears to me that the offence, if committed, comes under the third clause of Section 464 of the Penal Code. It is clear that an offence u/s 464 cannot be made out unless the act was dishonestly or fraudulently done; and in order to see how these words are to be construed, it is necessary to refer to Sections 24 and 25 of the Indian Penal Code. Section 24 defines the word "dishonestly" as follows: "Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person is said to do that thing dishonestly." Section 25 in like manner defines "fraudulently" thus: "A person is said to do a thing fraudulently if he does that thing with intent to defraud, but not otherwise."

2. Here, in the arguments, which have been addressed to me, it has not been suggested that the prisoner made the alterations in the cheque to cause wrongful gain to any one, but it is contended that he did it to cause wrongful loss.

3. Mr. Strachey, the acting Government Prosecutor, contends that the prisoner's intention was to cause wrongful loss to Musammat Chunni Kuar by delaying the payment of the Rs. 500 due to her. The question of intention is one for a jury or for a Judge sitting as a jury. Of two probable intentions, the one immediate and more probable and the other remote and less probable, I do not think we should attribute to the prisoner the remoter intention.

4. In my opinion his intention was to conceal a fraud which had been previously committed. A sum of Rs. 500, due to Sewa Ram, and after his death to his representative, had been fraudulently withdrawn. Sewa Ram's representative had applied for payment, and it became an immediate consideration how to provide for this Rs. 500. The only way was to have another Rs. 500 ready. We find that two reports (which will be referred to presently), dated the 25th April and Sri August 1835, represented that Sewa Ram's money was in deposit. Ought I to infer from this that Girdhari Lal's object and intention was to cause wrongful loss to Musammat Chunni Kuar? No doubt had the amount of the cheque been paid to Sewa Ram's representative, it would probably have OH used a loss to her by causing the payment to her to be delayed. I cannot conceive that that was his intention. The intention was to stave off the evil day when the fraudulent withdrawal of Sewa Ram's money should be found out. That is not the intention referred to in Section 24. Although the act might have caused loss, the intention in reference to this cheque was to meet the claim of the representative of Sewa Ram. Under these circumstances, in my opinion, it cannot be said that the prisoner acted "dishonestly" within the meaning of Section 24. Then did he act "fraudulently" within the meaning of Section 25? He may have known that the probable consequence of his act would be to delay payment of the money due to Musammat Chunni Kuar, but it cannot be said that his intention was to defraud. Any loss that the Government could sustain had already been sustained by the fraudulent withdrawal of Sewa Ram's money. Section 464 of the Penal Code, therefore, which may be read as part of Section 465 under which the prisoner has been convicted, is not made out; and I must allow the appeal in this respect, and so far set aside the conviction and sentence.

5. Now we come to the other part of this case, namely, the prisoner's conviction (and sentence in respect of the second and third charges u/s 218 of the Penal Code. This section reads as follows: "Whoever, being a public servant, and being, as such public servant, charged with the preparation of any record or other writing frames that record or writing in a manner which he knows to be incorrect, with intent to cause, or knowing it to be likely that he will thereby cause, loss or injury to the public, or to any person, or with intent thereby to save, or knowing it to be likely that he will thereby save, any person from legal punishment, &c."

6. The first argument addressed to me by Pandit Ajudhia Nath for the prisoner was that this section did not apply, because he contended the prisoner t Girdhari Lal did not frame the writing, the subject of the charge, "as such public servant" Now we

find the prisoner, who was a public servant in fact, making these two reports, and Assuming to make them in due course and as a part of his duty; and, in fact holding out these reports as reports which were made by the proper officer. There is also the fact that when the two witnesses from the office were being examined, no question was put to them which suggested that it was not the prisoner's business to make these reports. From all this I am bound to infer that the prisoner made the reports because it was his business to do so; and as nothing was elicited from the two witnesses to the contrary, I hold there was evidence that he made these two reports as a public servant within the meaning of Section 218.

7. It is then urged that, allowing that he made these false reports as a public servant, he did not make them with intent to cause loss. How far this contention can avail the prisoner will be seen. When Sewa Ram's representative applied to have the sum standing to his credit paid, there was an officer of the Government Treasury to whom the prisoner was subordinate named Jainti Prasad. This officer called for a report, and Girdhari Lal made the first of these reports to the effect that there was a sum of Rs. 500 standing to the credit of Sewa Ram. The report is dated the 25th April 1885. The two witnesses above referred to were asked what the report meant, and they said that it meant that this sum stood in deposit to Sewa Ram's credit, and Girdhari Lal did not say at his trial, though every opportunity was given him, that the report had any other meaning. It is only here that it is suggested that the report does not mean what until now it has been taken to mean. Was it a false report, or was it incorrect, to his knowledge? It is asserted that he looked at one side of the account only, and therefore reported incorrectly but for myself I do not believe he was misled. With what intention then did he make that report? If he had had no intention to defraud, or deceive any one, he could, within a week, have caused Musammat Chunni Kuar's money to be transferred to the Civil Court deposit, instead of waiting until the Treasury Officer, Babu Jainti Prasad, had returned to his duties. Now Jainti Prasad was not a person, as it appears to me, who looked carefully into the papers; put before him. He left on the 28th April, and returned to his duties on the 28th July 1885. His place was filled during that time by another officer. The cheque, which was prepared on the 28th April, was not put before the officiating officer. Instead of putting it before this officer, Girdhari Lal waits; and why does he do that? The reason for delay no doubt was because the prisoner knew that Babu Jainti Prasad was a person who did not carefully look at the papers he signed. Does not this show intention? In August 1885, he makes another incorrect report. He again reported that Sewa Ram's money was in deposit? He must have had some intention; and now what was his intention. I have no moral doubt that what he wanted and what was in his mind was to stave off the evil day of the discovery of the previous fraud, and to save himself or the actual perpetrator of that fraud from legal punishment, and for that purpose and with that intention he made these false reports. I come to the conclusion therefore that the prisoner did frame those reports in a manner which he knew to be incorrect, with intent within the, meaning

of Section 218 of the Penal Code.

8. It only remains to consider whether the punishment awarded by the lower Court for the two offences u/s 218 is sufficient. I think not. The Sessions Judge has convicted the prisoner of three charges. The conviction and sentence for forgery has been quashed here, and the convictions u/s 218 of the Code sustained.

9. The Sessions Judge passed two sentences of three months" rigorous imprisonment in respect of the latter offences. If I allow these sentences to stand, they would not, in my opinion, adequately represent the punishment that should be awarded for these two offences of which the prisoner has been found guilty. It has been very ably urged by the prisoner's junior counsel, Babu Jogindro Nath Chaudhri, that I ought to consider his youth, his loss of all chance of future Government employment, and the time that this case has been under investigation. I do not know what the prisoner's age may actually be. His age, as shown on the record, was 29 years, and he was apparently of sufficient age to be instructed with the duty of an accountant, and as to the argument of loss of employment and loss of social position, it is sufficient to say that had Girdhari Lal not been of good character he would not have been employed and trusted by his superiors as he is shown to have been, and would not have had the opportunity of perpetrating the offences. Under these circumstances the sentences passed by the lower Court in respect of the second and third charges must be increased as follows: Six months" rigorous imprisonment and a fine of Rs. 500 in respect of the second charge and conviction; in default of payment of the fine, six months" rigorous imprisonment in addition. In respect of the third charge, six months" rigorous imprisonment to commence at the expiry of the sentence in respect of the second charge. This will make altogether twelve months" rigorous imprisonment and Rs. 500 fine, and in default of payment of the fine, six months" rigorous imprisonment in addition.