

(1935) 08 PAT CK 0028
Patna High Court
Case No: Criminal Revn. No. 217 of 1935

Gena Lal

APPELLANT

Vs

Turantlal Chowdhury

RESPONDENT

Date of Decision: Aug. 9, 1935

Judgement

@JUDGMENTTAG-ORDER

Rowland, J.

This application is presented by Gena Lal, complainant, against an accused person Turantlal Chowdhury. Turantlal was in the employment of Majhauria estate as patwari in village Sahiara. His duties were to collect rent and remit it periodically to the head-quarters of the estate. He was to give receipts using printed counterfoil books provided and prepare shiahas in counterfoil sending one copy with chalan to headquarters. He also had to maintain the jamabandis or ledger accounts of the raiyats. The complainant is Diwan of the estate, and as a result of an inspection of the accounts of the accused he instituted the prosecution on which accused was charged under S. 408 with criminal breach of trust in respect of Rs. 47 odd made up of a number of items said to have been misappropriated between Pos. 20, 1340 and Asin 13, 1341, the original complaint having been in respect of a some what larger amount. The prosecution was based on a comparison of the accounts submitted by the accused and the amounts of money sent in by him to the headquarters of the estate with actual cash items, ascertained to have been realised by him from tenants on an examination of the receipts in the hands of the tenants. The accused did not contest receipt by him of the amounts he was alleged to have received, but pleaded that he had committed no defalcation and had paid in whatever was due from him.

2. The Sub-Deputy Magistrate who tried the case examined the evidence carefully and in detail and found discrepancies between the jamabandis, entries in the patwari's counterfoil receipts, receipts issued to tenants and the entries in the shiahas. The judgment shows that in a number of instances the full amount realized from the tenant and for which a receipt was made, was retained by the accused. The

shiahas with which remittances were made apparently had entered in them the lesser amount tallying with the counterfoil receipt book and not tallying with the receipt granted to the tenants. Thus the Magistrate was convinced that these amounts had been misappropriated. In answer to the charge the accused produced two papers: (1) a receipt (Ex. A-29, purporting to have been granted on 27th September 1934 by the proprietor of the estate acknowledging receipt of Rs. 82 odd, and (2) a shiaha (Ex. F) dated Asin 23, 1341, of corresponding amount. The Magistrate thought that the receipt was very suspicious and that the signature of the proprietor on it was not genuine. He thought that the shiaha also was unreal as it did not agree with the proprietor's cash book which he found to have been regularly kept. In the result he convicted the accused.

3. The appeal was heard by the Sub-divisional Officer of Muzaffarpur who recorded an order of acquittal on the order-sheet. This procedure is to be deprecated. Magistrates should ordinarily write regular judgments except in very simple cases. The appellate Court considered that the shiaha and receipt were "highly suspicious," but observed that direct evidence to hold it to be a forgery was lacking. He thought that the absence of proof that the shiaha was bogus and the receipt a forgery was fatal to the prosecution case. In revision it was at first contended that the appellate Court was wrong in observing that direct evidence of the falsity of the receipt and shiaha was "lacking. With regard to the receipt the position was that this with 30 other receipts was placed before the complainant Gena Lal in his cross examination and he gave his opinion that all the receipts were in the handwriting of his master. After the receipts had been examined a petition was filed on behalf of the prosecution denying the genuineness of the disputed receipt Ex. A-29; but Gena Lal, though examined on 25th January to prove additional shiahas did not say that on examination he was convinced that the receipt was not in his master's writing; nor did the prosecution examine the proprietor to prove that the receipt was not granted by him.

4. The appellate Court was therefore not incorrect in stating that direct evidence of the falsity of Ex. A-29 was lacking but the observation that the complainant had not filed all the shiahas is incorrect. At first only those shiahas were put in which the complainant thought necessary, but on 25th January all the remaining shiahas were produced making a complete series for the year. It is contended for the petitioner that the Magistrate should have in any case examined the circumstances relied on by the trying Magistrate as proving by inference that the disputed papers could not be genuine. It is also contended that the appellate Court should, if necessary, have called for further evidence as to the genuineness of the receipt. Whether to call for further evidence or not was within the discretion of the appellate Court, but certainly that Court should have considered with reference to the evidence as a whole whether, even if true, the disputed receipt and shiahas afforded a complete answer to the prosecution case. The effect of explanation (1) to S. 403, I.P.C., has not been considered. The trial Court has said that the shiahas contain items of several

dates including some items which ought to have been entered in shiahas of earlier date than Ex. F. If Ex. F and Ex. A-29 are not forgeries, the question is still to be considered whether in respect of such items there was failure to credit the money at the time when it ought to have been credited and to remit it at the time when it ought to have been remitted and whether this failure is dishonest or not. The question is, was there dishonesty at the time? This question not having been considered, there has not, in my opinion, been a proper trial of the appeal.

5. The acquittal will be set aside and the appeal will have to be heard. It will be open to the appellate Court, if necessary, to take further evidence as to the genuineness or otherwise of the receipt Ex. F. The Magistrate will take steps to secure the appearance of the accused. If convenient to the District Magistrate, it would be perhaps desirable that he should hear the appeal himself though I will abstain from making a definite order as to who should hear the appeal.