

59 CWN 993

Calcutta High Court

Case No: Criminal Revision No. 744 of 1954

Jaymongal Singh

APPELLANT

Vs

The State

RESPONDENT

Date of Decision: April 7, 1955**Acts Referred:**

- Evidence Act, 1872 - Section 167
- Post Office Act, 1898 - Section 24, 52

Citation: 59 CWN 993**Hon'ble Judges:** Mitter, J; Guha Ray, J**Bench:** Division Bench**Advocate:** S.S. Mukherjee and Kishore Mukherjee, for the Appellant; Harideb Chatterjee for the State, for the Respondent**Final Decision:** Allowed

Judgement

Guha Ray, J.

The petitioner, Joy Mongal Singh, who was admittedly the postal peon attached to the Kalighat P.O., between the 21st of March, 1953, and the 1st of April, 1953, was tried on two charges u/s 52 of the Indian Post Office Act with the help of a common jury and convicted on both the counts on the unanimous verdict of the jury and sentenced to 6 months" rigorous imprisonment on each count, the two sentences being concurrent. An appeal from his convictions and sentences was summarily dismissed. he case for the prosecution briefly is that on the morning of the 6th of April, 1953, a large number of letters and other postal articles was found lying in a small room under the stairs of Premises No. 137, Lansdowne Road, occupied by Mrs. Latika Ghosh. None of these letters and postal articles had been addressed to her. On seeing these letters she called a neighbour of hers, namely, Sri N. K. Ghosh, a Municipal Magistrate, Calcutta, and showed him the postal articles. This gentleman rang up the Kalighat P.O., about the matter. The post-master deputed an overseer to bring in these letters, etc. These letters, etc., were then entered in a list and delivered to the addressees with a request to them

that they should return the covers to the post office in order to facilitate an enquiry. All these letters which were found at 187, Lansdowne Road had been addressed to different places within the delivery area of heat No. 16 of Kalighat P.O., and it is the prosecution case that from the 21st of March, 1953, upto the 1st of April, 1953, the petitioner was the postman in-charge of that heat, specially for the first three deliveries of each day, namely, at 7-30 A.M., 12-30 P.M., and 2-30 P.M. An Inspector of post offices held an enquiry" on the 9th of April, 1953. The petitioner wrote out a statement in the form of an explanation. This explanation of the petitioner is Ex. 11, It was not till the 15th of June, 1953, that an information was sent to the police. In that information it was not stated that the petitioner had committed any offence or offences u/s 52 of the Indian Post Office Act by secreting the postal articles in question but what was stated was that he was suspected to have been responsible for the non-delivery of the articles. The petitioner however, is said to have made himself scarce and it was not till the 5th of November, 1953, that, according to the prosecution, he could be traced. On that date he was produced at the thana by the Inspector post offices and he was put under arrest. A formal first information report was drawn up on the 15th of December, 1953, more than a month after the actual production of the petitioner. Then after a preliminary enquiry he was committed to the Court of Sessions.

2. He was actually charged on two counts in respect of three letters, namely. Ex. 7B, Ex. 9 and Ex. 8B. The first formed the subject-matter of the 1st charge, the 2nd and the 3rd the subject-matter of the 2nd charge. Ex. 7B is addressed to 9B, Monohar Pukur Road and bears the postal seal of Kalighat, P. O., the hour of delivery being 2-30 P.M. and it is dated the 27th March, 1953. Ex. 9 is addressed to 102/3, Hazra Road and bears the delivery seal of the Kalighat P.O., the time being 7-30 a.m.. and the date the 30th March, 1953. Ex. 8B is addressed to 109/84, Hazra Road and bears the delivery seal of the Kalighat P.O., the time of delivery 7-30 a.m., and its date 30th March, 1953. These three letters were amongst the numerous letters and other postal articles found at 137, Lansdowne Road on the morning of the 6th of April, 1953.

3. The defence of the petitioner was that he was not guilty and that at the relevant time he was not the delivery peon of the particular zone, of which the letters were found lying undelivered in Mrs. Latika Ghosh's place. His defence about the Explanation Ex. 11 is that it was extracted from him under undue influence and coercion by his Superior Officers.

4. Admittedly, there is no direct evidence to show that the petitioner actually left the letters in question at Lansdowne Road before they were covered there in the morning of the 6th of April, 1953. The evidence for the prosecution is in the first place that of the delivery clerk who claimed to have made over these three letters to the petitioner on the 27th and the 30th March. 1953. In the second place there is the evidence of the delivery clerk, P. W. 1, to the effect that the petitioner attended the post office on the 27th and the 30th of March, at the: hours in question and in the third place there is the evidence of P. W. 1, the delivery clerk, P.W. 6, the postmaster and P. W. 9, another peon that the petitioner was

the postal peon in charge of beat No. 16, of Kalighat P.O., on the relevant dates. Apart from this oral evidence there is the beat list Ex. 2, which shows the distribution of Kalighat post office into different beats. It appears from the beat list that Lansdowne Road from Nos. 115 to 145C lies within this beat and Monohar Pukur Road from No. 18/2/1 to 2/1 and Hazra Road from 109/3A to 109/40B and 101 to 107 except 109/8 lies within this beat. This beat list is a register none of the pages of which bears the signature of any one. Apart from this beat list there is an attendance register Ex. 1a showing the attendance of the petitioner on the relevant dates at the post office at the relevant hours. While on behalf of the defence the genuineness of the attendance register and the entries therein do not appear to have been challenged, the unsigned beat list appears very seriously to have been challenged and the learned Judge in his summing up drew the attention of the jury to all these shortcomings of the beat list. Apart from these two registers there is the explanation Ex. 11 of the petitioner himself. The learned Judge in directing the jury as regards the petitioner's explanation points out that although it was signed by one S. N. Lahiri apart from the petitioner himself and P. W. 17, only P. W. 17 was examined and not S. N. Lahiri. The learned Judge however omitted to point out that P.W. 17 himself admitted that the Supervisor, the Deputy Postmaster, the Delivery Clerk and others were present when this explanation was written by the petitioner inside the post office. Though he said that S. N. Lahiri, Clerk of Kalighat P.O., who signed this statement was not examined, the learned Judge nowhere pointed out to the jury that the other officers mentioned by P.W. 17, as having been present at the time when the petitioner wrote out Ex. 11 were also not examined and the jury were entitled to presume that had they been examined they would not have supported the case for the prosecution. At the same time he said as follows :

It is my duty however to tell you that you should not place much reliance on this statement as it is doubtful if the accused had or had not been given some sort of promise about his case being legitimately dealt with.

5. Elsewhere, he pointed out that in the explanation the petitioner stated that he had no guilty intention and then he asked the jury to consider whether such an explanation could have been extracted by coercion. But then the question arises whether, when the Judge himself was doubtful, the petitioner had or had not been given some sort of promise it was open to him to admit this piece of evidence at all. Section 24 of the Indian Evidence Act provides that a confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by an inducement, threat or promises having reference to the charge against the accused person proceeding from a person in authority and sufficient in the opinion of the Court, to give the accused persons grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him. From the learned Judge's summing up it does appear to us that to him it was doubtful whether the explanation had been induced by some sort of promise or not. That being the case, he should not have admitted Ex. 11 in

evidence at all. From this the inference is justified that possibly at the time this piece of evidence was admitted the learned Judge did not apply his mind at all to the question whether it should go in evidence or not. Of course, section 167 of the Indian Evidence Act provides that the improper admission or rejection of evidence shall not be ground of itself for a new trial or reversal of any decision in any case, if it shall appear to the Court before which such objection is raised that, independently of the evidence objected to and admitted there was sufficient evidence to justify the decision. In a trial by jury an improper admission of evidence leads to the further result of some sort of a direction on that evidence and whether that direction is improper or proper the attention of the jury is directed to a piece of evidence, which they are not entitled to consider at all. A direction which is likely to be quite proper if the evidence in question was legally admissible may become quite improper when the evidence is inadmissible, so that the admission in a jury trial of inadmissible evidence is inevitably followed by certain improper directions, so that the improper admission of evidence does not in such a case stand by itself. In this case, for example, though the learned Judge appears to have sufficiently warned the jury against the acceptance of Ex. 11, he told them at one place to consider if an explanation By which the offender disowned his guilty intention could have been induced by coercion, etc. This part of the charge suffers from other shortcomings also. The learned Judge nowhere told the jury that though he decided Ex. 11 to be voluntary for the purpose of admitting it, that decision was by no means binding on the Jury for whom the primary question was if the explanation was true, but who had to consider if it was voluntary in deciding if it was true. As a matter of fact this aspect of the matter does not appear to have occurred to the learned Judge at all and the Jury might have been seriously influenced by the fact that the learned Judge admitted it in evidence. In the circumstances the question of prejudice to the accused arises particularly in a Jury trial and section 167 of the Indian Evidence Act would not in our opinion constitute a complete answer in a trial of that kind to such improper admission of evidence because as already stated such improper admission of evidence is followed by certain directions on that evidence that turn out to be misleading because of such improper admission. It is not unlikely that the gentlemen of the jury were very much influenced by this explanation of the petitioner where he admits receipt of the letters though he disowns all guilty intention in respect thereof, his statement being that he was doing the work of two men on these particular dates and that he was resting near the house after having walked about in the sun for a long time and he does not remember what happened afterwards. How far this improper admission of evidence led to an erroneous verdict has now to be considered.

6. That the petitioner had attended on those particular dates at the particular hours is not disputed but the whole question is whether on the evidence on the record it has been proved that he received the postal articles addressed to different places in beat No. 16. That at once raises the question whether there is any reliable evidence before us as to what were the areas within beat No. 16. On this point the sole evidence is the unsigned document Ex. 2 and even the postmaster P. W. 6 does not try to prove this document.

7. What he says is that the beat system that was in existence before he took over charge was continued and he did not make any changes. The beat register was proved in the Sessions Court by P. W. 2, who was not questioned at all about it in the committing Court where the beat register was proved by one Karunamoy in whose handwriting it purports to be and Karunamoy was not examined in the Sessions Court as it is said that he was not available at the time. Whatever the reasons for the absence of Karunamoy the fact remains that a man who wrote up the beat register was not available and no body knows when this register was prepared and on what basis. The further fact remains that this beat register was never produced before the police. It is also significant that the explanation of the petitioner Ex. 11 was also not produced before the Police nor was it mentioned in the petition of complaint filed on the 15th of June, 1953. The beat register also does not find any mention in the petition of complaint. The genuineness therefore of the so-called beat list Ex. 2 one must seriously doubt. In the attendance register itself Ex. 1 against the name of the petitioner there is the figure 16, but none of the witnesses has stated that this figure 16. represents the beat number. Now even if this number be taken to represent the beat number the question still remains what were the areas within that beat and if Ex. 2, the genuineness of which is seriously in doubt is left out of account, there is nothing whatever to indicate what areas were actually included in this beat. Assuming therefore that the petitioner was the peon in charge of beat No. 16, and that he received the letters and postal articles meant for delivery within that beat on the relevant dates and at the relevant hours, in the absence of anything to show what areas really fell within that beat it cannot be said that the petitioner really received for delivery the letters and postal articles in question which were found on the morning of the 6th of April, 1953, at 137, Lansdowne Road. That being so, the verdict of the Jury on both the counts has to be set aside and the petitioner acquitted of both the charges.

8. The convictions and sentences are accordingly set aside and the petitioner is acquitted. He is discharged from his bail bond. The petition accordingly is allowed and the Rule is made absolute.

Mitter, J.

I agree.