

## **Mangleshwari Prasad vs State Of Bihar on 22 January, 1954**

**Equivalent citations: AIR1954SC715, AIR 1954 SUPREME COURT 715**

**Bench: B.K. Mukherjea, V. Bose**

### **JUDGMENT**

Bhagwati, J.

1.This is an appeal by special leave from a judgment of the High Court of Judicature at Patna affirming the conviction and sentence of seven years' rigorous imprisonment imposed upon the Appellant by the Second Assistant Sessions Judge, Gaya.

2. The Appellant, a public servant, was a Tax Daroga in the employ of the Gaya Municipality. One Ram Dayal Singh was a peon in the said employ and was working under the Appellant. Collections of the taxes due to the Municipality used to be made by the various Tax Collectors who used to hand over the sums collected every day to the Appellant. A sum of Rs. 3,773-10-9 was thus collected and handed over to the Appellant on the 8th November 1949 and a sum of Rs. 4,240-3-3 on the 10th November 1949.

The practice of the Appellant was to put these collections into a cash box which was carried to a vault in the premises of the Imperial Bank of India at the end of the day's work. The key of the cash box and the vault remained with the Appellant. The Appellant used to prepare a challan in triplicate for the deposit of the moneys the next day and this challan was sent by the Appellant to the Treasury for being passed through the peon Ram Dayal Singh. After the challan was passed by the Treasury Officer the peon used to bring the challan back to the Appellant. The Appellant then went to the vault, took out the cash box and the money was thereafter deposited with the Bank as per the challan.

The challans used to be signed by the Accountant as well as the Cashier of the Municipality, initialled by the Treasury Officer and stamped by the Bank in token of the receipt of payment. These stamps used to bear the initials of the Cashier who received the payments. One part of the challan was handed over to the depositor. The other part was retained by the Bank and the third part used to be sent by the Bank after about a month to the office of the Municipality. The Accountant of the Municipality used to make the entries in the cash book of the Municipality on receipt of such part of the challan.

The Bank also used to send scrolls to the Treasury Account offices intimating the deposits that had been made and also used to fill in entries with regard to such deposits in the pass book which was written up from time to time.

The Appellant maintained a note book in which the receipts from the Tax Collectors were noted and totalled up at the end of each day. He also maintained a cash book in which all the receipts as well as disbursements were shown. The peon Ram Dayal Singh also maintained a note book in which he noted the amounts received by the Appellant from the Tax Collectors every day. The challans after being received by the Appellant in connection with the deposits made each day were kept by him in an almirah and were available for checking up the accounts of the payments made from time to time in the account of the Municipality with the Bank.

3. A sum of Rs. 4,887/4/- had been collected by the 5th October 1949 but had not been deposited with the Bank upto the 9th November 1949. Two challans bearing Nos. 257 and 263 were prepared by the Appellant on 9-11-1949 for the respective amounts of Rs. 2,522/- and Rs. 2,365/4/- aggregating to Rs. 4887-4-0 and sent to the Treasury Officer for his initials through the peon Ram Dayal Singh. A sum of Rs. 5,262-1-3 had been collected by the 29th October 1949 but had not been deposited with the Bank upto the 11th November 1949. The Appellant on the 11th November 1949 prepared a challan bearing No. 225 in respect of this sum and sent it to the Treasury Officer for his initials through the peon. The amounts of Rs. 4,887/4/- and Rs. 5,262-1-3 were in the ordinary course sent by the Appellant with the peon to the Bank together with the respective challans and were deposited by the peon with the Bank and the respective challans with the stamps of the receipt of the payment duly initialled by the Cashier of the Bank were brought back by him and handed over to the Appellant and were subsequently found in the regular file of the challans when the same were called for by the Auditor. There were regular entries with regard to the deposit of these amounts with the Bank in the scrolls and the pass book as also in the books of account maintained by the Municipality.

4. The amounts of Rs. 3,773/10/9 collected on the 8th November 1949 and Rs. 4,240/3/3 collected on the 10th November 1949 however did not find their place in the scrolls and the pass book as also in the account books of the Municipality even though they were alleged to have been deposited by the Appellant through the peon Ram Dayal Singh on the 9th November 1949 and the 11th November 1949 respectively. This discovery was made by the Auditors on or about 13th January 1950 when the audit of the accounts of the Municipality was conducted.

On being interrogated in that behalf the Appellant handed over challans Nos. 264 and 268 bearing dates the 9th November 1949 and the 11th November 1949 respectively from the almirah. These challans however were alleged to have been forged, and it was alleged that the signature of the Accountant and the cashier of the Municipality, the initials of the Treasury Officer and the stamps of the Bank in token of the receipt of payments together with the initials of the Cashier therein were none of them genuine. The suspicion in regard to the embezzlement of these two sums as well as the forgery of these two challans naturally attached to the Appellant as well as the peon Ram Dayal Singh and both of them were put up for trial before the Second Assistant Sessions Judge, Gaya for various charges including conspiracy, embezzlement, forgery, etc.

5. The learned Sessions Judge acquitted the peon Ram Dayal Singh individually of all these charges but convicted him of a charge under Section 409 read with Section 109 of the Indian Penal Code in so far as he was of the opinion that if he had not aided the Appellant by remaining silent and not

betraying him the Appellant would never have succeeded in embezzling the two sums and sentenced him to four years' rigorous imprisonment. The learned Sessions Judge came to the conclusion that the Appellant was guilty of all the offences with which he had been charged except the one in regard to conspiracy under Section 120(b) of the Indian Penal Code. An appeal was taken to the High Court of Judicature at Patna and the High Court acquitted the peon Ram Dayal Singh of the fresh charge which had been framed against him by the learned Sessions Judge and discharged him altogether. The High Court however confirmed the conviction of the Appellant and sentenced him as above.

6. The fact that the two amounts of Rs. 3,773-10-9 and Rs. 4,240-3-3 were embezzled cannot be disputed. These collections which were made on the 8th November 1949 and the 10th November 1949 respectively and handed over by the Tax Collectors to the Appellant did not find their way to the Bank and were not credited in the account of the Municipality with the Bank nor were they included in the scrolls or the pass book. The challans Nos. 264 and 268 for the said amounts bearing dates the 9th November 1949 and the 11th November 1949 respectively which were produced by the Appellant in token of the payment of these amounts to the Bank and marked Exhibits 20 and 20(a) were proved by the prosecution to be forged inasmuch as the signatures of the Accountant and the Cashier of the Municipality, the initials of the Treasury Officer, as also the stamp of the receipt and the initials therein of the Cashier of the Bank were found not to be genuine.

There were also considerable discrepancies between the stamp usually imprinted by the Bank and the stamp which was actually imprinted on Exhibits 20 and 20(a), which discrepancies were commented upon by both the Courts below and went to show that the stamp which was actually imprinted on Exhibits 20 and 20(a) was not the stamp of the Bank but was applied in the office of the Tax Daroga utilising an old stamp which was in use there in any event up to the year 1944. This stamp used to remain in the custody of the Appellant but used to remain on his table some time during the working hours so that it could be utilised either by the Appellant or by the peon Ram Dayal Singh if either of them was minded to imprint the same on the challans Nos. 264 and 268.

The note book maintained by the Appellant showed as if both these amounts had been received by him from the Tax Collectors on the respective dates, the 8th November 1949 and the 10th November 1949. The note book maintained by the peon Ram Dayal Singh did not show all the items comprising these two amounts of Rs. 3,773-10-9 and Rs. 4,240-3-3 and it appeared that he had made notes against the entries on these respective dates showing that the amounts were 'Baqui' or 'Nahin Jama' meaning that they had not been deposited in the Bank. These entries in the note book of the peon Ram Dayal Singh showed totals made by the Appellant in English at the bottom showing the two amounts of Rs. 3,773-10-9 and Rs. 4,240-3-3 as being the recoveries on those respective dates.

The evidence thus led by the prosecution clearly went to prove that the Appellant either alone or along with the peon Ram Dayal Singh was responsible for the embezzlement as well as the forgeries.

7. The attempt on the part of the Appellant however was to throw the blame entirely on the peon Ram Dayal Singh. It was contended that the latter forged the signatures of the Accountant and the Cashier of the Municipality, and the initials of the Treasury Officer and brought the challans to the Appellant who in his turn took the moneys out of the vault and handed them over to him for the

purpose of being deposited in the Bank. The peon Ram Dayal Singh did not however pay in the moneys at the counter of the Bank but stamped these challans with the old stamp which was lying on the table of the Appellant, forged the initials of the Bank Cashier and handed over the challans thus completed to the Appellant who had no reason to suspect the genuineness of the challans and put them into the almirah along with the other genuine challans. The Appellant thus disowned all liability in regard to the embezzlement and the forgeries.

8. The High Court rejected this contention of the Appellant mainly on the ground that the Appellant used to accompany the peon Ram Dayal Singh to the counter of the Bank in order to make the deposits of the amounts collected from time to time. Having regard to the evidence on record it could not however be maintained that the Appellant invariably accompanied the peon Ram Dayal Singh when these deposits were made. It was only when the amounts to be deposited were large or when the presence of the Appellant was required in order to persuade the Cashier of the Bank to accept a large amount of change that the Appellant used to accompany the peon Ram Dayal Singh to the counter of the Bank.

It was also in evidence that on these very dates the 9th November 1949 and the 11th November 1949 two amounts of Rs. 4,887-4-0 and Rs. 5,262-1-3 respectively were deposited by the peon Ram Dayal Singh with the Bank and it was not the case of the prosecution that the Appellant accompanied the peon Ram Dayal Singh on those occasions. As a matter of fact these admitted deposits as well as the disputed were made on the very same days, 9th November 1949 and the 11th November 1949, and the theory which found favour with the High Court in regard to the presence of the Appellant on all the occasions when deposits were made with the Bank was not quite correct. The position appears to be that on these dates, the 9th November 1949 and the 11th November 1949 the Appellant did not accompany the peon Ram Dayal Singh when the latter went to the Bank for making the deposits and it was contended that the peon Ram Dayal Singh deposited only the admitted amounts of Rs. 4,887-4-0 and Rs. 5,262-1-3 and embezzled Rs. 3,773-10-9 and Rs. 4,240-3-3 after the same had been handed over by the Appellant to him after taking them out from the vault.

9. We have however got to consider whether it was possible for the peon Ram Dayal Singh to have committed these forgeries of the two challans Exhibits 20 and 20(a) and embezzled the amounts of Rs. 3,773-10-9 and Rs. 4,240-3-3 on these respective dates. There is no direct evidence one way or the other and the whole case turns on circumstantial evidence and it is well settled that circumstantial evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence. In the present case the only two persons who could have been responsible for the forgeries and the embezzlement of the moneys were the Appellant and the peon Ram Dayal Singh. If the peon Ram Dayal Singh could be shown not to have committed the forgeries and embezzled the moneys the only person who could have done so was the Appellant himself. It is in evidence that the peon Ram Dayal Singh only knew Hindi and the entries which he had made in his note book were also in Hindi. It was not shown that he knew the English language or ever wrote anything in English.

On the other hand the Appellant was an experienced officer in the employ of the Municipality for a period of over 17 years, knew English, maintained all the records in English and was familiar with

the English language. We have had the benefit of seeing the original challans Exhibits 20 and 20(a) as also the genuine challans of the Exhibit 18 series which were produced in the Courts below and having regard to the circumstances that each of these challans required the signatures of the Accountant and the Cashier of the Municipality, the initials of the Treasury Officer and the stamp of the receipt of payment initialled by the Cashier of the Bank we have not the slightest hesitation in holding that the peon Ram Dayal Singh was certainly not capable of forging these challans Ex. 20 & 20(a) & if at all there was anybody who could have done so both in regard to the capacity as well as the opportunity of so doing the Appellant himself was the only person who committed the forgeries of the two challans Ex. 20 and 20(a).

The Appellant was in the habit of delaying the deposits with the Bank and as a matter of fact the amounts of Rs. 4,887-4-0 and Rs. 5,262-1-3 which were deposited on the 9th November 1949 and the 11th November 1949 under the genuine challans Nos. 257 and 263 and No. 225 respectively had been collected by him as early as the 5th October 1949 and the 29th October 1949 respectively. The Appellant deposited these amounts as late as the 9th November 1949 and the 11th November 1949 and there is no wonder if he did not deposit the amounts of Rs. 3,773-10-9 and Rs. 4,240-3-3 collected on the 8th November 1949 and the 10th November 1949 on these two dates the 9th November 1949 and the 11th November 1949 as alleged. The Appellant knew that the parts of the challans which used to be sent by the Bank to the Municipality would not be sent till almost a month after the dates of the deposits and the embezzlement, if any, would certainly not be discovered till then. There was moreover considerable laxity in the control over the finances in the administration of the Gaya Municipality which made it possible for the Appellant to embark on this bold venture and embezzle the amounts.

The peon Ram Dayal Singh actually made the admitted deposits into the Bank on these respective dates. He had in fact, if the story of the Appellant is true, been entrusted with the two amounts of Rs. 3,773-10-9 and Rs. 4,887-4-0, aggregating to Rs. 8,660-14-9 on the 9th November 1949 and with the two amounts of Rs. 4,240-3-3 and Rs. 5,262-1-3 aggregating to Rs. 9,502-4-6 on the 11th November 1949. If at all anybody was really responsible for these forgeries and the embezzlement we are of the opinion that it was the Appellant and not the peon Ram Dayal Singh.

10. After a careful scrutiny of the evidence led on behalf of the prosecution both the Courts below came to the conclusion that it was the Appellant and Appellant alone who was responsible for these forgeries and the embezzlement of the moneys. We have gone through the evidence ourselves and we do not see any reason to interfere with the concurrent findings of fact thus arrived at by both the Courts.

11. In regard to the sentences however we feel that if the Appellant had been prosecuted under the Prevention of Corruption Act II of 1947 the maximum sentence which would have been awarded to him would have been seven years' rigorous imprisonment though the special Court trying him would have imposed upon him a substantial fine even to the extent of the amount embezzled by him. The sentences of seven years' rigorous imprisonment which has been awarded to him under Section 409 of the Indian Penal Code and four years' rigorous imprisonment under Section 467 of the Indian Penal Code appear to us to be excessive and having regard to the circumstances of the case we feel

that the ends of justice will be met if we reduce the sentences to those of three years' rigorous imprisonment each in regard to those offences.

12. We accordingly dismiss the appeal save for this that though the conviction of the Appellant will be maintained the sentences awarded to him will be reduced from those of seven years rigorous imprisonment respectively to those of three years' rigorous imprisonment each, all the sentences to run concurrently.