
(1922) 01 PAT CK 0008
In the Patna High Court

Lakshumi Prasad

APPELLANT

Vs

Emperor

RESPONDENT

Date of Decision : 05-01-1922

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 438
Penal Code, 1860 (IPC) — Section 420, 477, 511

Citation : 65 Ind. Cas. 492

Hon'ble Judges : Jwala Prasad, J

Bench : Single Bench

Judgement

Jwala Prasad, J.—This is a reference by the Sessions Judge of Darbhanga recommending that the conviction of and the sentence passed upon the accused u/s 420/511, Indian Penal Code by the Sub-Divisional Magistrate of Samastipore be set aside.

2. The accused was a clerk employed at the Samastipore Central Sugar, Company and as such in charge of weighing the carts of sugar-canes upon the machine and to enter the weights thereof in the Weighment Register prescribed for the purpose. That register contains a column headed "Weighment" and is divided into three sub-columns (1) Gross, (2) Tare, and (3) Net; Carts with sugar canes loaded thereon used to be weighed upon the machine and the gross weight of the sugar-canes and the carts used to be entered in sub-column (1). The carts were then emptied, and were again weighed, and this weight, entered in sub column (2). In sub column 3 was shown the net weight of suger-canes by subtracting the weight of empty carts noted in sub-column (2) from the gross weight entered, in sub-column (1). Upon the net weight of sugar-canes mentioned in column No. 3 payments used to be made to the sellers according to the currant, market rate of sugar canes.

3. The accused" went on leave for three days towards the end of February 1921, and one Hirdai Narain acted for him during those days. Hirdai Narain suspected that the accused was showing more weight of the carts in the Register than the

actual weight with a view to cause loss to the factory and that this he used to do in collusion with the suppliers of sugar-canes probably on receiving some illegal gratification from them. Hirdai Narain (P.W. No. 6) reported his suspicion to the Head Clerk, Kanto Choudhry, (P.W. No. 2) who in his turn reported the matter to the Assistant Superintendent (P.W. No. 1), Under the directions of the Assistant Superintendent the Head Clerk awaited the arrival of the cart of one Nathuni on the 2nd of March. Nathuni's cart was weighed by the accused and the gross weight thereof was entered in the register as 16 maunds, 30 seers, As the cart passed, the Head Clerk stopped it from being emptied and took it back to the weighment machine and re-weighed it. He found that the weight was 14 maunds, 20 seers, While the Head Clerk was weighing the cart, the accused changed the figure "6" in the register into "12" by altering "6" into "2". The matter was then reported to the Assistant Superintendent who sent the letter (Exhibit I) to the Sub-Inspector of Police. After investigation, the accused was put on his trial.

4. The Magistrate found the facts summarised above as having been satisfactorily proved by evidence. The learned Sessions Judge also has accepted the facts as having been proved, but he is of opinion that upon the facts the accused is not guilty of an attempt to cheat. He has accordingly referred the case to this Court, u/s 438 of the Code of Criminal Procedure, for quashing the conviction of the accused.

5. The case appeared to be somewhat important and intricate, and I, therefore, requisitioned the assistance of the learned Assistant Government Advocate, which he has very gladly rendered to me.

6. I have considered the authorities relied upon by the learned Sessions Judge: Hurjee Mall v. Imam Ali Sircar 8 C.W.N. 278 : Cri. L.J. 124 and Queen-Empress v. Dhundi 8 A. 301 : (1886)A.W.N. 125 : 5 Ind. Dec. (N.S.) 122 and those cited by the learned Assistant Government Advocate Regina v. Padala Venkatasami 3 M. 4 : 1 Weir 543 : 1 Ind. Dec, (N.S.) 559 and Queen-Empress v. Paku 24 B 287 : 1 Bom. L.R. 678 : 12 Ind. Dec. (N.S.) 727.

7. There is no doubt that the accused did enter false figures in the register showing a greater quantity of sugar canes than was actually supplied by Nathuni. There is also no doubt that by so doing he intended to cheat the Company by making it pay a higher sum to Nathuni than he was entitled to. The clerk was in charge of writing the Register and making entries in all the column. He had written the first sub-column under the heading "Weight" namely, the gross weight of the sugar canes along with the cart. He had still to find out the net weight of the sugar-canes for which the Company was liable to pay the price to the supplier. This, no doubt, was a mere matter of arithmetic, inasmuch as the weight of Nathuni's cart, namely, 5 maunds and 30 seers, was a constant quantity as found from the entries on the previous dates for the whole of the month of February up to the 1st of March, Before the remaining two sub-columns, that is, "Tare," and "Net" weight were filled in, the Head Clerk

intercepted and the accused was not able to write those columns, It is not known when the clerk was to make out this net weight, whether after the close of the weighment for the whole day of all the carts of sugar canes supplied or at the end of the month, or as each cart was being weighed. The evidence on this point is not sufficient. At any rate, the time had not come and nothing was done by the accused to show that he was going to carry out his intention of cheating by entering those sub-columns of "Tare" and "Net" weight and fixing the liability absolutely upon the Company. Until that was done, the Company could not be said to have been cheated. Again, until that was done and the register had passed out of the control of the clerk and submitted to the Company as evidence of the liability of the Company, there was yet time for the clerk to change his mind or intention and, as put by Brodhurst, J., in the case of *Queen Empress Dhundi* 8 A. 301 : (1886) AW.N. 125 : 5 Ind. Dec. (N.S.) 122 "from prudence, if not from penitence". We have to assume that better reasons would prevail at any moment and the man would change his intention to commit a sin or crime before the actual consummation thereof; and until he has done all in his power to let his action be out of his control, so that the commission of the sin or the crime would be a natural effect of the actions already committed, there is still a mere preparation for the commission, and not an attempt to commit the offence or the sin. That learned Judge, in the decision referred to above, says; "it is to be noted that the act or omission must be one that causes, or is likely to cause, damage to such person, damage or loss, etc. But here the mere certificate by itself and until endorsed, and until further action had been taken upon it, could not possibly have caused loss or damage to any person. "This is also the view supported by the decision in the case of *Regina v. Padala Venkatasami* 3 M. 4 : 1 Weir 543 : 1 Ind. Dec. (N.S.) 559, Mr. Mayne in his commentary has also laid down the dictum of an American Jurist that there is a wide difference between the preparation and an attempt to commit an offence. He says the preparation consists in devising or arranging means necessary for the commission of an offence, an attempt is the direst movement towards the commission after preparations are made.

8. I, therefore, agree with the view taken by the learned Sessions Judge that the writing of the false figure in the register had not passed from the stage of preparation into that of an attempt to commit the offence of cheating. It appears to me that the accused was tried under a wrong section. The accused came clearly within the per-view of Section 477(a) of the Indian Penal Code, which relates to the falsification of an account-book by a clerk or a servant and I wonder why this section was not taken advantage of.

9. In view, however, of the age of the accused and of its being the first offence, I do not think any advantage will now be gained by re trying the accused. The Magistrate, while giving a lenient punishment to the accused, observed that the accused is a young man and does not appear to belong to a class of confirmed criminals. The accused has already been in Jail for about five or six days, and I hope this will be a warning to him and he will reform himself and really repent

for what he did and would try to lead an honest life.

10. I accept the reference and set aside the conviction and the sentence.