

BAJRANG LAL &amp; ANR.

v.

STATE OF RAJASTHAN

February 24, 1976

[R. S. SARKARIA AND P. N. SHINGHAL, JJ.]

*Prevention of Corruption Act (2 of 1947), s. 5(1)(d) and (2), and Indian Penal Code (Act 45 of 1860), s. 21, Ninth—Railway Khalasis associated in the work of issuing passes to Railway employees—If 'public servants'.*

Two *khalasis* were convicted for the offence of conspiracy to secure railway passes on forged applications, and under s. 5(1)(d) and (2), Prevention of Corruption Act, 1947. It was the duty of the office of the Works Manager of the Railway to issue passes to railway employees for railway travel. The two *khalasis* were not formally appointed to work in the Pass section, but their services were actually utilised in the office for issuing passes.

In appeal to this Court it was contended on behalf of the *khalasis*, *inter alia*, that they are not public servants.

Dismissing the appeal,

HELD: (1) Section 21, Ninth, I.P.C., as it stood at the relevant time included in the definition of 'public servant' every *officer* in the service or pay of the Government. The tests for determining whether a person is an *officer* of the Government, are: (a) whether he is in the service or pay of the Government; and (b) Whether he is entrusted with the performance of any public duty whether of an exalted or humble character. [500G-501B]

In the present case, the two *khalasis* were actually allowed to deal with the preparation and issuance of railway passes, and as such, were in fact, performing public duties and discharging public functions auxiliary to those of the Works Manager—who is an officer of the Government—and his office. They were, therefore, in actual possession of the situation of a public servant and in view of Explanation II to s. 21, I.P.C., would be 'public servants'. They were, therefore, rightly convicted under s. 5(1)(d) and (2), Prevention of Corruption Act. [501E-G]

*G. A. Monterio v. State of Ajmer* [1956] S.C.R. 682, followed.

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 198 of 1971.

Appeal by special leave from the judgment and order date the 27th July, 1971 of the Rajasthan High Court at Jodhpur in Criminal Appeal No. 666 of 1969.

*A. N. Mulla, S. K. Mehta and M. Qamaruddin*, for the appellant.

*Subhag Mal Jain*, for the respondent.

The Judgment of the Court was delivered by

SARKARIA, J. This appeal by special leave is directed against a judgment of the High Court of Rajasthan. It arises out of these facts:

There is an office of the Works Manager, Northern Railway at Bikaner. Among others, the duty of this office is to issue Railway Passes to the Railway employees and their dependent family members for railway travel. Sita Ram and Ganesh Ram were at the relevant time April 11, 1963 working as Pass Clerks in the office of the

**A** Works Manager. Bajrang Lal and Ram Kishan, though posted as Khalasis in the Railway Carriage Shop, were associated with the work of issuing passes in the office of the Works Manager. The office used to receive applications from Railway employees of the different sections under the Works Manager duly forwarded by the Foreman Incharge of the respective sections for issue of the Railway passes. It was the duty of the office hands to check the correctness of the application and the genuineness of the signatures of the forwarding officers before preparing the passes in the Railway Pass Books maintained by them. After checking, preparing and initialling the passes they were put to the Works Manager. If the passes were meant for a local line, they were put to the Chief Clerk of the Works Manager's office for signature. Thereafter, it was the duty of the Clerks to send the passes to the concerned sections with acknowledgement slips, and the Foreman of the section was expected to pass them on to the applicants concerned.

According to the prosecution case, during this period from December 23, 1961 and April 11, 1963, Bajrang Lal, Ram Kishan, Sita Ram and Ganesh Ram, all hatched a conspiracy for securing passes on forged applications. The scheme, as unfolded at the trial was that false and forged applications were prepared in collaboration by Bajrang Lal and Ram Kishan with the object of causing wrongful loss to the Railway.

The prosecution has brought material on the record to show that 15 forged applications were prepared by them to secure such passes. Ex. P-46 is one of such applications prepared in the name of one Narain (P.W. 6). It is admittedly in the hand of Ram Kishan, appellant. It bears the endorsement purporting to be under the signature of the forwarding officer, Kishan (P.W. 20). The signature on this forwarding endorsement is in the hand of Bajrang Lal. The passes Exts. P-47 and P-48 were prepared by Ram Kishan. They were checked by Sita Ram. Ram Kishan prepared the acknowledgement receipt in respect of the passes, Exts. P-47, and P-48, on Ext. P-140 to show that they had been delivered to the persons in whose names they were prepared.

Similarly, the forged application, Ext. P-78, was prepared by Bajrang Lal, while the Pass, Ext. P-79, in respect thereof was prepared by Ram Kishan. The slip Ext. P-140 containing an entry about the pass Ext. P-79 was prepared by Ram Kishan.

**G** The application Ext. P-87 was written by Bajrang Lal, while the acknowledgement receipt Ex. P-88 in the slip Ex. P-140 was prepared by Ram Kishan. Ram Kishan also prepared the false acknowledgement receipt, Ex. P-76, and the acknowledgement receipt in respect of Pass No. 812080 in the slip, Ex. P-140.

**H** On the preceding facts, Sita Ram, Ganesh Ram, Bajrang Lal and Ram Kishan were tried in respect of offences under ss. 120B, 420, 465, 471, Penal Code and under s. 5(1)(d) read with s. 5(2) of the Prevention of Corruption Act, 1947, by the Special Judge. Sita Ram and Ganesh Ram were acquitted of all the charges. Bajrang

Lal and Ram Kishan were convicted on charges under ss. 420, 468 and 471, Penal Code and sentenced to one year's rigorous imprisonment and a fine of Rs. 200/- each on each of these counts. They were further convicted under s. 120B, Penal Code and sentenced to 6 months' rigorous imprisonment, each. They were also convicted under s. 5(1)(d) read with s. 5(2) of the Prevention of Corruption Act and sentenced to one year's rigorous imprisonment and a fine of Rs. 200/-, each. It was not thought necessary to record a separate conviction under s. 465, Penal Code. The sentences on all the counts were directed to run concurrently.

On appeal by the convicts, the High Court set aside their conviction under ss. 420, 468 and 471, Penal Code. It, however, maintained their conviction and sentence in respect of the offence under s. 120B, Penal Code and s. 5(1)(d) read with s. 5(2) of the Prevention of Corruption Act. It further altered the conviction of the appellant under s. 468/471, Penal Code to one under s. 465, Penal Code and reduced the sentence on this count to six months' rigorous imprisonment with a fine of Rs. 200/- only.

Hence this appeal by the convicts, Bajrang Lal and Ram Kishan.

Bajrang Lal has since died. Ram Kishan's appeal only survives for decision.

The first contention of Shri A. N. Mulla appearing for the appellants is, that Ram Kishan and Bajrang Lal were not 'public servants' within the definition of the term in s. 21, Penal Code. It is urged that the High Court was wrong in assuming that at the relevant time every person in the service or pay of the Government was a 'public servant' within the meaning of clause (10) of s. 21, Penal Code. Sub-Clause (a) of clause (10) of s. 21, it is pointed out, was introduced by the Amending Act 40 of 1964 and not by Act 2 of 1958 referred to by the High Court in its judgment. In the alternative, it is submitted that clause (9) of s. 21 also, as it stood at the relevant time, did not cover the case of the appellants, Ram Kishan and Bajrang Lal, because they were mere *khalasis* or menial servants and not "officers in the service or pay of the Government", within the contemplation of that clause.

We are unable to accept these contentions. True, that the High Court has wrongly referred to the Amending Act of 1958. The relevant period is from December 23, 1961 to April 11, 1963. Clause (9) of s. 21 as it stood at that time, was as follows :

"Ninth.—Every officer whose duty it is, as such officer to take, receive, keep, or expend any property on behalf of the Government or to make any survey, assessment, or contract on behalf of the Government or to execute any revenue-process, or to investigate, or to report, on any matter affecting the pecuniary interest of the Government, or to make, authenticate or keep any document relating to the pecuniary interests of the Government or to prevent the infraction of any law for the protection of the pecuniary interests of the Government and every officer in the service

A or pay of the Government or remunerated by fees or commission for the performance of any public duty."

The question, is whether the appellants, Ram Kishan and Bajrang Lal, were "officers in the service or pay of the Government" within the meaning of this clause? The term 'officer' has not been defined by the Code.

B Mr. Mulla contends that the appellants were not "officers" within the contemplation of this clause, because—(a) they were mere Khalasis and, as such, were not exercising any delegated function of the Government, and (b) they were never appointed to perform any public duty in the office of the Works Manager. In this connection, reference has been made to *Reg v. Ramajivrao*<sup>(1)</sup> and *Nizamuddin v. E.*<sup>(2)</sup>.

C In *Ramajivrao's* case (supra), the Bombay High Court held that the word 'officer' in this clause means "some person employed to exercise, to some extent and in certain circumstances, a delegated function of Government. He is either armed with some authority or representative character, or his duties are immediately auxiliary to those of some person who is so armed."

D *Ramajivrao's* case was noticed by a Bench of the Calcutta High Court in *Nizamuddin v. Queen Empress* (supra) and it was ruled that an 'officer' within the terms of s. 21, clause Ninth of the Penal Code is one who is appointed to some office for the performance of some public duty. Accordingly, it was held that a peon attached to the office of the Superintendent of the Salt Department was an officer in the service or pay of the Government and as such was a public servant.

E The meaning of the term 'officer' was considered by the Lahore High Court also in *Abad Shah v. Emperor* <sup>(3)</sup>. It was opined that the term 'officer' in the aforesaid clause means a functionary or holder of some *officium* or office, however humble to whom in some degree are delegated certain functions of the Government.

F These cases were considered by this Court in *G. A. Monterio v. State of Ajmer*<sup>(4)</sup>. Approving the law enunciated by the Calcutta High Court in *Nizamuddin's* case (supra), the Court speaking through Bhagwati J., explained the position, thus :

G "The true test...in order to determine whether a person is an officer of the Government is :

(1) whether he is in the service or pay of the Government, and

H (2) whether he is entrusted with the performance of any public duty.

(1) (1875) 12 Bom. H.C. R. 1.

(3) A.I.R. 1918 Lah. 152.

(2) I.L.R. 28, Cal. 344.

(4) [1956] S.C.R. 682.

If both these requirements are satisfied it matters not the least what is the nature of his office, whether the duties he is performing are of an exalted character or very humble indeed."

By the application of these tests, in the above case, it was held that a Class III servant working as a Metal Examiner under the control of the Railway Works Manager, was an "officer" of the Government within the meaning of s. 21, Clause Ninth, Penal Code.

The instant case is within the *ratio* of the decision in *G. A. Monterio v. State of Ajmer* (supra). As was pointed out in that case, the Railway Works Manager is an officer of the Government, armed with some authority or representative character *qua* the Government. The appellants were holding the posts of *Khalasis* in the Railway Carriage Section, but were actually allowed to deal with the preparation and issuance of Railway Passes in the Office of the Works Manager and as such they were, in fact, performing public duties and discharging public functions auxiliary to those of the Works Manager and his office. On "the strength of the evidence" and the statement of the accused, the trial court unhesitatingly found it as an "established fact that Bajrang Lal and Ram Kishan worked in the Pass Section". This finding which is borne by the evidence of Sadhu Ram (P.W. 32), the Head-Clerk of the Works Manager, Mohd. Sajjad (P.W. 19) and Mohd. Ibrahim (P.W. 34), was affirmed by the High Court. We also find no good reason to disturb this concurrent finding of fact.

Thus, the position that emerges is that although Bajrang Lal and Ram Kishan were not formally appointed to work in the Pass Section, the posts held by them being of *Khalasis* drawing pay from the Railway Carriage Section, their services were actually utilised in the Pass Section of the Office of the Works Manager. The appellant was, therefore, in actual possession of the situation of a public servant, and in view of Explanation II to s. 21, Penal Code, would be a 'public servant' notwithstanding the defect in his right to hold that situation.

We therefore negative the contention of Mr. Mulla and hold that the appellant Ram Kishan was a 'public servant' within the 9th Clause of s. 21, Penal Code as it stood at the material time. Consequently, the appellant's conviction for an offence under s. 5(1)(d) read with s. 5(2) of the Prevention of Corruption Act cannot be assailed on that score.

It is next contended on behalf of the appellant that he had admitted only the execution of the body writing of the application Ex. P-46, and not the signature thereon purporting to be that of Narain. The point sought to be made out is that without signature, the body writing of the application would not be a "document" as defined in s. 29, nor would the mere scribing of the application amount to "forgery" under s. 463 or to 'making a false document' within the meaning of s. 464, Penal Code.

A The contention must be repelled. There is no record before us to show that Ram Kishan appellant had specifically denied the execution of that part of the writing which purports to be the signature of "Narayan" applicant. No request was made by the appellant for summoning the original record. On the contrary, from the judgments of the courts below, it appears that Ram Kishan had categorically admitted that the application, Ex. P-46, had been written by him.

B Narayan (P.W. 6) testified that he had made no such application, nor had he ever asked the appellant to scribe it. The witness unequivocally stated that this application does not bear his signature. Narayan's evidence has been believed by the courts below. There was thus no doubt whatever that this application including the signature thereon, is a false document. The passes, Ex. P-47, P-48, P-78 and the receipt, P-88, were also proved to be in the hand of the

C appellant. The charge under s. 465 was thus fully brought home to him.

The charge of criminal conspiracy to prepare and obtain false Railway Passes with a view to cause wrongful loss to the Railway had been fully established against Ram Kishan and Bajrang Lal. The forged Passes Ex. P-47 and P-48 were admittedly in the hand of

D Ram Kishan, and the forwarding endorsement on the application Ex. P-46 pursuant to which these forged Passes were prepared, was proved to be in the hand of Bajrang Lal. Kishan (P.W. 20) who was supposed to have made and signed this forwarding endorsement, testified that this writing did not bear his signature. Again, Bajrang Lal made the false entries in the Railway Pass Book in respect of

E the Passes, Ex. P-47, P-48, Ram Kishan then prepared the acknowledgement receipt on Ex. P-140 showing that these Passes had been delivered to the persons in whose names they were prepared. Similarly, the forged application, Ex. P-78, was prepared by Bajrang Lal and the Pass relating thereto was prepared by Ram Kishan. The slip in respect of this forged Pass is also in the hand of Ram Kishan. Another instance was furnished by the application Ex. P-87

F which was in the hand of Bajrang Lal, while the acknowledgement receipt Ex. P-88 was prepared by Ram Kishan.

From the concerted conduct of Bajrang Lal and Ram Kishan in preparing these forged writings, it could unerringly be inferred that they had agreed to prepare forged Railway Passes with the intention of causing wrongful loss to the Railway. And, in pursuance of the

G conspiracy they did prepare the forged passes aforesaid.

We therefore find no good reason to disturb the conviction of the appellant recorded by the High Court in respect of offences under ss. 120-B, 465, Penal Code and s. 5(2) of the Prevention of Corruption Act.

H Lastly Mr. Mulla submitted that the appellant was only a small fry. The bigger fish, the clerks had gone scot free and therefore it was unfair to inflict so harsh a sentence on the appellant. Might be that some bigger partners in the crime have escaped punishment

for want of proof. But the sentence awarded to the appellant is the minimum prescribed by law for an offence under s. 5(2) of the Prevention of Corruption Act. The Court had no discretion to inflict a lesser sentence on that count.

**A**

For the foregoing reasons, we dismiss this appeal and uphold the conviction and sentence of the appellant.

V.P.S.

*Appeal dismissed.***B**