MOHAMMAD ASLAM

v.

STATE OF UTTAR PRADESH

September 22, 1976

[P. N. BHAGWATI, V. R. KRISHNA IYER AND S. MURTAZA FAZAL ALI, JJ.]

Practice and Procedure—Re-appraisal of evidence by Supreme Court inspite of concurrent findings of fact, proper when miscarriage of justice has occurred.

The appellant, a cashier in a rural block development office of Shahjahanpur district, was convicted for misappropriating public money. Both the courts concurrently found that he had pocketed the sum which he claimed to have paid the Panchayat-Secretary as salary.

The appellant contended that the charge against him was falsified by the voucher and regular entry of the cash register regarding the above payment, which had been ticked and initialled by the Block Development Officer, and produced in evidence.

Allowing the appeal, the Court

HELD : (1) The proposition of litigative finality at the High Court level on findings of fact has been affirmed by this Court, but the exceptions which prove the rule are also well-established. A conviction of guilt has been rendered by both the Courts, but certain grave factors conducive to miscarriage of justice, induce us to make an exception. The accused is entitled to the benefit of reasonable doubt owing to the contemporaneous entry in the cash register coupled with the signature of the B.D.O. the same day, as against his *ipsi dixit* later. [689 G, 691 H, 692 G—H]

(2) Our observations must serve as catalysts to crash strategies on white collar crimes. Gross negligence, even absent *mens rea*, in handling public funds by those in office must hold penal consequences as it inflicts double injury on the poor masses. [694 G—H]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 310 of 1971.

(Appeal by Special Leave from the Judgment and Order dated 23-4-1971 of the Allahabad High Court in Criminal Appeal No. 168/69 with Criminal Appln. No. 986/69).

Frank Anthony and *U. P. Singh,* for the Appellant.

O. P. Rana, for the Respondent.

The Judgment of the Court was delivered by

KRISHNA IYER, J. Some exceptions disprove the rule. Cases are legion where the proverbial proposition of litigative finality at the High Court level on findings of fact has been affirmed by this Court, but the exceptions which prove the rule are also well-established.

We must at the outset state that this case does not fit into the conventional legal mould but, nevertheless, possesses such strange features that our 'ultimate' power may legitimately come into play.

A petty store-keeper-cum-cashier in a rural block development office (in the district of Shahjehanpur) was charged with misappropriation of several sums adding up to a little over Rs. 5,000/-. The charges having been denied and the real culprit having been pointed out as the boss of the block development office, the Sessions Court received evidence on both sides, found the testimony of the Block Development Officer (BDO, acronymically) 'completely false and undelievable' in regard to many of the items of embezzlement and made critical observations about his culpability in respect of many of the malversations. We may have something to say about the not unusual phenomenon of the 'small fry getting caught, and the big shark breaking through the net' in economic offences where public money is handled by public servants. For the nonce we may content ourselves with the statement that the little official in his twenties—which the accused was—was acquitted of all but one charge and the misappropriation of Rs. 5,194.82 dwindled into a solitary fugitive item of Rs. 50/- for which he was punished with imprisonment for one year a fine of Rs. 300/-. The conviction was confirmed but the sentence was reduced by the High Court.

The aggrieved appellant urges before us that the solitary surviving item of misappropriation held proved concurrently, had, in fact, been vitiated in the process by fundamental flaws. We will proceed briefly to narrate the episode and examine the tenability of the extraordinary features leading to the exculpatory sequel.

The agrestic immensity of Indian backwardness is sought to be banished by developmental activities through block-level infrastructures. Jaitipur Block is one such and it has a nucleus of small officials and some rural development assistants, the hegemony being vested in the BDO. The *dramatis personae* here are the accused, the stock-clerk-cum-cashier, the BDO (PW 8) and the Panchayat Secretary (PW 7) whose magnificent salary is Rs. 50/- per mensem. The prosecution narrative runs long but can be short if we abandon the plurality of charges and limit the facts to the single item of Rs. 50/-. In skeletal brevity, there was a Block Office in Jaitipur where a small staff worked on low salaries to stimulate rural development. The accused was cashier and used to be entrusted in such capacity with sums, large and small. The case, as originally projected, was that Rs. 5,194.82 was committed to his custody and the whole sum was siphoned off into his own pocket by various acts of criminal breach of trust. Admittedly it was the duty of the accused cashier to maintain the cash book and deal with the monies. Equally clear is the fact that the head of the office, the BDO, was duty-bound 'to tally and *check the daily entries* of the cash book *with the relevant vouchers,* to affix his signature... after checking the total at the end of the day'.

The block office has, on its rolls, Panchayat Secretaries drawing small salaries. One of them is PW 7, on a monthly pay of Rs. 50/-. Another unfortunate feature of these offices, as disclosed in the evidence, is that even these petty emoluments are paid irregularly pro-

ducing both discontent and inclination for manipulation. That public offices should be so run is not too complimentary. Anyway, PW 7 received his pay for December 1964 on February 22, 1965 and his pay for the later month of January 1965 he drew a few days earlier on February 15, 1965 (vide Exhibits Ka 26 and Ka 29). These oddities in disbursements led to the plausible plea by Aslam, the accused, that P.W. 7 not having received his pittance for the month of December 1964 even after January had come and gone, pleaded his dire need for money and received Rs. 50/- as pay for the month of January 1965 and signed a separated voucher bearing that date, *viz.*, February 1, 1965. It is conceivable that a little man with a little pay packet, which is tantalizingly postponed, pressurizes the cashier to pay him the small sum signing a voucher and it need not surprise us if the cashier gives in to compassion and makes the payment. This is precisely the case of the accused. To shore up this plea, he points out a regular entry in the cash register against the date February 1, 1965 of a payment of Rs. 50/- as salary for the month of January 1965 to P.W. 7. Reinforcement is received from the further fact that this specific entry of payment—the falsification of which is the foundation for the charge of misappropriation of Rs. 50/- is ticked and initialled by the BDO P.W. 8. We have earlier referred to the practice and the obligation of this officer to tally and check the daily entries in the cash book *with the relevant vouchers* and then to affix the signature after checking the total at the end of day. Moreover he had the special responsibility, as the most responsible officer on the staff on his own showing, 'to keep the cash balance found at the end of every day in the cash-chest register'. He does not do daily physical verification of the cash but does it on a monthly basis and he keeps the key of the same, although another key is left with the cashier.

The accused's contention that he paid the salary of Rs. 50/- to P.W. 7 on February 1, 1965 supported though it is by an entry in the Books duly initialled by the BDO presumably after verification with the corresponding voucher has been rejected by the Courts without advertence to these spinal circumstances by the superficial plea that P.W. 7 is seen to have been paid the salary for December 1964 on February 22, 1965 with a regular entry and a stamped voucher. P.W. 7, when examined, denied the earlier payment on February 1, with a touch of dubious candour and owned up the payment for December supported by the stamped voucher on February 22, 1965. A streak of mystique generates doubt in P.W. 7's testimony because in cross-examination he says : '*I do not remember* as such that along with other officials the cashier would have given me the salary for the month of January 1965 *for two times by mistake*'. In the next breath he corrects himself to say that he had not been paid twice. On the strength of these materials a conviction of guilt has been rendered by both the Courts and, be the appreciation right or wrong, we as the final court should have held back ordinarily from temptation for re-appraisal, vehement argument notwithstanding. But certain grave factors, conducive to miscarriage of justice have bulked forward to induce us to make an exception, which we will presently expatiate upon.

A

There were nine items of misappropriation originally imputed to the accused. All, but one, remained unproven and the guilt is now fixed on one of the inconsiderable items. Not that the littlest sum of public money can be taken on privately with impunity but that the perspective is coloured somewhat by the substantial failure of the prosecution to make out its case regarding all the major items. More B disquieting is the fact that the single surviving charge stands or falls on the veracity or unveracity of a solitary witness appreciated in the light of the conspectus of circumstances. What are those circumstances ? The BDO, charged as he is with serious responsibilities including guardant functions over the finances of the institution, has sworn that he checks the daily entries in the cash book with the relevant vouchers and affixes his signature, checks the total at the end of the day and C again affixes his signature. It is a pregnant piece of evidence that there is a specific entry on February 1, 1965 in the cash book that a payment of Rs. 50/- by way of salary to P.W. 7 has been made. The BDO has signed against the entry which means, in the ordinary course, he has verified the payment with reference to the relevant voucher. If this be a fact, the accused has probably paid the salary, made the necessary entry, shown it together with the relevant voucher to the D BDO, got his signature, totalled up the figures correctly and secured the BDO's signature over again. The exculpatory impact of this testimony is sufficient, according to ordinary canons of criminal jurisprudence to relieve the accused of culpability since reasonable doubt is generated. The sensible scepticism about guilt which springs from the BDO's signature against the relevant entry is heightened by the fact that the Finance Handbook referred to by the High Court in its E judgment states that it is the duty of the drawing and disbursing officer to check each and every entry of receipt and expenditure recorded in the cash book and periodically to check physically the cash balances. The BDO, according to the High Court, has made evasive statements to suppress certain facts and 'spoken some apparent lies'. Startlingly enough, the Sessions Court has recorded P.W. 8, the BDO, as false and unbelievable in regard to certain other charges and gone to the F further extent of concluding that four entries figuring as charges against the accused had been really made to the BDO himself 'who probably embezzled these amounts'. The consequential acquittal of the accused on these four charges has not been disturbed. In sum, therefore, the conclusion is irresistible that the BDO, the top officer in full financial control, had behaved irresponsibly or delinquently with regard to the funds of the block office, had been described as too G mendacious to be depended and had convicted himself, of gross neglect of public duty in regard to the checking of the cash register, out of his own mouth. If we are to attach—there is no reason for a Court not to do so—weight to the contemperaneous entry in the cash register coupled with the signature of the BDO the same day, as against his *ipse dixit* later, the accused is entitled to the benefit of H reasonable doubt. There is likely to have been a separate voucher evidencing the payment of Rs. 50/- which is the subject of the defalcation because the BDO is not likely to have attested the entry of that payment without checking it up with the corresponding receipt.

Two circumstances fall to be mentioned before the probative balance-sheet can be struck. The entry of Rs. 50/- on February 1, 1965 is seen scored off. Who did it? Can we guess in the dark? Nothing on record suggests that the accused alone could have done it. There is much credibility in the theory that with the connivance of the BDO and the clerks petty sums are quietly abstracted from the public exchequer, make believe entries are made and attesting signatures appended by the BDO and, if the peril of detection by higher officers is apprehended, scorings, additions, alterations and the like are made. It is common case that in the cash register there are many such crossings, cuttings, scorings and like tamperings. Many scapegraces were perhaps party to these processes but one scapegoat cannot, for that reason, get convicted in the criminal court.

In this context it is pertinent to remember that the District Accountant, after a fuller examination of the books of the block offices, has stated that the several embezzlements have been facilitated by the laxity of the BDO who should be directed to make good the loss. A further recommendation by him to proceed departmentally as against the BDO and as against the Cashier is also found in the report. Whether action had been taken against the BDO, the State's counsel was not able to tell us.

The sole lip service to the criminality imputed is lent by PW 7. Did he receive his salary of Rs. 50/- twice over? Undoubtedly he was interested in denying it. Doubt hardly exists of the fact that he got his small December salary of Rs. 50/- only in February next. Far more likely that in such a situation he would have pressed for the payment of Rs. 50/- to be adjusted later. Likewise, his initial ambiguity in plainly denying that he had been paid twice enhances this suspicion. When the cash affairs of the office is in a mess, when the Chief is guilty of dereliction, when the clerks are receiving petty salaries at irregular intervals, the somewhat tainted testimony of PW 7 is far too slender a string to hang the guilt upon, pitted as it is against the cash register entry by the BDO, apparently after consulting the payment voucher. The accused was suspended promptly and therefore this voucher, if it did exist, must have been in the office and its non-production in court is not a matter for drawing an inference against the accused.

We have made this unusual probative survey of the evidence for the sole reason that the *bona fides* of the prosecution, leaving off the bigger and going at the smaller, mixing false testimony with true is seriously suspect and holding on to the conviction of the accused on no evidence, which a reasonable person reasonably instructed in the law will rely upon, is neither just nor legal.

The accused, at the time of the offence, was in his early twenties probably a neophyte or new entrant into a little racket. Doubts there are about his complicity but that a man *may* be guilty is different from saying that he *must* be guilty. The dividing line between the two is

A sometimes fine, but always real. There is undoubtedly collective guilt in the conjoint delinquency in the running of the block development office. Public affairs and public funds, especially on the developmental front, require far more integrity, orderliness, activism and financial prudence. Its absence we regret, but the specific guilt of the particular accused not having been proved, as mandated by the B law, results in his acquittal.

We accordingly allow the appeal.

The guilt-finding function is over, but judges have accountability to the country to the extent matters falling within their professional examination deserve sounding the tocsin. With this *alibi* we make a C few observations.

The popular art of helping oneself to public money, in little bits or large slices, is an official pathology whose pernicious spell has proliferated with the considerable expansion in institutions of public welfare and expenditure for rural development. From *Kautilya's Artha-*D *shastra to Gunnar Myrdal's Asian Drama,* the vice is writ large and the demoralising kink in the projects for criminal prosecution to eradicate these vices in public offices is that more often than not the bigger engineer of these anti-social schemes figures as prosecuting witness and the smaller men in the package deal are put up as sacrificial goats. The head escapes, the hand is chased down and, when the Court convicts, cynicism, instead of censure, is the unintended public res-E ponse. In a social system of the high and low, where the wheels of punitive processes are steered by the former, laws equal in the face quirk unequal at heart. Crack-down Crime Control itself takes its alignment from the social philosophy of the agencies of public power. The present case is a small symptom of a spread-out disease and the State, in its highest echelons, determined to down this rocket of economic offences must launch massive, quick-acting, broad spectrum prosecutorial re-F medies, regardless of personal positions, and leisurely procedural apparatuses, if high social dividends are to be drawn. The mystique of making the dubious officer the veracity vendor in the witness-box and the collaborating minion the dock-dweller, is suspected as intrigue to shelter the upper-berth culprit. Caesar's wife, where public interest is at stake, must be above suspicion, if prosecutorial credibility is to be popular purchase.

G

If the nation, poised for socialism, must zero-in on public office offences, what we have observed must not—and surely, will not—slumber as *obiter* sermons but serve as catalysts to crash strategies on white-collar crimes. In a developing country of scarce resources, husbanding public funds has a special onerousness. Gross negligence, H even absent *mens rea,* in handling the nation's assets by those in office must be visited with criminal liability as it inflicts double injury on that voiceless, faceless, woe-stricken have-not community which is aplenty. Public power, under the Penal Law, must be saddled with

higher degree of care, if Indian jurisdiction is to fulfil its social mission through developmental legislation. Had such a law existed, many superior officers routinely signing away huge sums or large contracts could have been alterted into better standards by potential penal consequence. The present case is an instance in point and our parliamentarians, we hope, will harken. A

M.R. *Appeal allowed.* B