

SIRIAMULU
NAIDU,
In re.

WALLER, J.

passed on an accused person who has been convicted at the same trial of both. The last objection is that the second petitioner should not have been convicted of an offence under section 471, Indian Penal Code, as it was another person that physically presented the forged document for registration. The evidence shows that the petitioner actively participated in the process of presentation. He was the prime mover in the affair and the second accused was a tool in his hands. He brought her to the Registrar's office, was with her all the time and, knowing the document to be a forgery, aided in its use by lending his services as an identifying witness. He was therefore properly convicted.

The Criminal Revision Petition is dismissed.

B.C.S.

APPELLATE CRIMINAL.

Before Mr. Justice Odgers.

P. SANKARAN PILLAI (APPELLANT), ACCUSED *

1929,
January 25.

Indian Post Office Act (VI of 1898)—Postal employee prosecuted under sec. 55—Sanction under sec. 72, if to be obtained before or after Court takes cognizance.

Sanction under section 72 of the Post Office Act to prosecute a postal employee, for an offence under section 55 of the said Act, may be obtained either before or after the Court takes cognizance of the offence.

APPEAL against the order of the Court of the Assistant Sessions Judge, the Nilgiris, Ootacamund, in case No. 87 of the Calendar for 1928.

(Miss) Sita Devadoss and T. A. Ananta Ayyar for appellant.

K. S. Vasudevan for Public Prosecutor for the Crown.

* Criminal Appeal No. 550 of 1928.

JUDGMENT.

In this case the facts have been fully and I think correctly set out by the Assistant Sessions Judge. The accused, who was the sub-postmaster of a small place called Cherambadi, was convicted of criminal breach of trust or misappropriation in respect of a value payable article. This article was a cover addressed to himself containing a railway receipt for certain motor car parts which, the proprietor of a bus plying between Cherambadi and Calicut, P.W. 3, had induced the accused to order for him from Bombay. The goods were duly ordered and arrived at Calicut station and the accused took possession of this V.P.P. cover and, of course, of the railway receipt and also obtained delivery of the goods from the Calicut station (or rather the bus conductor, P.W. 4, was the man who actually obtained the goods). The Bombay firm who supplied the goods sent them on the 27th April and on the 29th the parcel receipt was presented and the goods delivered. The Bombay firm was paid on the 27th June. The accused postmaster had, of course, to disguise the fact that he had taken possession of this V.P.P. letter and he did so by manipulating the register maintained in the Post Office, Exhibit C series. The accused was convicted and sentenced to 5 years' rigorous imprisonment and a fine of Rs. 100 under section 409, I.P.C., read with section 52 of the Post Office Act, and on the charge of having fraudulently prepared the V.P. register, with which he was charged under section 477-A, I.P.C., and section 55 of the Post Office Act, he was sentenced to one year. If the fine was not paid he was to undergo a further six months' imprisonment. The learned Advocates for the accused have endeavoured to show that the accused received this railway receipt in an ordinary cover and not as a value payable article. In order to establish this, of course, Mr. Ananta Ayyar had to try and induce

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me to consider that the evidence of the manager of the Bombay firm, P.W. 5, was wrong or mistaken and that he must be incorrect when he says that this V.P. article was sent on the 22nd of April 1927 from Bombay Hughes Road Post Office. I can see no reason for distrusting this gentleman, Mr. K. R. Srinivasan. Nothing in his cross-examination throws the slightest doubt on his accuracy.

The second point urged is that this story of the postmaster having purchased or arranged to purchase from the bus proprietor, P.W. 3, is got up for the occasion, in order to account for the anxiety of the accused to obtain these motor parts. It does not seem to me to be at all unlikely, and neither the bus proprietor, P.W. 3, nor his conductor, P.W. 4, were examined in any way to break down that story. It seems to me the only tenable theory to account for the somewhat extraordinary conduct of this man. He apparently was responsible for the payment of these motor parts and I can only suppose from the facts that are revealed, that he had not the money to pay in April. He therefore wanted to put off payment as long as possible and he actually succeeded in putting it off for two months, from about the 29th April to about the 27th June.

Under section 62 of the Post Office Act, sanction is required before a postal employee can be prosecuted for an offence under section 55 of the Post Office Act. The objection taken here is, that the sanction was given after the prosecution had begun. This objection does not seem to have been taken in the lower Court. The section does not say that the complaint made under authority from the Director-General or Postmaster-General must precede the cognizance of the offence; that is to say, it does not seem to me to matter as long as sanction is obtained, whether it is obtained before the Court takes cognizance of the offence or not. I think, therefore, the

conviction under section 55 of the Post Office Act must stand. The sanction in this case is Exhibit D and was dated 28th and 30th January. The complaint is dated 14th January of the same year.

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For the first offence he received five years' rigorous imprisonment, and the reason why I have taken time to think over this case is, that it has caused me some anxiety as to what the right sentence in cases of this sort is, because I am quite convinced that five years is extremely excessive. I am quite aware that the man is a postmaster, and that postmasters and other persons occupying public posts of trust must be expected to carry out their duties conscientiously, and when they fail to do so they must be punished in accordance with the responsibility that rests upon them. If this man had tried or succeeded in converting to his own use money, I should have taken a very different view of the case to what I am going to take. In a way, I suppose, and technically, he did convert the money which was due to be paid on the 29th April for this V.P. article to his own use. What he actually got out of the transaction, which was an extremely foolish one—for it has entailed the loss of his position, and I am told he is a man of 13 years' service in the Postal department—was a mere putting off of payment for two months. Under these circumstances, I think that the accused will be properly punished by reducing his sentence to one year. I do not interfere with the sentence under section 477-A, I.P.C., and section 55 of the Post Office Act which will run concurrently with the other sentences.

If the fine is not paid I reduce the period of further imprisonment to three months.

B.C.S.