

APPELLATE CRIMINAL.

Before Mr. Justice Fforde and Mr. Justice Tek Chand.

THE CROWN—Appellant

versus

DES RAJ—Respondent.

Criminal Appeal No 146 of 1927.

Indian Post Office Act, VI of 1898, section 52—Postmaster opening a value-payable envelope and extracting therefrom a railway receipt, and not paying the money till 6 days later.

A branch post master trading also as a shop keeper ordered a consignment of flour in his own name. A value-payable envelope containing the railway receipt for the consignment of flour having arrived, he extracted the railway receipt on 16th of August 1925, went down to the Railway Station where the goods had by this time arrived and took delivery. On the 22nd of August he paid the price of the goods into the Post Office. In the meantime between those dates he entered and daily repeated in the Post Office's books as explanation of non-delivery the words "on account of the absence of the addressee".

Held, that on the above facts the Postmaster was guilty of an offence under section 52 of the Post Office Act.

Imam Din v. Emperor (1), distinguished.

Appeal from the order of Lala Chanan Mal, Magistrate, 1st class, Sialkot, dated the 29th November 1926, acquitting the accused-respondent.

CARDEN-NOAD, Government Advocate, for Appellant.

JAGAN NATH, BHANDARI, for Respondent.

JUDGMENT.

FFORDE J.

FFORDE J.—This is an appeal by the Crown from an acquittal. The facts are very simple and may be

stated shortly. • The respondent was at the time of the matter complained of a branch postmaster of the village Throh in the Sialkot District. For his services as such he received a salary of about Rs. 5 a month. He was also a shop-keeper trading under the name of Gouri Shankar-Des Raj, Gauri Shankar being his father. Some time in August, 1925, the respondent had ordered a consignment of flour from the Pioneer Flour Mills at Shahdara in order to meet the requirements of his shop for the cattle fair which was due to take place at the end of that month. On the 13th of August, 1925, a value-payable envelope arrived at the branch post office in question. This envelope contained a railway receipt for the consignment of flour. On the 16th of August the respondent opened the envelope, extracted the railway receipt, went down to the station, where the goods had by this time arrived, and took delivery. On the 22nd of August he paid the price of the goods into the post office. In the meantime, that is between the 15th and 21st of August, the respondent made certain entries in the books of the post office in the branch office daily account form in which under the column headed "Explanation of non-delivery of registered articles and parcels and value-payable articles in deposit" he entered the words "on account of the absence of the addressee." This explanation was repeated daily from the 15th to the 21st. On the 22nd, as I have already stated, the money for the goods was paid into the post office.

It is clear upon these facts, which have been conclusively proved, that the respondent has been guilty of an offence under section 52 of the Post Office Act (Act VI of 1898). The respondent himself admitted that he had taken possession of the value-payable

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letter, that he extracted the railway receipt, that he had got the goods on the strength of this document and that he had failed to pay the amount due until the 21st of August. Mr. Jagan Nath has urged that these circumstances do not show that there was any intent on the part of the respondent to misappropriate the value-payable letter and that no offence has been committed under section 52 of the Post Office Act. This argument obviously cannot succeed. The fact that the respondent made a series of false entries for the purpose of selling stores which had been consigned to his firm under the value-payable post office arrangement, shows that he was perfectly aware that he was doing a wrong act. Moreover, every shop-keeper knows that the whole object of consigning goods on the value-payable system is to prevent the goods being delivered until the money has been paid, and a person who has for some time been occupying the duty of a postmaster must be perfectly aware of the importance of strictly observing the rules in connection with this class of transactions.

The trial Magistrate in acquitting the respondent has at the conclusion of his judgment said :—

“ His offence would, therefore, only be a technical one and it might amount to misappropriation but it was not criminal misappropriation.”

The offence no doubt is a technical one in the sense that no loss was incurred by the post office and the money involved was voluntarily returned, but the offence undoubtedly does amount to criminal misappropriation within the meaning of section 403, Indian Penal Code. The trial Magistrate has relied upon the case *Imam Din petitioner v. The Emperor*

respondent (1). That case, however, has obviously no bearing upon the facts before us and I do not consider it necessary to discuss it.

The question remains what punishment should be imposed for this offence. The respondent is a young man and is apparently a respectable one. The offence took place as long ago as August 1925. It was known to Nazir Ahmad (P. W. 2), of the Daska Post Office, at the time. It was also investigated by Ram Lal (D. W. 2), Inspector of Post Offices, Pasrur Sub-Division, in the month of December 1925, and this official satisfied himself with censuring the respondent. Under these circumstances, although the offence under section 52 of the Post Office Act cannot be regarded as anything but serious, I think that the interests of justice would be met in the present case by a nominal imprisonment coupled with fine.

I would accordingly accept the appeal, set aside the acquittal and convict the respondent under section 52 of the Post Office Act, VI of 1898, and would sentence him to be imprisoned till the rising of the Court and to pay a fine of Rs. 100, or in default, to undergo three months' rigorous imprisonment.

TEK CHAND J.—I agree.

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Appeal accepted.