Ram Krishan and Another

Vs

The State of Delhi (with connected appeal)

Criminal Appeals Nos. 43 and 44 of 1954

(N. Chandrashekar Aiyar, B. P. Sinha, Syed Jafar Imam, Vivian Bose JJ)

09.03.1956

JUDGMENT

CHANDRASEKHARA AIYAR J. -

Ram Kishan, the first appellant in Criminal Appeal No. 43, is a partner-proprietor in the firm of Kundan Lal Raja Ram of Saharanpur. Prem Chand, the second appellant, is a partner in the firm of Narain Prasad and Prem Chand in the same place. The appellant, Gian Chand, is the munim of a firm called Lekh Raj Shambhu Nath. Some of the Saharanpur merchants, including the three firms, were suspected of exporting potatoes at concessional rates on false declarations or certificates that they were seed potatoes. Police investigation was proceeding in this connection at Saharanpur in October, 1951. Madan Lal, Railway Section Officer, examined as P. W. 4 in the case, was deputed by the Railway Department to assist the Special Police Establishment in the investigation. Labhu Ram, Railway Parcels clerk in the Railway at Saharanpur, was deputed by the Station Master to help the Police party.

It is alleged by the prosecution that during the progress of the investigation, and after the houses and shops of the accused persons had been searched, Ram Kishan took Labhu Ram aside and proposed that the three firms would be prepared to pay Rs. 2,000 if the case was hushed up and that Madan Lal was to be sounded. Madan Lal refused to have anything to do with such a proposal, but as the accused persisted in their offer, it was ultimately decided that a trap should be laid for them at Delhi in Madan Lal's house. It is unnecessary to narrate in detail the steps taken in connection with this plan. The trap succeeded. The three accused and Labhu Ram were at Delhi on the morning of the 29th December and an increased sum of Rs. 5,000 was paid in the shape of currency notes to Madan Lal by Ram Kishan while two police officers and a Magistrate were hearing the conversation from an adjoining room and saw the payment through a hole in the door.

The appellants were charged under section 120-B of the Indian Penal Code for criminal conspiracy to cause the offence of criminal misconduct punishable under section 5(2) of the Preventation of Corruption Act (II of 1947), to be committed by Madan Lal, one of the prosecution witnesses. They also stood charged with an offence under the same section read with section 116 of the Indian Penal Code for abetting the commission of criminal misconduct by the said Madan Lal by paying him a sum of Rs. 5,000 by way of illegal gratification, which offence was, however, not committed by him.

The Special Judge, Delhi, who tried the case, found the appellants guilty under both heads of

charges. He sentenced Ram Kishan to three months' rigorous imprisonment and a fine of Rs. 5,000; Prem Chand and Gian Chand to two months' rigorous imprisonment and a fine of Rs. 1,000 each. He did not separately convict or sentence the accused under the head of criminal conspiracy. The High court reduced the sentence on Gian Chand to the term of imprisonment already undergone and a fine of Rs. 500.

There is no dispute that the amount was actually paid to Madan Lal even though he said he could do nothing to help the appellants, who begged him somehow to help theme out of the impending prosecution. Evidence has also been given by the Magistrate and the police officers about the talk and the lower courts have found on the evidence of Madan Lal and Labhu Ram and the eavesdroppers that Rs. 5,000 was offered as a bribe and not as compensation money in settlement of the amounts legitimately due to the Railway.

An attack against the concurrent findings of fact being wholly futile in the circumstances, Mr. Sethi, for the appellants in Criminal Appeal No. 43 of 1954, raised some questions of law on their behalf. His first point was that section 5(2) of the Prevention of Corruption Act (II of 1947), under which the accused were charged and convicted was inapplicable to the facts. His second point was that Madan Lal was not a "public servant" within the meaning of the Act and hence the charge was unsustainable. He urged as his third point that trap cases of this kind must be sternly discouraged and deprecated by the courts, inasmuch as opportunities for the commission of offences should not be deliberately created so that people who yield to the temptations of ordinary human nature might be punished as criminals; in other words, crimes committed under such circumstances should be regarded only as venial and not heinous.

To appreciate the first contention it is necessary to pay attention to the language of section 5 of the Prevention of Corruption Act, which is in these terms :-

> "S. 5(1) A public servant is said to commit the offence of criminal misconduct in the discharge of his duty, -
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> (a) if he habitually accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person, any gratification (other than legal remuneration) as a motive of reward such as is mentioned in section 161 of the Indian Penal Code, or
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> (b) If he habitually accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person, any valuable thing without consideration or for a consideration which he knows to be inadequate, from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by him, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned, or
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> (c) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person so to do, or
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> (d) if he, by corrupt or illegal means or by otherwise abusing his position as a public

servant, obtains for himself or for any other person any valuable thing or pecuniary advantage.

(2) Any public servant who commits criminal misconduct in the discharge of his duty shall be punishable with imprisonment for a term which may extend to seven years, or with fine, or with both.

(3) In any trial of an offence punishable under sub-section (2) the fact that the accused person or any other person on his behalf is in possession, for which the accused person cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income may be proved, and on such proof the Court shall presume, unless the contrary is proved, that the accused person is guilty of criminal misconduct in the discharge of his official duty and his conviction therefor shall not be invalid by reason only that it is based solely on such presumption.

(4) The provisions of this section shall be in addition to, and not in derogation of any other law for the time being in force, and nothing contained herein shall exempt any public servant from any proceeding which might, apart from this section, be instituted against him".

The object of the Act as set out in the preamble is to make more effective provision for the prevention of bribery and corruption. A new offence of criminal misconduct by a public servant is created by section 5 and under sub-section (2) it is made punishable with imprisonment for a term which may extend to seven years or with fine or with both. The offence is of four kinds or categories. Bribery as defined in section 161 of the Indian Penal Code, if it is habitual, falls within clause (a). Bribery of the kind specified in section 165, if it is habitual, is comprised in clause (b). Clause (c) contemplates criminal breach of trust by a public servant and the wording takes us to section 405 of the Code. It is with clause (d) that we are really concerned in the present case.

It was argued that the intention of the Act was to create by means of clause (d) an offence different from a single act of bribery and that it can come into play only when there is no offer to give and acceptance of a bribe by a public servant. Before it can be made applicable there must be proof, it was said, that the public servant adopted corrupt or illegal means and thereby obtained for himself or for any other person any valuable thing or pecuniary advantage. To force a bribe out of an unwilling person is different from the acceptance of a bribe from a voluntary giver and that before a charge under section 5(1), sub-clause (d) could be sustained, there must be threat or inducement, or promise proceeding from the public servant or duress or extortion practised by him to obtain the pecuniary advantage. This argument proceeds upon the footing that the Act seeks to create and creates an independent offence distinct from simple bribery. In one sense, this is no doubt true but it does not follow that there is no overlapping of offences. We have primarily to look at the language employed and give effect to it. On class of cases might arise where corrupt or illegal means are adopted or pursued by the public servant to gain for himself a pecuniary advantage. The word "obtains", on which much stress was laid does not eliminate the idea of acceptance of what is given or offered to be given, though it connotes also an element of effort on the part of the receiver. On many accept money that is offered, or solicit payment of a bribe, or extort the bribe by threat or coercion; in each case, he obtains a pecuniary advantage by abusing his position as a public servant. The word 'obtains' is used in sections 161 and 165 of the Penal Code. The other words "corrupt or illegal means" find place in section 162. Apart from "corrupt and illegal means", we have also the

words "or by otherwise abusing his position as a public servant". If a man obtains a pecuniary advantage by the abuse of his position, he will be guilty under sub-clause (d). Sections 161, 162 and 163 refer to a motive or a reward for doing or forbearing to do something, showing favour or disfavour to any person, or for inducing such conduct by the exercise of personal influence. It is not necessary for an offence under clause (d) to prove all this. It is enough if by abusing his position as a public servant a man obtains for himself any pecuniary advantage, entirely irrespective of motive or reward for showing favour or disfavour. To a certain extent the ingredients of the two offences are common, no doubt. But to go further and contend that the offence as defined in clause (d) does not come within the meaning of bribery is to place too narrow a construction on the sub-clause. A speedy disposal of corruption cases by special courts, the benefit of investigation by higher police authorities are some of the provisions intended for the protection of public servants prosecuted under the Act while they are subjected also to increased disabilities, namely, a longer term of imprisonment as punishment and the application of the presumption referred to in sub-clause (3).

In support of the contention that Madan Lal was not a "public servant", reference was made to section 137 of the Indian Railways Act. Under the Act as it stood before it was amended by Act XVII of 1955, every railway servant was deemed to be a public servant only for the purposes of Chapter IX of the Indian Penal Code and it was provided by sub-clause (4) that "notwithstanding anything in section 21 of the Indian Penal Code a railway servant shall not be deemed to be a public servant for any of the purposes of that Code except those mentioned in Chapter IX". The amended sub-clause (1) is in these terms :

> "Every railway servant, not being a public servant as defined in section 21 of the Indian Penal Code shall be deemed to be a public servant for the purposes of Chapter IX and section 409 of that Code".

Sub-section (4) has now been omitted. The Prevention of Corruption Act provides by section 2 that "For the purposes of this Act, "Public servant" means a public servant as defined in section 21 of the Indian Penal Code". The result is that before the amendment, railway servants were treated as public servants only for the purposes of Chapter IX of the Indian Penal Code but now as the result of the amendment all railway servants have become public servants not only for the limited purposes but generally under the Prevention of Corruption Act.

It has been stated already that a trap was laid for catching the appellants and this circumstance, according to the learned counsel for the appellants, should be taken into account in the matter of sentence. In this connection, our attention was invited to the well-known and weighty observations of Lord Goddard, C. J., in Brennan v. Peek [[1947] 2 All E. R. 572.] where his Lordship expressed the hope that "the day is far distant when it will become a common practice in this country for police officers to be told to commit an offence themselves for the purpose of getting evidence against someone; if they do commit offences they ought also to be convicted and punished, for the order of their superior would afford no defence". While there is much to be said in support of the opinion expressed by the learned Chief Justice, it cannot be laid down as an absolute rule that the laying of traps must be prohibited on the ground that by so doing we hold out an invitation of the commission of offences. The detection of crime may become difficult if intending offenders, especially in cases of corruption are not furnished opportunities for the display of their inclinations and activities. Where matters go further and the police authorities themselves supply the money to be given as a bribe, severe condemnation of the method is merited, as in Rao Shiv Bahadur Singh and another v. The State of Vindhya Pradesh [[1954] S. C. R. 1098.]. - See also Ramjanam Singh v. The State of Bihar [Cr. Appeal No. 81 of 1953.]. But whatever the ethics of the question might be,

there is no warrant for the view that the offences committed in the course of traps are less grave and call only for lenient or nominal sentences.

For the appellant in the connected Appeal No. 44 it was urged by his learned counsel that he was only a munim of a firm and not a partner or a proprietor as the other appellants and that it could not be stated of him that he was interested in giving or attempting to give any bribe for hushing up the case. There is, however, the clear and definite evidence of Labhu Ram that Gian Chand came along with the appellants to him when the talk about the bribe took place. He says that on the morning of the 29th December, 1951, the three accused who were staying at the Coronation Hotel, Delhi, told him that they had amongst themselves collected Rs. 5,000 to be paid to Madan Lal and that in the house of Madan Lal all the three accused one by one made request to Madan Lal to hush up the potato case pending against them. This is corroborated by Madan Lal who states that all the three accused said that the money had been subscribed by them jointly and requested him to accept the same and get the case withdrawn. The cases of Gian Chand does not stand on any different footing from that of the other appellants.

The convictions and sentences are confirmed and the appeal will stand rejected.

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