S. Gangoli

Vs

The State of Uttar Pradesh (and connected appeal)

Criminal Appeals Nos. 20 and 21 of 1957

(B. P. Sinha, P. B. Gajendragadkar, K. N. Wanchoo JJ)

14.05.1959

JUDGMENT

GAJENDRAGADKAR J. –

Are the appellants S. Gangoli and P. R. Chaudhri (hereafter called appellants 1 and 2 respectively) public servants under s. 2 of the Prevention of Corruption Act, 1947 (Act II of 1947) (hereinafter called the Act) ? That is the short question which arises for our decision in the present appeal. That question arises in this way.

Chaudhri had been posted as Assistant Permanent Way Inspector, Sultanpur, East Indian Railway, in March, 1948, in the Lucknow E.I.R. Division. Gangoli was posted as Assistant Pay Clerk in the Lucknow E.I.R. Division during the same period. The case against the appellants was that they had committed an offence under s. 120B of the Indian Penal Code and s. 5(2) read with ss. 5(1)(c) and 5(1)(d) of the Act. It appears that in accordance with the Pay Commission's Report a sum of Rs. 16,685 was entrusted to appellant No. 2 by the railway department to be disbursed among Class IV staff working under appellant No. 1. This payment had to be made in the presence of, and was to be attested by, appellant No. 1. According to the prosecution both the appellants had entered into a criminal conspiracy to misappropriate a part of the said government amount entrusted to appellant No. 2 by paying to the respective members of Class IV staff lesser amounts than those to which they were entitled and by making entries in the pay-sheets which purported to show that the due amounts had been paid to them. In accordance with this conspiracy payment was made on March 11, 1948, in a running train between Faizabad and Chilbila and the entries in the pay-sheets show that the whole of the amount of Rs. 16,591 had been paid to 216 employees. The entries also show that the payment had been made by appellant No. 2 and the same had been attested by appellant No. 1. In fact the whole amount had not been disbursed to the employees who in all were paid Rs. 1,555 less. In this manner the two appellants had misappropriated the sum of about Rs. 1,555 and had falsified the pay-sheets in pursuance of their conspiracy.

Within a few days of the said payment the employees became suspicious because they learnt that persons recruited on the same day had been paid larger amounts as arrears. Thereupon they approached the higher officers and made a complaint to them. They were advised to present their grievance in writing and as a result some of the employees did present applications in writing complaining that they had not received the due payment of their arrears. There representations led to an enquiry and Mr. Dalip Singh in fact recorded some of the statements on April 6 and 7, 1948. The prosecution alleges that this development alarmed appellant No. 1 and he tried to hush up the matter by calling all the men together and paying them the amounts which had been previously wrongfully deducted from their arrears. It is the prosecution case that on this day three documents were

executed, Exs. 5, 10 and 11, which would clearly show that the appellants had committed the offences charged against them.

Both the appellants denied the charges. They pleaded that they had not entered into any conspiracy and it was their suggestion that they had been falsely implicated in the present case. Appellant No. 1 pleaded that the case against him had been started, and false evidence had been secured by H. N. Das with the aid of Shambu because relations between him and Das were not friendly. Appellant No. 2 pleaded that he had been falsely implicated because, contrary to the suggestion of the police, he had refused to implicate appellant No. 1. According to them the evidence adduced by the prosecution was interested and false, and the documents produced by it were either fabricated or irrelevant.

In support of its case the prosecution examined 44 witnesses, relied upon the three documents Exs. 5, 10 and 11 and urged that the charges framed against the appellants were clearly established by the said evidence. The learned Sessions Judge at Lucknow who tried the case against the appellants agreed with the unanimous opinion of the assessors and held that the charges framed against the appellants had been proved beyond a reasonable doubt. He accordingly convicted them of the said offences and sentenced appellant No. 1 to suffer rigorous imprisonment for three years and appellant No. 2 to suffer rigorous imprisonment for two years.

This order of conviction and sentence was challenged by the appellants by preferring appeals in the High Court of Judicature at Allahabad. These appeals, however, failed and the High Court substantially agreed with the conclusions of the learned trial judge. Mr. Justice Kidwai who heard these appeals no doubt partly accepted the defence plea and held that Das was not a reliable witness and that he might have been responsible for the fabrication of Ex. 10. The learned judge also found that Shambu was likewise an unreliable witness. Even so it was held that the evidence of gangmen was on the whole satisfactory and that the documents Exs. 5 and 11 corroborated the oral evidence adduced by the prosecution. In the result the order of conviction and sentence passed against the appellants by the trial judge was confirmed. It is against this order passed by the High Court that the appellants have preferred the present appeals by special leave; and the only point which they have raised before us is that their conviction and sentence are illegal because they are not public servants under s. 2 of the Act.

Section 2 of the Act provides that for the purposes of this Act public servant means a public servant as defined in s. 21 of the Indian Penal Code. It is not disputed that under s. 21 the appellants are public servants. The East Indian Railway which has employed the appellants was at the material time owned by the Government of India and managed and run by it, and so if the status of the appellants had to be judged at the material date solely by reference to s. 21 of the Code there would be no difficulty in holding that they are public servants as defined by the said section.

It is, however, urged that, for determining the status of a railway servant, it is necessary to consider s. 137 of the Indian Railways Act, 1890 (Act 9 of 1890). It may be recalled that when this Act was passed almost all the railways in India were owned and managed by public limited companies and as such railway servants as defined by s. 3(7) of the Railways Act could not be treated as public servants under s. 21 of the Code. After the railways were nationalised and taken over by the Government of India, this position has materially altered. But prior to the nationalisation of railways, the position was that railways servants as such did not fall under s. 21 of the Code. That is why s. 137(1) and (4) purported to bring them within the definition of public servants contained in the said section. Sub-s. (1) of s. 137 provides that every railway servant shall be deemed to be a

public servant for the purposes of ch. IX of the Indian Penal Code. The effect of this sub-section is to treat railway servants as public servants under s. 21 for the purpose of offences relating to public servants which are dealt with by ss. 161 to 171 is ch. IX of the Code. It is thus clear that the result of this provision was to treat railway servants as public servants even though they did not satisfy the requirements of the definition of s. 21. Having provided for the extension of the said definition to railway servants for the purposes of ch. IX of the Code, sub-s. (4) prescribed that notwithstanding anything contained in s. 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 these mentioned in sub-s. (1). It is on this sub-section that the appellants' argument is based. It is urged by Mr. B. L. Anand that this sub-section clearly provides that railway servants shall not be deemed to be public servants except for the purposes of ch. IX; and since the appellants had not been charged with any of the offences in ch. IX of the Code they cannot be treated as public servants for the offences under ss. 5(1) and 5(2) of the Act. It is true that these two sub-sections have been amended by Act 17 of 1955. Sub-s. (4) has been deleted and sub-s. (1) now provides that every railway servant being a public servant as defined in s. 21 of the Indian Penal Code shall be deemed to be a public servant for the purposes of ch. IX and s. 409 of that Code. In other words, under the amended provision of s. 137(1) railway servants would be deemed to be public servants under s. 21 of the Indian Penal Code only for the purpose of ch. IX and s. 409 of that Code. We are, however, concerned with the provisions of s. 137 prior to its amendment in 1955.

Now s. 137, sub-s. (4) opens with the non-obstante clause and expressly states that a railway servant shall not be deemed to be a public servant for any of the purposes of that Code subject of course to the exception mentioned in sub-s. (1). The argument is that the non-obstante clause has the effect of excluding the application of s. 21 of the Code in all cases except those falling under ch. IX of the Code; and it is urged that since the offences charged against the appellants are outside ch. IX of the Code, sub-s. (4) creates a bar against treating them as public servants for the purpose of the said offences. This argument, however, ignores the relevant words "for any of the purposes of that Code" used in sub-s. (4). These words indicate that the bar created by sub-s. (4) applies, and is confined, to the purposes of that Code and cannot be extended beyond the said purposes. What sub-s. (4) really provides is that if a railway servant is charged for an offence under the Indian Penal Code and the said offence is outside ch. IX of the Code he cannot be treated as a public servant. This sub-section does not purport, or intend to make any provision in respect of offences which are outside the Penal Code, In respect of such offences neither sub-s. (1) nor sub-s. (4) of the Railways Act would apply, and the question as to whether railway servants fall within the mischief of the Act must be decided in the light of the provisions of the said Act itself.

That takes us to the question whether the appellants can be said to be public servants under s. 2 of the Act. S. 2, as we have indicated, in substance incorporates in itself the definition of a public servant contained in s. 21 of the Indian Penal Code. There can be no doubt that the effect of s. 2 of the Act is that the status of accused persons has to be determined by the application of s. 21 of the Indian Penal Code as if the said section had been included in the Act. If that be so the appellants cannot resist the conclusion that they are public servants under s. 2 of the Act. The contention that because s. 2 of the Act refers to s. 21 of the Indian Penal Code the bar created by s. 137(4) of the Railways Act would inevitably come into operation is unsound. The said bar can be invoked only if the status of the accused person is being determined for any purposes of the Code other than those of ch. IX. In the present case the main offences charged are under the Act and not under the Code, and so s. 137(4) in inapplicable.

With regard to the construction of s. 137(4) there is another consideration which may be indicated.

S. 137(1) beings within the definition of s. 21 of the Code railway servants who but for it would not have satisfied the rests laid down in s. 21. The deeming provision of sub-s. (1) would be clearly inappropriate and unnecessary if the railway servants concerned could be treated as public servants under s. 21 itself. In other words, railway servants employed by the railway administration owned and conducted by the Government of India would be public servants under s. 21 as such without recourse to the statutory fiction introduced by s. 137(1). Having provided for this statutory fiction by sub-s. (1), sub-s. (4) purports to cover the same ambit and to deal with the same class railway servants and it provides that this class of persons shall not be deemed to be public servants except as mentioned in sub-s. (1). This negative statutory fiction is only intended to emphasise the fact that persons who are treated as public servants by virtue of sub-s. (1) can be dealt with only under the provisions of ch. II of the Code and no other. Could it have been intended by the Legislature that sub-s. (4) should exclude the application of the provisions of the Code other than those contained in ch. IX to railway servants who would be public servants under s. 21 without the aid of sub-s. (1) of s. 137 ? Prima facie such an intention cannot be attributed to the Legislature. It is true that the non-obstante clause lends some assistance to the argument of the appellants that with the exception of the provisions of ch. IX, s. 21 of the Code would be inapplicable to railway servants; but the said non-obstante clause cannot prima facie be wider in its scope than sub-s. (1) of the said section. The said non-obstante clause has apparently been inserted ex abundanti cautela [(1955) 2 S.C.R. 977 - Rai Bahadur Kanwar Raju Nath & Ors. v. Promod C. Bhatt, Custodian of Evacuee Property] to clarify the effect of s. 137(1). The two sub-sections introduce a positive and a negative fiction respectively and thereby achieve the same result. However, since we are concerned with the provisions of the Act and not with any provisions of the Code other than ch. II it is unnecessary to pursue this point any further and to express a definite opinion on this aspect of the matter.

We must now refer to the decisions to which our attention was invited. The first case on which Mr. Anand relied is the decision of the Punjab High Court in Devi Ram Deep Chand v. The State [A.I.R. 1954 Punj. 189]. In that case the accused were goods clerks employed by the railway and they were being prosecuted in the court of a First-Class Magistrate on charges under s. 408 of the Penal Code. It was urged on their behalf that the offences alleged against them were in substance offences under s. 5 of the Act, and that they could be tried by a special judge alone. That is why the High Court was moved for a transfer of the case against them from the court where it was pending to the court of the special judge. From the judgment of the High Court it clearly appears that the learned Assistant Advocate-General intimated to the Court that the prosecution did not propose to frame or prove a charge against the appellants under s. 5 of the Act. Therefore s. 2 of the Act did not really fall to be construed by the court; and so the observations made by Dulat, J., that if the petitioners are not public servants within the meaning of s. 21 of the Penal Code they cannot be called public servants for the purposes of Act 2 of 1947, is clearly obiter. If, however, this observation was intended to be a decision on the point, it must, with respect, be held to be based on a misconstruction of s. 137(4).

Mr. Anand has also fairly invited our attention to two decisions of this Court - Ram Krishan v. The State of Delhi [[1956] S.C.R. 182] and C.A. Montorio v. The State of Ajmer [[1956] S.C.R. 682] - which are prima facie against his contention. In the first of these two decisions the appellants had been charged under s. 120B of the Indian Penal Code for criminal conspiracy to cause offence of criminal misconduct punishable under s. 5(2) of the Act to be committed by Madan Lal as also under that section read with s. 116 of the Code. They had been convicted by the special judge on both the counts and their conviction had been upheld by the High Court. In their appeal before this Court one of the points raised by the appellants was that Madan Lal was not a public servant within the meaning of the Act. It appears that the offence in question had been committed on December 29, 1951, and the argument was that under s. 137(1) and (4) Madan Lal who was a railway servant

could not be held to be a public servant under s. 2 of the Act. Chandrasekhara Aiyar, J., who delivered the judgment of the Court, cited s. 137(1) and added that sub-s. (4) had been omitted by the amendment of 1955. Then the learned judge referred to s. 2. of the Act and concluded thus : "The result is that before the amendment railway servants were treated as public servants only for the purpose of ch. 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 purpose but generally under the Prevention of Corruption Act." With respect, it may be pointed out, that this observation seems to give to the amended provisions of s. 137 of the Railways Act retrospective effect. The question of the construction of the relevant sections does not appear to have been fully argued before this Court and it has not been considered. It is nevertheless true that in respect of an offence committed in 1951 Madan Lal was held to be a public servant under s. 2 of the Act.

In the case of Montorio [[1956] S.C.R. 682] the main point raised before this Court was whether the accused was a public servant under s. 21 of the Code and that was considered by this Court; in dealing with that question this Court construed s. 21 and held that the appellant was an officer within the meaning of s. 21(9) and therefore a public servant within the meaning of s. 21. Incidentally reference has been made to the earlier decision of this Court in the case of Ram Krishan [[1956] S.C.R. 182] and it has been observed that the said decision "lays down that before the amendment of s. 137 of the Railways Act, by Act 17 of 1955, railway servants were treated as public servants only for the purposes of ch. IX of the Indian Penal Code but in any event they were public servants under the Prevention of Corruption Act." With respect, this latter statement does not appear to be borne out by the judgment in the case of Ram Krishan [[1956] S.C.R. 182].

Going back to s. 2 of the Act once more we must hold that in defining a public servant it enacts the same definitions as s. 21 of the Indian Penal Code and under this interpretation of the section the appellants undoubtedly are public servants. The result is the courts below were right in holding that the appellants could be properly charged and tried for offences under s. 5(2) read with s. 5(1)(c) and s. 5(1)(d) of the Act. The validity of the charge under s. 120B has not been and cannot be challenged.

Mr. Anand for appellant No. 1 and Mr. Chatterjee for appellant No. 2 appealed to us to reduce the sentence passed against their clients. It was urged in support of this plea that though the charge against them was in respect of a large amount of Rs. 1,555 evidence had been adduced to prove misappropriation of Rs. 218 which is a much smaller amount. We do not think that in the circumstances of this case the actual amount shown to have been misappropriated has a decisive or even a material bearing on the question of sentence. The positions respectively occupied by the appellants, the relations between them and the Class IV servants, the method adopted by the appellants in committing the offence and the other circumstances have all been considered by the courts below in passing concurrently the respective orders of sentence against the appellants. In our opinion there is no justification for interfering with the said orders.

The appeals accordingly fail and are dismissed. The appellants to surrender to their bail bonds.

Appeals dismissed.

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