SUPREME COURT OF INDIA

Bhagwan Sahai

Vs.

State of Punjab

Crl.A.No.189 of 1957

(S. J. Imam, J. L. Kapur and K. N. Wanchoo, JJ.)

18.12.1959

JUDGEMENT

KAPUR, J.:

1. This is an appeal by special leave against the judgment and order of the Punjab High Court dated May 17, 1956. At the relevant time, i.e., between May 1, 1953, and June 2, 1954, the appellant was a Naib-Tehsildar at Ferozepur Jhirka in the district of Gurgaon. The allegation against the appellant was that during his tours in the several villages of Ferozepur Jhirka Tehsil, his son who was a Director of the Starline Pictures Ltd., a film company of Delhi, accompanied him and at the time of mutations the appellant asked the parties whose mutation he was attesting to purchase shares in the company of his son and that many of such persons on being so pressed by the appellant purchased shares and did so because they were asked by the appellant who showed them official favours.

2. The facts which have led to the conviction of the appellant are these. On June 8, 1954, the First Information Report against the appellant was filed under S. 5(1)(d) of the Prevention of Corruption Act (hereinafter termed the Act). It was based on a letter of the Deputy Commissioner who is also the Collector of the district enclosing with the letter the report of the Revenue Assistant, Gurgaon in an enquiry which he held against the appellant. The letter stated that the case felt within S. 5(1)(d) of the Act and suggested that the necessary sanction should be taken under S. 6 of the Act. Thereafter the sanction of the Commissioner, Ambala Division, was taken on 2-12-1954. By this document the Commissioner sanctioned the prosecution of the appellant under S. 5 of the Act. Cognizance of the case was taken on July 18, 1955, by Mr. Manohar Singh, Special Judge, Gurgaon but it was his successor who recorded the evidence of the witnesses for the prosecution on various dates from 2-9-1955, up to 19-10-1955. On 2-11-1955, a charge was framed against the appellant under S. 5(1)(a) of the Act. After the charge the appellant cross-examined six prosecution witnesses and then examined some defence withnesses and after the arguments were heard the appellant was convicted on January 4, 1956, and sentenced to imprisonment till the rising of the Court. The conviction was in the following words :

"After a careful consideration of the whole evidence, I am of opinion that the offence with which the accused has been charged is proved beyond reasonable doubt. I convict him of an offence under Section 5 of the Prevention of Corruption Act".

It may here be added that the evidence disclosed against the appellant was that all the forms of applications for shares were written by the appellant excepting eight and receipts for the sums

received were sent later by post or through some other agency. According to the case set up against the appellant in the trial Court it is alleged that he had abused his official position, collected subscriptions for the shares for the benefit of his son and the company of which his son was a Director and that without his so acting the Meos, an agriculturist tribe, in that Tehsil whose mutations were before the appellant would not have purchased these shares. All the witnesses for the prosecution had stated that they did not understand what a share of a company was and they had never thought of buying a share in a company and they had paid the money to the appellant or his son because they thought that thereby they were obliging the appellant who was to attest their mutations. It has also been found that the appellant asked the various persons to purchase the shares and that money was paid to the appellant or to his son in the presence of the appellant.

3. It was contended in the High Court that the action of the appellant did not amount to criminal misconduct as the appellant himself did not derive any advantage of a pecuniary nature and counsel there referred to the language of the charge framed which stated that the appellant "was in the habit of obtaining illegal gratification" but the High Court was of the opinion that the evidence was led in the presence of the appellant and he knew what the case against him was and what case he had to meet. The finding of the High Court may be stated in its own words :

"It is clear that the appellant's son obtained a pecuniary advantage by the sale of these shares and it is equally clear that the appellant himself used his official position to persuade various persons to purchase those shares. Under section 5 of the Prevention of Corruption Act a person who abuses his official position for obtaining a pecuniary advantage either for himself or for any other person commits the offence of criminal misconduct, and on the facts proved in this case there can be no doubt that the appellant did abuse his official position in order to obtain pecuniary advantage for his son, and, in my opinion, therefore, the appellant's conviction under section 5 of the Prevention of Corruption Act is justified."

For the appellant two questions were raised before us : (1) that the sanction for prosecution purported to be under S. 5(1)(d) and therefore the appellant could not be convicted under S. 5(1)(a) and (2) that the High Court had no power to convert the conviction from one under S. 5(1)(a) to one under S. 5(1)(d) because the charge also was under S. 5(1)(a). A subsidiary point was raised that in any event no offence under S. 5(1)(d) had been made out against the appellant as no pecuniary advantage was proved.

4. Now under S. 6 of the Act no Court can take cognizance of an offence under S. 5 except with the previous sanction of the authorities therein mentioned and it is not disputed that the sanction was given by the proper authority but the argument raised is that the sanction was for an offence under S. 5(1)(d) and even though it does not expressly mention the section, the facts recited in the sanction show that the sanction was given for prosecution under clause (d) of S. 5(1) and not under any other clause of the section. To decide this question it is necessary to refer to the sanction given by the Commissioner. The relevant parts of the sanction are :

"Whereas it has been brought to my notice that Shri Bhagwan Sahai ..... from July 1953 to February 1954 obtained pecuniary advantage for his son Daya Kishan Bhardwaj who was one of the Directors of the Starline Pictures Ltd., Delhi by abusing his position as a public servant and persuading and prompting the undernamed persons who had or expected to have dealings with him in his public capacity, to purchase shares of the said company of the value noted against each,

totalling Rs. 1,840 and thereby committed an offence of criminal misconduct in the discharge of his duty, punishable under section 5 of the Prevention of Corruption Act of 1947.

Then follows a list containing 68 names of persons who are alleged to have purchased the shares and the amounts which were paid by each one of them. The operative part of the sanction is :

"Now, therefore, in exercise of the powers conferred upon me by section 6 of the Prevention of Corruption Act 1947 I,...sanction the prosecution of Shri Bhagwan Sahai, Naib Tehsildar..... under section 5 of the Prevention of Corruption Act, 1947".

It was contended that the language of the sanction shows that it was for an offence under S. 5(1)(d) and therefore a conviction by the Special Judge under S. 5(1) (a) was illegal and in support reliance was placed on a judgment of this Court in Jaswant Singh v. State of Punjab, 1958 SCR 762 : (AIR 1958 SC 124). In that case the sanction was for receiving Rs. 50 as a bribe from one Pal Singh. In the charge it was stated that the accused had habitually accepted illegal gratification and also that he had received Rs. 50 from Pal Singh and the offence therefore fell under S. 5(1) (a) and he was convicted for that offence by the Special Judge. The High Court on appeal held that taking the sanction into consideration the accused could not be convicted of an offence for habitually accepting bribes but the sanction in regard to receiving Rs. 50 from Pal Singh was valid and therefore the conviction was upheld. The contention that as the sanction was confined to illegal gratification of Rs. 50 paid by Pal Singh and the charge was for habitually accepting illegal gratification, the whole trial was without jurisdiction and the accused could not be convicted of any offence, was negatived and this Court held that the accused could be convicted under S. 5 (1)(d). I was in that connection that this Court said at p. 766 (of SCR) : (at p. 127 of AIR) :-

"Section 6(1) of the Act bars the jurisdiction of the court to take cognizance of an offence for which previous sanction is required and has not been given. The prosecution for offence under S. 5(1) (d) therefore is not barred because the proceedings are not without previous sanction which was validly given for the offence of receiving a bribe from Pal Singh but the offence of habitually receiving illegal gratification could not be taken cognizance of and the prosecution and trial for that offence was void for want of sanction which is a condition precedent for the courts taking cognizance of the offence alleged to be committed and therefore the High Court has rightly set aside the conviction for that offence".

The sanction in the present case when analysed means :

(i) Accused obtained pecuniary advantage for his son;

(ii) he did so between July 1953 and February 1954;

(iii) he did so by abusing his position by pursuading the 68 persons therein mentioned to purchase shares;

(iv) These persons had dealings with him in his public capacity or expected to have such dealings.

The question for decision is whether the sanction is under S. 5(1) (a) or S. 5 (1) (d) or under both. Clauses (a) and (d) of S. 5(1) are as follows :

"S. 5(1). A public servant is said to commit the offence of criminal misconduct in the discharge of his duty,-

(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 or reward such as is mentioned in section 161 of the Indian Penal Code;

(b) ....

(c) ....

(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."

The elements necessary to prove an offence under S. 5(1) (a) are (1) that the accused was a public servant; (2) that he habitually accepted or obtained from any person gratification for himself or for any other person; (3) that he did so as a motive or reward for doing or forbearing an official act. In the case of a charge under S. 5(1)(d) it would be necessary to prove that (1) the accused was a public servant; (2) that he used corrupt or illegal means or otherwise abused his position; (3) that he obtained for himself or for any other person any valuable thing or pecuniary advantage.

5. The various elements of the sanction set out above do not exclude habitually, and receipt of illegal gratification as reward or motive for doing an official act. No doubt the word 'habitually' is not used in the sanction but the dates between which and the plurality of persons may well indicate habituality. Further, though every kind of gratification is not pecuniary advantage or valuable thing (See Exp. to S. 161 I.P.C.) pecuniary advantage and valuable thing are included in gratification. Moreover in the context the use of the words 'abusing his position' would not exclude the words 'motive for doing an official act'. It is true in other contexts the words 'abusing his position' may have other meanings but in the present case what the appellant was accused of doing and is proved to have done was attesting mutations and that was the doing of an official act. Therefore the sanction, in our opinion, falls both within cl. (a) of S. 5 (1) and cl. (d) of S. 5(1).

6. Since the sanction is construed as relating to both offences under S. 5(1) (a) and S. 5 (1)(d) of the Act the charge under S. 5 (1)(a) could have been validly framed. The High Court has not in terms altered the conviction from 5(1)(a) to 5(1)(d) although some of its observations have given room for such an argument. What the High Court meant was that the appellant had not taken a bribe in the sense that word in usually understood. The appellant had abused his position and helped another person to derive a pecuniary advantage thereby. The facts, however, show that he had done this consistently for over several months. This would amount to his habitually obtaining in the discharge of his duty gratification for another person. The High Court's judgment is therefore consistent with the charge framed under S. 5(1)(a). We must accordingly construe the High Court's judgment as upholding the conviction under S. 5(1)(a).

7. We, therefore, dismiss this appeal.

Appeal dismissed.

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