Ram Chandra Prasad

Vs

The State of Bihar

Criminal Appeal No. 168 of 1959

(K. Subha Rao, Raghuvar Dayal JJ)

18.04.1961

JUDGMENT

RAGHUBAR DAYAL, J. -

This appeal, by special leave, is against the order of the Patna High Court dismissing the appellant's appeal against his conviction for offences under s. 161, Indian Penal Code and s. 5(2) of the Prevention of Corruption Act, 1947 (Act II of 1947), hereinafter called the Act.

The appellant was the Construction Engineer at Sindhri R. B. Basu was a contractor living in Calcutta and carrying on the business of the company named and styled the Hindustan Engineering and Construction Company. The prosecution alleged, and the Courts below have found, that the appellant accepted the sum of Rs. 10,000 as illegal gratification from Basu at the Kelner's Restaurant at Dhanbad Railway Station on July 18, 1951.

The Courts disbelieved the appellant's defence that he had taken the envelope containing this amount not knowing that it contained this amount, but knowing that it contained papers relating to Basu's contracts.

The contentions raised on behalf of the appellant are :

> (i) that the provisions regarding the presumption contained in s. 4 of the Act are unconstitutional; (ii) that the case was tried by the Special Judge who had no jurisdiction to try it; (iii) that there had been no proper corroboration of the statement of Basu about the accused demanding the bribe and accepting the amount as illegal gratification.

The Constitutionality of s. 4 of the Act was sought to be questioned on the ground that it went against the provisions of Art. 21 of the Constitution which reads :

> "No person shall be deprived of his life or personal liberty except according to procedure established by law."

We do not consider this question to be a substantial question of law for the purpose of Art. 145(3), which lays down that the minimum number of Judges who are to sit for the purpose of deciding any case involving a substantial question of law as to the interpretation of the Constitution shall be five, in view of it being held that the word 'law' in Art. 21 refers to law made by the State and not to positive law. It has been held in A.K. Gopalan v. The State of Madras [[1950] S.C.R. 88] that in Art.

21, the word 'law' has been used in the sense of State-made law and not as an equivalent of law in the abstract or general sense embodying the principles of natural justice, and 'procedure established by law' means procedure established by law made by the State, that is to say, by the Union Parliament or the Legislatures of the States. Section 4 has been enacted by Parliament and therefore it must be held that what it lays down is a procedure established by law.

The appellant was tried by the Special Judge of Patna. The offence was committed at Dhanbad, in Manbhum District. The case was chalanned to the Magistrate at Dhanbad. On an application by the accused, the High Court transferred it to the Court of the Munsif-Magistrate at Patna. Subsequent to this order of transfer, the Criminal Law Amendment Act, 1952 (Act XLVI of 1952) came into force on July 28, 1952. The case, thereafter, was forwarded to the Special Judge at Patna in view of s. 10 of the Criminal Law Amendment Act. The contention for the appellant is that there was the Special Judge at Manbhum and that he alone could have tried this case. Section 7 of the Criminal Law Amendment Act, reads :

> (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1898, or in any other law the offences specified in sub-section (1) of section 6 shall be tribal by special Judges only.
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> (2) Every offence specified in sub-section (1) of section 6 shall be tried by the special Judge for the area within which it was committed, or where there are more special Judges than one for such area, by such one of them as may be specified in this behalf by the State Government.
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> (3) When trying any case, a special Judge may also try any offence other than an offence specified in section 6 with which the accused may, under the Code of Criminal Procedure, 1898, be charged at the same trial."

Sub-section (1) makes the offences under s. 161, Indian Penal Code and s. 5(2) of the Act triable by a special Judge only. The appellant has been tried by a special Judge appointed under the Act. His grievance is not with respect to the competency of the Court which tried him, but is with respect to the trial Court having no territorial jurisdiction to try him, as sub-s. (2) of s. 7 provides that such offences would be tried by the special Judge for the area in which they were committed. The offences were committed within the territorial jurisdiction of the special Judge at Manbhum and therefore could have been tried by him alone. It would therefore appear that the special Judge at Patna had no jurisdiction to try this case.

Sub-section (3) of s. 8 of the Criminal Law Amendment Act reads :

> "Save as provided in sub-section (1) or sub-section (2), the provisions of the Code of Criminal Procedure, 1898 shall, so far as they are not inconsistent with this Act, apply to the proceedings before a special Judge; and for the purposes of the said provisions, the Court of the special Judge shall be deemed to be a Court of Session trying cases without a jury or without the aid of assessors and the person conducting a prosecution before a special Judge shall be deemed to be a public prosecutor."

It follows that the provisions of s. 526 of the Criminal Procedure Code empowering the High Court to transfer any case from a criminal Court subordinate to it to any other Court competent to try it, apply to the case before any special Judge. If this case had been transferred to the Court of the

special Judge, Manbhum, on the coming into force of the Criminal Law Amendment Act, it would have been open to the High Court to transfer the case from that Court to the Court of the Special Judge, Patna. The case had been transferred from Dhanbad to Patna at the request of the appellant. The trial at Patna cannot be said to have prejudiced the appellant in any way. The mere omission of a formal forwarding of this case to the Special Judge at Manbhum and of a formal order of the High Court to transfer it to the Court of the Special Judge at Patna, have not, in our opinion, prejudiced the appellant in any way. When the case was taken up by the Special Judge, Patna, on October 23, 1952, the accused as well as the Public Prosecutor desired de novo trial. No objection to the jurisdiction of the Court to try the case was taken at that time. Such an objection appears to have been taken the time of the arguments before the Special Judge and was repelled by him. Such an objection was not raised before the High Court when the appellant's appeal was first heard in 1955 or in this court when the State of Bihar appealed against the order of the High Court. All this indicates that the appellant did not feel prejudiced by the trial at Patna.

In view of s. 531 of the Code of Criminal Procedure, the order of the Special Judge, Patna, is not to be set aside on the ground of his having no territorial jurisdiction to try this case, when no failure of justice has actually taken place. It is contended for the appellant that s. 531 of the Code of Criminal Procedure is not applicable to this case in view of sub-s. (1) of s. 7 and s. 10 of the Criminal Law Amendment Act. We do not agree. The former provision simply lays down that such offences shall be triable by special Judges and this provision has not been offended against. Section 10 simply provides that the cases triable by a special Judge under s. 7 and pending before a Magistrate immediately before the commencement of the Act shall be forwarded for trial to the special Judge having jurisdiction over such cases. There is nothing in this section which leads to the non-application of s. 531 of the Criminal Procedure Code.

We are therefore of opinion that the order of the special Judge convicting the appellant cannot be quashed merely on the ground that he had no territorial jurisdiction to try this case.

The last contention for consideration is whether there had been proper corroboration of the statement of Basu about the accused demanding the bribe of Rs. 10,000 and accepting it on July 18, 1951, at the Kelner Refreshment Room, Dhanbad Railway Station.

We may briefly indicate the salient facts deposed to by Basu in this connection. The appellant is said to have visited Calcutta in December 1950, to have gone to Basu's house and to have asked him to pay a bribe of Rs. 10,000. There is no direct corroboration of this statement by the testimony of any other witness. Kanjilal, an employee of Basu, under instructions of his master, met the appellant in May, 1951, inquired of him whether he would accept the amount he had demanded in December and had not been so far paid, and got the reply that the amount would be acceptable. He conveyed this information to Basu. Nothing was done till over a month and then too, not to make the payment, but to inform the authorities.

In June 1951, Basu informed Mr. K. N. Mookerjee, P.W. 3, the then Superintendent of Police, Special Police Establishment, about the accused's demanding bribe and at his request delivered the letter, Exhibit 11/1, dated June 18, to him. He made mention in this letter about the demand made in December 1950, but made no reference to the appellant's expression of readiness to accept the amount in the month of May.

Mr. Mookerjee took steps for laying the trap and deputed Mr. S. P. Mookerjee, P.W. 1.

Kanjilal met the appellant on July 14 and arranged with him that he would go to Dhanbad railway station when Basu would also be reaching there and that the money would be paid there and that the date of that meeting would be communicated later. Basu was told of this arrangement at Calcutta. He, in his turn, informed the authorities. July 18 was fixed for the purpose. Kanjilal informed the appellant by telephone on July 16 that the meeting would be on the 18th and that Basu would be reaching Dhanbad by the Toofan Express at about 5 p.m. The trap arrangements were completed and the trap-party reached Dhanbad by the Toofan Express on July 18. Kanjilal himself went to Sindhri on the morning of July 18 and confirmed the arrangement to the appellant. The appellant also reached Dhanbad railway station at about 5 p.m.

The members of the trap party took their seats at different tables in the corners of the Refreshment Room of Kellner's Restaurant. Basu, with the appellant, reached there and occupied another table. Refreshments were taken. Thereafter, Basu talked over matters about the contract with the appellant, moved near him, took out the file from his satchel and then, after some conversation, took out the envelope containing the currency notes of the vale of Rs. 10,000 and having its one long edge slit. This envelope was passed on to the appellant. Basu states that he made a statement at the time that there were Rs. 10,000, which he could not pay to the appellant so far. The appellant took the envelope and put it in his trouser pocket. The trap party, after getting the signal that the bribe money had been paid, surrounded the appellant and got the envelope from him. It was found to contain the very currency notes whose numbers had previously been noted by the Magistrate, Mr. Mahadevan.

There is no verbal corroboration of Kanjilal's statement about the message he conveyed to the appellant either in May or on the telephone or on the morning of the 18th of July.

The Courts below have found corroboration of the statements of Basu from the circumstances that the demand of money in December 1950 was mentioned in June, 1951, to Mr. K. N. Mookerjee, that the trap must have been laid when Basu must have been certain that the appellant would turn up at Dhanbad at the appointed time and that the appellant's presence at Dhanbad railway station could not have been accidental but must have been the result of previous arrangement. No infirmity can be found in this reasoning. The appellant gave an explanation for his presence at the railway station that day. It has not been accepted by the Courts below. In fact, the learned counsel for the appellant did not press it for consideration at the second hearing of the appeal, on remand by this court. No doubt, the trap arrangements must have been made when there was a practical certainty that the appellant would turn up at Dhanbad railway station. Basu is not expected to mention falsely in the month of June that the appellant made a demand of Rs. 10,000 in December 1950. Ordinarily, one is not expected to make a complaint of such a demand after such a long period of time. The interval of time seems to have been due possibly to a hope that matters may straighten out or that a lower sum might be acceptable as bribe to pass the pending bills of Basu. The omission of the trap witness to corroborate Basu's statement at the time of the passing on of the envelope to the appellant, informing the appellant of the envelope containing Rs. 10,000, is really surprising when the party consisted of four persons who had gone there for the purpose of being witnesses of the appellant's accepting the bribe and who could therefore be expected to be alert to hear what passed on between the appellant and Basu. The question here is : what did the appellant expect the envelope to contain ? It was no occasion for Basu to personally deliver any bills or papers concerning the contract business. Such papers could have been sent in the regular course of business to the appellant's office. The appellant does not appear to have questioned Basu as to what the envelope contained, as he would have done, if he did not know for certain what it contained. The appellant's statement that he understood the envelop to contain bill etc., is not consistent with his putting the envelope in his pocket. The envelope is expected to be a fat one as it contained one hundred Rs. 100 currency notes.

An envelope containing business papers is not expected to be put in the trouser pocket. One usually carries it in hand, or in one of the pockets of the coat or bush-shirt one may be putting on. When it is held that the appellant must have gone to Dhanbad railway station by arrangement, it becomes a moot point, what the purpose of the arrangement was. Surely, it could not have been a mere delivering of certain bills and papers. As already mentioned, it could have been sent to Sindhri by post or through Kanjilal or any other messenger. The purpose of the meeting at Dhanbad railway station must have been different. The appellant has failed to mention any purpose which could be accepted as correct.

It is true that the appellant was not specifically questioned, when examined under s. 342, Criminal Procedure Code, with respect to his demanding Rs. 10,000 to Calcutta, Kanjilal's visit to him in May and July and his telephonic call and the arrangement and about Basu's statement at the time the envelope was passed on to him. But we are of opinion that this omission has not occasioned any failure of justice. The appellant fully knew what had been deposed to by witnesses and what had been the case against him. He denied the correctness of the main allegation that he received Rs. 10,000 as bribe.

We are therefore of opinion that the appellant knew when he took the envelope from Basu that he was getting Rs. 10,000 as bribe, which amount he had demanded, and that therefore the conviction of the appellant is correct. The appeal is therefore dismissed.

Appeal dismissed.

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