M. Narayanan Nambiar

Vs

State of Kerala

Criminal Appeal No. 155 of 1961

(Syed Jafar Imam, K. Subha Rao, N. Rajgopala Ayyangar, J.R. Mudholkar JJ)

05.12.1962

JUDGMENT

SUBBA RAO, J. –

This appeal by special leave is preferred against the judgment of the High Court of Kerala, confirming that of the Special Judge, Trivandrum, convicting the accused under s. 5(2), read with s. 5(1)(d) of the Prevention of Corruption Act, 1947, (2 of 1947), hereafter called the Act, and sentencing him to pay a fine of Rs. 1,000/-, or in default to undergo simple imprisonment for four months.

The appellant was a Special Revenue Inspector for land assignment at Manantoddy in Wynad Taluk in the old Malabar district.

The case of the prosecution was that he, by abusing his position as a public servant, got 4 acres and 80 cents of Government land in R.S. No. 376/2 of Tavinhal village assigned in the name of his brother-in-law P.V. Gopinathan Nambiar without revealing the fact that he was his brother-in-law and by making false entries in the relevant records showing that the said land contained only 97 trees valued at Rs. 165/-, whereas the land had actually 150 trees worth Rs. 1450/-. The suppression of the fact that the assignee was his brother-in-law and the underestimate of the value of the land were dishonestly made to circumvent the rules governing the assignment of lands to landless poor.

The Special Judge and on appeal the High Court held that the appellant dishonestly underestimated the extent and the value of the trees in the said land with a view to help his brother-in-law and thereby committed an offence under s. 5(2), read with s. 1(4) of the Act. Hence the appeal.

Learned counsel for the appellant raised before us 2 points : (1) Section 5(1)(d) of the Act does not apply to a case of wrongful loss caused to Government by a public servant who by deceit induced it to part with its property : (2) The High Court acted erroneously in relying upon a report dated April 5, 1961, made by the District Forest Officer, Kozhikode, filed by the Public Prosecutor after the appeal was reserved for judgment without giving an opportunity to the appellant to file objections thereto or contesting the correctness of the valuation given therein.

As the first contention turns upon the provisions of s. 5(1), it will be convenient to read the same :-

> 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 s. 161 of the Indian Penal Code, or

(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

(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

(d) if he, by corrupt or illegal means or by otherwise abusing his position as public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage.

We are concerned in this case with 5(1)(d) of the Act. Under that clause if a public servant by corrupt or illegal means or by otherwise abusing his position as public servant obtains for himself or for any other person valuable thing or pecuniary advantage, he will be guilty of criminal mis-conduct, punishable under s. 5(2) of the Act with imprisonment for a term which shall not be less than one year and which may extend to 7 years, and shall also be liable to fine. The learned counsel contends that clause (d) being a penal provision, shall be strictly construed; and that if so construed, it would only take in cases of direct benefit obtained by a public servant for himself or for any other person from a third party in the manner described therein and does not cover a case of a wrongful loss caused to the Government by abuse of his power.

This conclusion, the argument proceeds, flows from three circumstances : (1) The benefit obtained in clause (b) must be similar to that provided for in clauses (a) & (b) i.e., benefit obtained from a third party; (2) The case of wrongful loss to the Government is provided by clause (c) and any other loss which does not fall within that clause is outside the scope of the section; (3) Though the word 'obtains' has a wide meaning in the setting in which it appears in clause (d) but in view of the fact that the same word is used in a limited sense in clauses (a) & (b), it should be given a limited meaning, namely, "gets a benefit from a third party". It takes colour from the same word used in clauses (a) & (b). He finally contends that the construction he is seeking to put forward for our acceptance fits in the general scope and scheme of the Act and that the Legislature intended to leave the losses caused to the Government by the deception caused by its public servant to be dealt with in accordance with the provisions of the Indian Penal Code or other appropriate laws. At the outset we may say that the argument is rather subtle but on a deeper scrutiny of the provisions and the clear phraseology used therein, we find that the contention is not sound.

Before we construe the relevant provisions of the section in the light of the criticism levelled by the learned counsel, it will be useful and convenient to know briefly the scope and the object of the Act. The long title of the Act reads :

'An Act for the more effective prevention of bribery and corruption'.

The preamble indicates that the Act was passed as it was expedient to make more effective provision for the prevention of bribery and corruption. The long title as well as the preamble indicate that the Act was passed to put down the said social evil i.e. bribery and corruption by public servant. Bribery is a form of corruption. The fact that in addition to the word "bribery" the "corruption" is used shows that the legislation was intended to combat also other evils in addition to bribery. The existing law i.e. Penal Code was found insufficient to eradicate or even to control the growing evil of bribery and corruption corroding the public service of our country. The provisions broadly include the existing offences under ss. 161 & 165 of the Indian Penal Code committed by public servants and enact a new rule of presumptive evidence against the accused. The Act also creates a new offence of criminal misconduct by public servants though to some extent it overlaps on the pre-existing offences and enacts a rebuttable presumption contrary to the well known principles of Criminal Jurisprudence. It also aims to protect honest public servants from harassment by prescribing that the investigation against them could be made only by police officials of particular status and by making the sanction of the Government or other appropriate officer a pre-condition for their prosecution. As it is a socially useful measure conceived in public interest, it should be liberally construed so as to bring about the desired object i.e. to prevent corruption among public servants and to prevent harassment of the honest among them.

A decision of the Judicial Committee in Dyke v. Elliot [(1872) L.R. 4 P.C. 184, 191.], cited by the learned counsel as an aid for construction neatly states the principle and therefore may be extracted :- Lord Justice James speaking for the Board observes at p. 191 :-

> "No doubt all penal Statutes are to be construed strictly, that is to say, the Court must see that the thing charged as an offence is within the plain meaning of the words used, and must not strain the words on any notion that there has been a slip, that there has been a casus omissus, that the thing is so clearly within the mischief that it must have been intended to be included and would have been included if thought of. On the other hand, the person charged has a right to say that the thing charged, although within the words, is not within the spirit of the enactment. But where the thing is brought within the words and within the spirit, there a penal enactment to be construed, like any other instrument, according to the fair commonsense meaning of the language used, and the Court is not to find or make any doubt or ambiguity in the language of a penal statute, where such doubt or ambiguity would clearly not be found or made in the same language in any other instrument."

In our view this passage, if we may say so, restates the rule of construction of a penal provision from a correct perspective. As we will presently show the case of the appellant on the facts found clearly falls not only within the words of clause (d) but also within its spirit. Indeed if his argument be accepted not only we will be doing violence to the language but also to the spirit of the enactment. First taking the phraseology used in the clause, the case of a public servant causing wrongful loss to the Government be benefiting a third party squarely falls within it. Let us look at the clause "by otherwise abusing the position of a public servant", for the argument mainly turns upon the said clause. The phraseology is very comprehensive. It covers acts done "otherwise" than by corrupt or illegal means by an officer by abusing his position. The gist of the offence under this clause is that a public officer abusing his position as a public servant obtains for himself or for any other person any valuable thing or pecuniary advantage. "Abuse" means mis-use i.e. using his position for something for which it is not intended. That abuse may be by corrupt or illegal means

or otherwise than those means. The word 'otherwise' has wide connotation and if no limitation is placed on it, the words 'corrupt', 'illegal', and 'otherwise' mentioned in the clause become surplusage, for on that construction every abuse of position is gathered by the clause. So some limitation will have to be put on that word and that limitation is that it takes colour from the preceding words along with which it appears in the clause, that is to say something savouring of dishonest act on his part. The contention of the learned counsel that if the clause is widely construed even a recommendation made by a public servant for securing a job for another may come within the clause and that could not have been the intention of the Legislature. But in our view such innocuous acts will not be covered by the said clause. The juxtaposition of the word 'otherwise' with the words "corrupt or illegal means" and the dishonesty implicit in the word "abuse" indicate the necessity for a dishonest intention on his part to bring him within the meaning of the clause. Whether he abused his position or not depends upon the facts of each case; nor can the word 'obtains' be sought in aid to limit the express words of the section. 'Obtain' means acquire or get. If a corrupt officer by the said means obtains a valuable thing or a pecuniary advantage, he can certainly be said to obtain the said thing or a pecuniary advantage; but it is said that in clauses (a) & (c) the same word is used and in the context of those clauses it can only mean getting from a third party other than the Government and therefore the same meaning must be given to the said word in clause (d). 'Obtains' in clause (a) & (b) in the context of those provisions may mean taking a bribe from a third party, but there is no reason why the same meaning shall be given to that word used in a different context when that word is comprehensive enough to fit in the scheme of that provision. Nor can we agree that as dishonest misappropriation has been provided for in clause (c), the other cases of wrongful loss caused to the Government by the deceit practised by a public officer should fall outside the section. There is no reason why when a comprehensive statute was passed to prevent corruption, this particular category of corruption should have been excluded therefrom because the consequences of such acts are equally harmful to the public as acts of bribery. On a plain reading of the express words used in the clause, we have no doubt that every benefit obtained by a public servant for himself, or for any other person, by abusing his position as a public servant falls within the mischief of the said clause.

Coming to the spirit of the provision, there cannot be two views. As we have expressed earlier, the object of the Act was to make more effective provision for the prevention of bribery and corruption. Bribery means the conferring of benefit by one upon another, in cash or in kind, to procure an illegal or dishonest action in favour of the giver. Corruption includes bribery but has a wider connotation. It may take in the use of all kind of corrupt practices. The Act was brought in to purify public administration. When the Legislature used comprehensive terminology in s. 5(1)(d) to achieve the said purpose, it would be appropriate not to limit the content by construction when particularly the spirit of the statute is in accord with the words used therein.

Two decisions of this court cited at the Bar indicate that a wide construction was placed by this Court on the provisions of s. 5(1)(d) of the Act. In Ram Krishan v. The State of Delhi [[1956] S.C.R. 182.], the appellants were prosecuted for offering bribe to a Railway Officer for hushing up the case against them. In that context, s. 5(1)(d) was construed by this court. At. p. 188 Chandrasekhara Ayyar, J., speaking for the court made the following observation :

> "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 & 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."
>
> This Court again in Dhaneshwar Narain Saxena v. The Delhi Administration [[1962] 3 S.C.R. 259.] pointed the wide net cast by this provision in order to put down corruption. There the appellant was an Upper Division Clerk in the office of the Chief Commissioner of Delhi. He knew one Ram Nara who was a fireman serving in Delhi Fire Brigade. The latter sought the assistance of the appellant who had nothing to do with the issuing of licences of fire-arms which was done by the office of the Deputy Commissioner, Delhi. The appellant took a bribe in order to get the licence for him. It was argued that as it was not the duty of the appellant to issue licences or do something in connection therewith, he did not commit any offence within the meaning of s. 5(1)(d) of the Act. This Court rejected his contention. Sinha, C.J., speaking for the Court observed at p. 198 : "The legislature advisedly widened the scope of the crime by giving a very wide definition in s. 5 with a view to punish those who, holding public office and taking advantage of their position obtain any valuable thing or pecuniary advantage."

The observations made by this Court in the above two cases though made in a different context show the comprehensive nature of the said provision. We therefore hold that the accused in order to assign the land to his brother-in-law underestimated the value of the said land to conform with the rules and thereby abused his position as a public servant and obtained for him a valuable thing or a pecuniary advantage within the meaning of the said clause and therefore is guilty of an offence under sub-s. (2) thereof.

It is next contended that the said finding was vitiated by the fact that the High Court in arriving at the finding relied upon a valuation list prepared by the District Forest Officer and filed into court without giving an opportunity to the appellant to canvass its correctness. The admitted facts relevant to the argument may be stated. The arguments in the appeal were concluded on March 22, 1961. On April 6, 1961, the Public Prosecutor filed a Valuation list purporting to have been made by the District Forest Officer, Kozhikode. No notice of this list was given to the appellant and therefore he did not file any objections. On April 10, 1961, High Court delivered the judgment basing its finding on the said Valuation list and rejecting the appeal. Before the Special Leave was granted by this court, a report was called for from the High Court with regard to the said facts. The report sent by the Registrar is as follows :-

> "The learned Counsel for the appellant contended before the High Court that the method of calculation adopted by P.W. 15 in assessing the value of the timber was not correct and that the following method should have been adopted viz., 'in the case of timber trees to calculate the value of each tree at the rate given in the Madras Forest Manual for that particular species, and for fuel trees, to calculate the value at the official rate for cart load fixed by the Government.' Thereupon the Court directed in open court that a statement showing the value of the timber calculated by the above method may be submitted by either of the parties. No statement was filed by the appellant's counsel and on 6-4-1961 the State filed a statement. Since the statement was meant only to assist the Court in calculating the correct value of the timber along the lines suggested by the appellant's counsel the matter was not posted for further argument."

The appellant denied in his affidavit filed before us that any direction was given by the court before the judgment was reserved but the Public Prosecutor filed an affidavit to the effect that such a statement was made in the open court. We have no reason to reject the report of the Registrar and the affidavit filed by the Public Prosecutor. Even so, the fact remains that the learned Judge acted upon a document filed by the respondent without giving an opportunity to the appellant to file objections or to contest its reliability. We think the principles of natural justice require that no court shall give a finding whether on fact or law and particularly on facts without giving an opportunity to all the contesting parties. As that principle has been violated in this case, we have no option but to set aside the finding of the learned Judge on the question of the valuation of the trees on the plot assigned to the appellant's brother-in-law. We, therefore, set aside this finding and request the High Court to submit a revised finding on the said question within two months from the receipt of the record. The respondent may file a further statement if he so chooses to explain or even to correct the valuation list already filed by it. Thereafter an opportunity will be given to the appellant to file his objections. The objections filed by the appellant in this Court may be also considered by the High Court. The High Court will submit the finding on the evidence already on record including the said objections and statements. The parties may file objections to the finding within two weeks from the date the said finding is received. The appeal will be posted as early as possible after objections are filed or after the expiry of the time given for filing the objections.

Case remitted for submission of fresh finding.

</html