S. N. Bose

Vs

State of Bihar

Criminal Appeal No. 109 of 1967

(K. S. Hegde, G. K. Mitter JJ)

26.03.1968

JUDGMENT

HEGDE, J.-

In this appeal by special leave, Mr. Debabrata Mookherjea learned counsel for the appellant advanced the following contentions : (1) the investigation conducted in this case was without the authority of law, (2) the nature of the onus under s. 4 of the Prevention of Corruption Act has been wrongly construed by the High Court as well as the trial court, and (3) the sanction granted under s. 6 of the Prevention of Corruption Act is invalid in law as the authority who granted the same had no competence to do so.

The facts leading upto this appeal are these. The appellant was an assistant medical officer in the railway hospital at Gaya in the year 1964. PW 4 Doman Ram was a khalasi working under the inspector of works, Eastern Railway, Gaya. On March 2, 1964, as he was suffering from dysentery and stomach pain he was sent to the appellant along with a sick note for treatment. The case of PW 4 was that when he went to the appellant for treatment the appellant demanded and received from him Rs. 2 as illegal gratification for treating him. Thereafter he was treated by the appellant on the 5th, 7th, 9th and 12th of that month. By the 12th he had completely recovered and therefore he wanted to rejoin duty and for that purpose he requested the appellant to give him a fitness certificate. For issuing him that certificate the appellant demanded Rs. 5 as bribe and he further told PW 4 that unless he paid him the said sum by March 14, 1964, he (appellant) would remove PW 4's name from the sick list. After this talk, when PW 4 was going out of the hospital he met a person by name Babu. He complained to Babu about the behaviour of the appellant. The said person told him that he would meet him again on March 14, 1964, but on March 14 Mr. A. C. Das PW 17, Inspector of Special Police Establishment, met PW 4 in his house and ascertained from him all that had happened. Thereafter PW 4 met PW 17 again at the railway station as desired by the latter. From there both of them went to the district Dak bungalow where PW 17 recorded the complaint of PW 4. The same day PW 17 obtained from the First Class Magistrate an order under s. 5A of the Prevention of Corruption Act. Thereafter, PW 4 produced before PW 17 a five-rupee-currency note in the presence of panch witnesses. PW 17 noted the number of the currency note in question, prepared a memorandum in respect of the same, got it attested by the panch witnesses and thereafter returned the said currency note to PW 4 to be given to the appellant in case he made any further demand for bribe. After these preliminaries were over PW 4 went to the appellant along with the panch witnesses. There when PW 4 asked for the certificate, the appellant repeated his earlier demand. Then PW 4 gave him the currency note in question. This was seen by the panch witnesses. Immediately signal was given to PW 17 who came to the hospital and asked the appellant to produce the five rupee note received by him from PW 4. At this stage the appellant became

extremely nervous. He admitted that PW 4 had paid him Rs. 5 but that according to him was a return of the loan given to him by the appellant. He produced the currency note in question. After investigation the appellant was charged under s. 161 IPC and s. 5(2) read with s. 5(1) (d) of the Prevention of Corruption Act.

The plea of the appellant was that PW 4 and his wife were doing odd jobs in his house; PW 4 was a drunkard and hence was always in need; he used to often borrow from him (appellant); he had borrowed Rs. 5/- from him some days prior to the date of the trap and he returned that amount on that day. The appellant examined some witnesses in support of that plea.

The trial court as well as the High Court accepted the prosecution evidence; rejected the defence version and convicted the appellant both under s. 161, IPC as well as s. 5(2) of the Prevention of Corruption Act. They have given good reasons in support of the findings of fact reached by them. As this Court does not go into questions of fact except under exceptional circumstances, Mr. Mookherjea primarily confined himself to the legal issues arising in the case.

His first contention was that the investigation held in this case was without the authority of law and hence the appellant is entitled to be acquitted. He urged that in view of s. 5A of the Prevention of Corruption Act, PW 17 who was only an Inspector of police could not have investigated the case without the prior permission of a magistrate of the first class; on March 12, 1964 he merely applied for and obtained from a first class magistrate permission to lay a trap; the permission to investigate the case was obtained by him only on the 21st, but by that time the entire investigation was over; hence there was no valid investigation. The application made by PW 17 on the 12th was under s. 5A of the Prevention of Corruption Act. Therein, it is true, he had only asked for permission to lay a trap. It must be remembered that the permission given was one under s. 5A. A permission under that provision is a permission to investigate the case. Laying the trap is a part of the investigation. It is so laid down by this Court in State of Madhya Pradesh v. Mubarak Ali [[1959] 2 S.C.R. 201.]. An investigation is one and indivisible. All steps taken by PW 17 to ascertain the truth of the complaint made by PW 4 alleging that the appellant was attempting to obtain bribe from him, come within the expression 'investigation' under s. 4(1) of the Code of Criminal Procedure. 'Investigation' includes all the proceedings under the Code for the collection of evidence conducted by a police officer or any person (other than a magistrate) who is authorised by a magistrate in this behalf. The scope of the expression 'investigate' found in s. 5A of the Prevention of Corruption Act was explained by this Court in H. N. Rishbud and Inder Singh v. State of Delhi [[1955] 1 S.C.R. 1150.] and State of Uttar Pradesh v. Bhagwant Kishore Joshi [A.I.R. 1964 S.C. 221.]. Section 5A does not contemplate two sanctions, one for laying the trap, and another for further investigation. Once an order under that provision is made that order covers the entire investigation. A permission given under that provision enables the officer concerned not only to lay a trap but also to hold further investigation. There is no doubt that PW 17 was under a mistaken impression that he should obtain two permissions, one for laying the trap and another for investigating the case. Evidently because of that he applied for a second permission some days after the trap was laid. But that permission was wholly superfluous and the same does not affect the validity of the earlier order. Hence there is no basis for the contention that any portion of the investigation in this case was done without the authority of law.

It was next urged that before granting the permission the learned magistrate did not apply his mind to the question whether there was any need for granting the same. Before permitting PW 17 he should have first ascertained whether any officer of the rank of Deputy Superintendent or above was not immediately available to investigate the case, and whether there was any other reason for departing from the normal rule laid down by the legislature, namely, that cases of this nature should

be investigated by officers of the rank of Deputy Superintendent of Police or above. It was further contended on behalf of the appellant that the learned magistrate made the order causally; he have no reason in support of his order and hence the permission granted does not meet the requirements of the law.

The object of the legislature in enacting s. 5A was to see that the investigation of offences punishable under ss. 161, 165 or 165A, IPC as well as those under s. 5 of the Prevention of Corruption Act should be done ordinarily by officers of the rank of deputy superintendent or above. No doubt s. 5A also provides for an alternative procedure. An officer below the rank of deputy superintendent can investigate those offences if he obtains the previous permission of a first-class magistrate. The legislature proceeded on the basis that except for good reasons the magistrate would not accord permission for officers below the rank of a deputy superintendent to investigate those offences. But exigencies of administrative convenience may require that some of those cases have to be investigated by officers below the rank of Deputy Superintendents. For that reason it was provided that in such circumstances the permission of a magistrate of the first class should be obtained. This Court has laid down in State of Madhya Pradesh v. Mubarak Ali [[1959] 2 S.C.R. 201.] that the statutory safeguards under s. 5A must strictly be complied with for they are conceived in public interest and were provided as a guarantee against frivolous and vexatious proceedings. A magistrate cannot surrender his discretion to a police officer but must exercise it having regard to the relevant material made available to him at the stage of granting permission. He must also be satisfied that there is reason owing to exigencies of the administrative convenience to entrust a subordinate officer with the investigation. It is further observed therein that it is desirable that the order giving the permission should ordinarily on the face of it disclose the reasons for giving permission. The order giving permission under s. 5A in this case does not give any reason. On the application submitted by PW 17 the learned magistrate merely ordered "Permission granted". PW 17 did not mention in his application any special reason for permitting him to investigate the case unless we consider the statement in the application "Today is the date fixed for issuing the fit certificate after receiving a bribe money of Rs. 5 from him" as impliedly a ground in support of his application. It is surprising that even after this Court pointed out the significance of s. 5A in several decisions there are still some magistrates and police officers who continue to act in a causal manner. It is obvious that they are ignorant of the decisions of this Court. But the legality of the investigation held in this case does not appear to have been challenged in the trial court. The charge levelled against the appellant is established by satisfactory evidence and therefore all that we have now to see is whether the accused was prejudiced by the fact that investigation of this case was made by an officer below the rank of a Deputy Superintendent, as laid down by this Court in Munnalal v. State of Uttar Pradesh [A.I.R. 1964 S.C. 28.] and State of Uttar Pradesh v. Bhagwant Kishore Joshi [A.I.R. 1964 S.C. 221.]. No prejudice was pleaded much less established. An illegality committed in the course of an investigation does not affect the competence and jurisdiction of the court for trial and where cognizance of the case has in fact been taken and the case has proceeded to termination the invalidity of the preceding investigation does not vitiate the result unless the miscarriage of justice has been caused thereby, See Rishbud and Inder Singh v. State of Delhi. [[1955] 1 S.C.R. 1150.]

We next take up the question as to the scope of s. 4 of the Prevention of Corruption Act. As mentioned earlier, the appellant admits the fact that he received a sum of Rs. 5 from PW 4 on March 14, 1964. Once that fact is admitted by him, the court has to presume unless the contrary is proved by the appellant that he accepted the sum in question as a motive or reward for issuing the fit certificate. Mr. Mookherjea's contention was that the presumption in question does not arise unless the prosecution proves that the amount in question was paid as a bribe. He urged that the

presumption under s. 4 arises only when prosecution proves that the appellant had received "any gratification (other than legal remuneration) or any valuable thing from any person". He laid stress on the word 'gratification' and according to him the word 'gratification' can only mean something that is given as a corrupt reward. If this contention of Mr. Mookherjea is correct then the presumption in question would become absolutely useless. It is not necessary to go into this question in any great detail as the question is no more res integra. In C. I. Emden v. State of U.P. [[1960] 2 S.C.R. 592.] this Court held that the "presumption under s. 4 arose when it was shown that the accused had received the stated amount and that the said amount was not legal remuneration. The word 'gratification' in s. 4(1) was given its literal dictionary meaning of satisfaction or appetite or desire; it could not be construed to mean money paid by way of a bribe." The Court further observed :

> "If the word 'gratification' is construed to mean money paid by way of a bribe then it would be futile or superfluous to prescribe for the raising of the presumption. Technically it may no doubt be suggested that the object which the statutory presumption serves on this construction is that the court may then presume that the money was paid by way of a bribe as a motive or reward as required by s. 161 of the Code. In our opinion this could not have been the intention of the Legislature in prescribing the statutory presumption under s. 4(1). In the context we see no justification for not giving the word 'gratification' its literal dictionary meaning.
>
> There is another consideration which supports this construction. The presumption has also to be raised when it is shown that the accused person has received any valuable thing. This clause has reference to the offence punishable under s. 165 of the Code; and there is no doubt that one of the essential ingredients of the said offence is that the valuable thing should have been received by the accused without consideration or for a consideration which he knows to be inadequate. It can not be suggested that the relevant clause in s. 4(1) which deals with the acceptance of any valuable thing should be interpreted to impose upon the prosecution an obligation to prove not only that the valuable thing has been received by the accused but that it has been received by him without consideration or for a consideration which he knows to be inadequate. The plain meaning of this clause undoubtedly requires the presumption to be raised whenever it is shown that the valuable thing has been received by the accused without anything more. If that is the true position in respect of the construction of this part of s. 4(1) it would be unreasonable to hold that the word 'gratification' in the same clause imports the necessity to prove not only the payment of money but the incriminating character of the said payment. It is true that the Legislature might have used the word 'money' or 'consideration' as has been done by the relevant section of the English statute; but if the dictionary meaning of the word 'gratification' fits in with the scheme of the section and leads to the same result as the meaning of the word 'valuable thing' mentioned in the same clause, we see no justification for adding any clause to qualify the word 'gratification'; the view for which the appellant contends in effect amounts to adding a qualifying clause to describe gratification."

The same view was taken by this Court in Dhanvantrai Balwantrai Desai v. State of Maharashtra [A.I.R. 1964 S.C. 575.] and again in V. D. Jhangan v. State of Uttar Pradesh [[1966] 3 S.C.R. 736.].

It was next contended that to discharge the burden placed on the appellant under s. 4 all that he has

to do is to offer a reasonable explanation, the burden placed on him by s. 4(1) being somewhat analogous to that placed on an accused under s. 114 of the Evidence Act. This branch of the law is also well-settled by the decisions of this Court. Section 114 of the Evidence Act provides that the court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case. Under that provision the court is not bound to draw any presumption of fact. It is within its discretion to draw a presumption or not. But under s. 4(1) the court is bound to draw the presumption mentioned therein. The presumption in question will hold good unless the accused proves the contrary. In other words, the burden of proving the contrary is squarely placed on the accused. A fact is said to be proved when after considering the matters before it the court either believes it to exist or considers its existence was so probable that a prudent man ought under the circumstances of the particular case to act upon the supposition that it exists. The proof given by the accused must satisfy the aforementioned conditions. If it does not satisfy those conditions then he cannot be said to have proved the contrary. In Dhanvantrai Balwantrai v. State of Maharashtra [A.I.R. 1964 S.C. 575.] this Court considered the nature of the proof required to be given by the accused under s. 4(1). Therein this Court held that the burden resting on the accused person in such a case would not be as light as that placed on him under s. 114 of the Evidence Act and the same cannot be held to be discharged merely by reason of the fact that the explanation offered by him is reasonable and probable. It must further be shown that the explanation is a true one. The words 'unless the contrary is proved' which occur in that provision make it clear that the presumption has to be rebutted by proof and not by a bare explanation which is merely plausible. The same view was taken by this Court in V. D. Jhangan v. State of Uttar Pradesh [[1966] 3 S.C.R. 736.]. But at the same time it was mentioned in that decision that the burden resting on the accused will be satisfied if the accused person establishes his case by a preponderance of probability and it is not necessary for him to establish his case by the test of proof beyond reasonable doubt. In other words, the nature of the burden placed on him is not the same as that placed on prosecution which must not only prove its case but prove it beyond reasonable doubt. In the instant case the evidence adduced by the appellant in support of his plea was not accepted by the trial court as well as the High Court. Hence it must be held that he had not discharged the burden placed on him by law.

This takes us to the last point urged by Mr. Mookherjea namely that the sanction to prosecute granted by PW 1, the chief medical officer, under s. 6(1) of the Prevention of Corruption Act is invalid as he was not the authority competent to remove the appellant from his office and hence the prosecution is vitiated Section 6(1), to the extent it is material for our present purpose, reads :

> "No court shall take cognizance of an offence punishable under section 161 or section 164 or section 165 of the Indian Penal Code, or under sub-section (2) or sub-section 3A of section 5 of this Act, alleged to have been committed by a public servant, except with the previous sanction,
>
> #(a) . . . . .(b) . . . . .##
>
> (c) in the case of any other person, of the authority competent to remove him from his office."

This Court has laid down in R. R. Chari v. State of U.P. [[1963] 1 S.C.R. 121.]; as well as in several other decisions that no court can validly take cognizance of any of the offences mentioned in s. 6(1) of the Prevention of Corruption Act without the previous sanction of the authority competent to

remove from office the accused. Without a valid sanction the court had no jurisdiction to try the case. Hence, if the sanction accorded in this case is invalid then the appellant is entitled be acquitted.

P.W. 1 deposed that the appellant was a class III officer and that he could have been appointed or dismissed by the Deputy Agent Personnel who is subordinate to him. Therefore he (P.W. 1) was competent to grant previous sanction under s. 6(1) of the Prevention of Corruption Act. P.W. 1's assertion that the appellant could have been removed from his office either by the Deputy Agent Personnel or by himself was challenged in his cross-examination. The trial court as well as the High Court have relied on the oral evidence of P.W. 1 in coming to the conclusion that the sanction granted is valid. In our opinion those courts erred in relying on oral evidence in deciding the validity of the sanction granted. Hence, we asked the learned counsel for the respondent to satisfy us with reference to the rules on the subject that P.W. 1 was competent to remove the appellant from his office. For this purpose we granted him several adjournments. Though our attention has now been invited to some rules, those rules do not establish that P.W. 1 as competent to grant the sanction in question.

It was contended on behalf of the appellant that he was a gazetted officer and therefore he could be removed only by the Railway Board. This contention does not appear to be correct. As seen from the Government of India, Ministry of Railways' publication under the title "authorised scales of pay", the appellant is a class III officer. From that publication it is further seen that only class I an II officers are designated as gazetted officers. In support of his contention that he was a gazetted officer, the appellant relied on the Railway Board's letter No. PC/60/PS-5/MH-3 dated 2-3-1962. Paragraph 4 of that letter - the only relevant paragraph for our present purpose - says that an assistant surgeon after five years service shall hold the honorary gazetted rank and shall be entitled to the usual privileges granted to gazetted officers in matters such as passes, allotment of quarters. This letter merely indicates that the officers mentioned therein are entitled to certain privileges which are ordinarily available to gazetted officers. We are unable to read that letter as raising the rank of the appellant to that of gazetted officer. Therefore we proceed on the basis that the appellant was a non-gazetted officer. But the question still remains whether P.W. 1 was competent to remove him from service. In view of appendix 38 of the Indian Railways Establishment Code Vol. II (4th re-print, dated 26-7-1962), we may take it that P.W. 1 was the head of the department to which the appellant belongs. The next question is whether the head of his department was competent to remove the appellant from his service.

As per r. 134 of the Indian Railway Establishment Code, published in 1959, authorities competent to make first appointment to non-gazetted posts in the Indian Railways are the General Manager, the Chief Administrative Officer or lower authority to whom he may delegate power. There is no evidence to show that this power has been delegated to the heads of the department. No provision in the Indian Railway Establishment Code 1959 prescribing the authorities competent to remove from office a class III officer was brought to our notice. But the prefatory note to Vol. I of the Code says, "The revised Chapter XVII and revised Appendices I and XII will be printed later for inclusion in this edition. Till such times these are printed, the rules and provisions contained in Chapter XVII and Appendices IV and XVIII in the 1951 Edition (Reprint) as amended from time to time shall continue to apply."

In 1961 new rules relating to discipline and appeal of railway servants other than employed in the railway protection force have been published. Rule 1701 says, "Without prejudice to the provisions of any law, for the time being in force, relating to the conduct of Government servants, or to the

rules and made under section 47(e) of the Indian Railways Act, 1890 (9 of 1890), the conduct of railway servants shall be governed by the rules contained in Appendix VIII." Our attention has not been invited to any rules made under s. 47(e) of the Indian Railways Act, 1890 or any other statutory rules. Hence we are proceeding on the basis that the aforementioned r. 1701 governs the present case. Rule 1705 says that the authorities who are competent to place a railway servant under suspension and to impose penalties on him are specified in the Schedules I, II and III appended to the Rules. Rule 1707 sets out the various punishments that may be imposed on a railway servant, which includes removal from service as well as dismissal from service. Schedule I deals with railway servants employed in the Railway Board's office, the Research, Design and Standard Organisation, the Railway Staff College, Baroda, the Advanced Permanent Way Training School, Poona, the Railway Service Commission, the Railway Rates Tribunal, the Railway Liaison Office and all other railway offices which are not enumerated above. Schedule I does not apply to the case of railway servants employed in the zonal railways. As regards them, provision is made in Sch. II. From that Schedule it is seen that though a head of the Department can impose on Class III officers censure as well as some other punishments detailed therein, he is not competent to impose on them the punishment of removal from service, compulsory retirement or dismissal from service. Those punishments, as seen from the Schedule, can be imposed on them only by the appointing authority or any other higher authority. P.W. 1 is not shown to be the appointing authority. On the material before us it is not possible to come to the conclusion that P.W. 1 was competent to grant sanction under s. 6(1) of the Prevention of Corruption Act.

We accordingly allow this appeal and set aside the conviction of the appellant. He is on bail. His bail bond stands canceled.

Appeal allowed.##

</html