SUPREME COURT OF INDIA

Nani Gopal Mitra

Vs.

State of Bihar

Crl.A.No.181 of 1965

(J. C. Shah and V. Ramaswami, JJ.)

15.10.1968

JUDGEMENT

RAMASWAMI, J.-

1. This appeal is brought, by special leave, from the judgment of the Patna High Court dated September 14, 1965 in Criminal Appeal No. 268 of 1962 filed by the appellant against the judgment of the Special Judge, Santhal Parganas, Dumka, dated March 31, 1962.

2. In January, 1958 the appellant was employed as a Railway Guard on the Eastern Railway and was posted at Shibganj Railway Station. On January 18, 1958, Hinga Lal Sinha (P. W. 47) who was in charge of squad of travelling ticket examiners caught hold of Shambu Pada Banerji (P. W. 54) as he found him working as a bogus travelling ticket examiner in a train. P. W. 47 handed Shambu Pada Banerji to Md. Junaid (P. W. 48) who was a police officer in charge of Barharwa Railway out-post. A Fard Beyan was recorded on the statement of P. W. 47 and G.R.P. Case No. 12(1) 58 was registered against Shambu Pada Banerji. In connection with the investigation of that case the house of the appellant which was at a distance of 300 yards from Sahebganj Railway station was searched

on January 19, 1958 at about 3 p.m. by P. W. 56 along with other police officers, Md. Junaid (P. W. 48) and Dharmadeo Singh (P. W. 57). Various articles were recovered from the house of the appellant and a search list (Ex. 5/17) was prepared. A chargesheet was submitted in G.R.P. Case No. 12(1)58 against the appellant and Shambu Pada Banerji. Both of them were tried and convicted by the Assistant Sessions Judge, Dumka, by a judgment dated June 12, 1961. The appellant filed Criminal Appeal No. 405 of 1961 against his conviction under S. 474/466 of the Indian Penal Code. The appeal was allowed by the High Court by its judgment dated September 14, 1962, on the ground that there was no proof that the appellant was in conscious possession of the incriminating articles.

3. During the course of the investigation of G. R. P. Case No. 12(1)58, the investigating officer (P. W. 56) found a sum of Rs.51,000 standing to the credit of the appellant in the Eastern Railway Employees' Co-operative Credit Society Ltd., Calcutta. He also found the appellant in possession of National Savings Certificates of the value of Rs.8,000. On August 24, 1958, the Investigating Officer (P. W. 56) handed over charge of the investigation of G.R.P. Case No. 12(1) 58 to P. W. 46 of Sahebganj Government Railway Police Station. P. W. 46 completed the investigation on February 26, 1958. Since by that time it was found that the appellant was in possession of pecuniary resources disproportionate to his known sources of income it was thought that he had come in possession of these pecuniary resources by committing acts of misconduct as defined in clauses (a) to (d) of sub-section (1) of S. 5 of the Prevention of Corruption Act, 1947 (Act 2 of 1947), hereinafter referred to as the 'Act', and since the investigation of a case under the Act could be carried only in accordance with the provisions of S. 5A of the Act, under the orders of the superior officers, the case being G.R.P. Case No. 12(1) 58 was split up in the sense that a new case against the appellant being Sahebganj Police Station Case No. 11(2)59 was started upon the first information report of P. W. 46 made on February 26, 1959 to Gokhul Jha (P. W. 45), Officer in charge of Sahebganj Police Station. By his order dated February 27, 1959, Sri R. P. Lakhaiyar, Magistrate, First Class, Sahebganj, accepted the recommendation of the Deputy Superintendent of Police that Inspector Madhusudan Haldhar, P. W. 55, may investigate the case. Accordingly, Madhusudan Haldhar, P. W. 55, proceeded to investigate the case and after obtaining the sanction of the appropriate authority for prosecution of the appellant submitted a charge-sheet on March 31, 1960. Cognizance was taken and the case was transferred to Sri Banerji, a Magistrate, First Class, who committed the appellant and the two co-accused Baldeo Prasad and Mrs. Kamla Mitra to stand trial before the Court of Session. By his judgment dated March 31, 1962, the Special Judge, Santhal Parganas, convicted the appellant under S. 5 (2) of the Act and S. 411, Indian Penal Code. The appellant and the other co-accused Baldeo Prasad and Mrs. Kamla Mitra were acquitted of the charge of conspiracy under S. 120-B read with Sections 379, 411, 406 and 420, Indian Penal Code and S. 5 (2) of the Act. The Special Judge also acquitted the appellant of the charge under S. 474/466, Indian Penal Code. The matter was taken in appeal to the High Court which by its judgment dated September 14, 1965, set aside the conviction and sentence of the appellant under S. 411, Indian Penal Code and confirmed the conviction of the appellant under S. 5 (2) of the Act. The High Court, however, reduced the sentence of 6 years' simple imprisonment and fine of Rs. 40,000 to 2 years' imprisonment and a fine of Rs.20,000.

4. Section 5 of the Act, as it stood before its amendment by Act 40 of 1964, read as follows:-

"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, 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.

(2) Any public servant who commits criminal misconduct in the discharge of his duty shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to seven years and shall also be liable to find:

Provided that the Court may, for any special reasons recorded in writing, impose a sentence of imprisonment of less than one year.

x x x x

(3) In any trial of an offence punishable under sub-section (2) the fact that the accused person or any other person on his behalf is in possession, for which the accused person cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income may be proved, and on such proof the Court shall presume, unless the contrary is proved that the accused

person is guilty of criminal misconduct in the discharge of his official duty and his conviction therefore shall not be invalid by reason only that it is based solely on such presumption.

(4) The provisions of this Section shall be in addition to, and not in derogation of, any other law for the time being in force, and nothing contained herein shall exempt any public servant from any proceeding which might, apart from this Section, be instituted against him."

On December 18, 1964, Parliament enacted the Anti-Corruption Laws (Amendment) Act, 1964 (Act No. 40 of 1964) which repealed sub-section (3) of S. 5 of the Act and enlarged the scope of criminal misconduct in S. 5 of the Act by inserting a new clause (e) in S. 5 (1) of the Act to the following effect:

"(e) if he or any person on his behalf is in possession or has, at any time during the period of his office, been in possession, for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income."

5. It was in the first place contended on behalf of the appellant that Section 5 (3) of the Act was repealed by Parliament while the appeal was pending in the High Court and the presumption enacted in Section 5 (3) of the Act was not available to the prosecuting authorities after the repeal of the sub-section on Dec. 18, 1964. The argument was stressed that it was not open to the High Court to invoke the presumption contained in S. 5 (3) of the Act in considering the case against the appellant. It was also said that the presumption contained in S. 5 (3) of the Act was a rule of procedural law and not a rule of substantive law and alterations in the form of procedure are always retrospective in character unless there is some good reason or other why they should not be. It was, therefore, submitted that the judgment of the High Court was defective in law as it applied to the present case the presumption contained in Section 5 (3) of the Act even after its repeal. We are unable to accept the contention put forward on behalf of the appellant as correct. It is true that as a general rule alterations in the form of procedure are retrospective in character unless there is some good reason or other why they should not be. In James Gardner v. Edward A. Lucas, (1878) 3 AC 582 at p. 603, Lord Blackburn stated:

"Now the general rule, not merely of England and Scotland, but, I believe, of every civilized nation, is expressed in the maxim, "Nova constitutio futuris formam imponere debet, non praeteritis' - prima facie, any new law that is made affects future transactions, not past ones. Nevertheless, it is quite clear that the subject-matter of an Act might be such that, though there were not any express words to show it, it might be retrospective. For instance, I think it is perfectly settled that if the Legislature intended to frame a new procedure, that instead of proceeding in this form or that, you should proceed in another and a different way; clearly there bygone transactions are to be sued for and enforced according to the new form of procedure. Alterations in the form of procedure are always retrospective, unless there is some good reason or other, why they should not be. Then, again, I

think that where alterations are made in matters of evidence, certainly upon the reason of the thing and I think upon the authorities also, those are retrospective, whether civil or criminal".

In the King v. Chandra Dharma, (1905), 2 KB 335, Lord Alverstone, C.J., observed as follows:

"The rule is clearly established that, apart from any special circumstances appearing on the face of the statute in question, statutes which make alterations in procedure are retrospective. It has been held that a statute shortening the time within which proceedings can be taken is retrospective (The Ydun, 1899 P. 236), and it seems to me that it is impossible to give any good reason why a statute extending the time within which proceedings may be taken should not also be held to be retrospective. If the case could have been brought within the principle that unless the language is clear a statute ought not to be construed so as to create new disabilities or obligations, or impose new duties in respect of transactions which were complete at the time when the Act came into force, Mr. Compton Smith would have been entitled to succeed; but when no new disability or obligation has been created by the statute, but it only alters the time within which proceedings may be taken, it may be held to apply to offences completed before the statute was passed. That is the case here."

It is therefore clear that as a general rule the amended law relating to procedure operates retrospectively. But there is another equally important principle, viz., that a statute should not be so construed as to create new disabilities or obligations or impose new duties in respect of transactions which were complete at the time the amending Act came into force (See In re a Debtor, 1936 Ch 237 and In re Vernazza, 1960 AC 965). The same principle is embodied in S. 6 of the General Clauses Act which is to the following effect:

"6. Effect of repeal. - Where, this Act or any Central Act or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not-

x x x x x

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

x x x x x

(c) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed."

6. The effect of the application of this principle is that pending cases, although instituted under the old Act but still pending, are governed by the new procedure under the amended law, but whatever procedure was correctly adopted and concluded under the old law cannot be opened again for the purpose of applying the new procedure. In the present case, the trial of the appellant was taken up by the Special Judge, Santhal Parganas, when Section 5 (3) of the Act was still operative. The conviction of the appellant was pronounced on March 31, 1962 by the Special Judge, Santhal Parganas, long before the amending Act was promulgated. It is not hence possible to accept the argument of the appellant that the conviction pronounced by the Special Judge, Santhal Parganas, has become illegal or in any way defective in law because of the amendment to procedural law made on December 18, 1964. In our opinion, the High Court was right in invoking the presumption under S. 5 (3) of the Act even though it was repealed on December 18, 1964 by the amending Act. We accordingly reject the argument of the appellant on this aspect of the case.

7. It was next argued on behalf of the appellant that the statutory safeguards under Section 5A of the Act have not been complied with and the Magistrate has not given reasons for entrusting the investigation to a police officer below the rank of Deputy Superintendent of Police. Section 5A of the Act provides as follows:

"Notwithstanding anything contained in the Code of Criminal Procedure, 1898, no police officer below the rank-

(a) in the presidency towns of Madras and Calcutta, of an assistant commissioner of police,

(b) in the presidency town of Bombay, of a superintendent of police, and

(c) elsewhere, of a deputy superintendent of police,

shall investigate any offence punishable under Section 161, Section 165 or Section 165A of the Indian Penal Code or under sub-section (2) of Section 5 of this Act, without the order of a

presidency Magistrate or a Magistrate of the first class, as the case may be, or make any arrest therefor without a warrant;

x x x x x"

In the present case the office-in-charge of Sahibganj police station (P. W. 45) filed a position dated February 27, 1959 (Ex.1) to the First Class Magistrate upon which the Deputy Superintendent of Police made an endorsement (Ex. 1/1) suggesting that Inspector Haldhar may be empowered to investigate the case. The order of the Magistrate is Ex. 1/2 and is dated February 27, 1959. The order states: "Inspector Sri M. S. Haldhar is allowed to do it". The evidence of P. W. 1 is that he was posted at Sahebganj as a Magistrate from 1956 and used to do the work of the Sub-Divisional Officer also in his absence. He passed the order (Ex. 1/2) authorising M. S. Haldhar to investigate the case because the Deputy Superintendent of Police used to remain busy with his work and the present case needed a whole-time investigation. It was argued on behalf of the appellant that there was nothing in the endorsement of the Deputy Superintendent of Police that he was busy and therefore the inquiry should be entrusted to Sri Haldhar. But the High Court has observed that P. W. 1 was a Magistrate working at Sahebganj for a period of two years prior to the passing of the order in question and he must have known that the Deputy Superintendent of Police could not devote his whole time to the investigation of the case and therefore the Inspector of Police should be entrusted to do the investigation. On this point the High Court has come to the conclusion that the order of the Magistrate was not mechanically passed and the permission of the Magistrate authorising Haldhar to investigate the case was not illegal or improper. In our opinion Counsel on behalf of the appellant has been unable to make good his argument on this point.

8. It was then said that the charge against the appellant under S. 5 (2) of the Act was defective as there were no specific particulars of misconduct as envisaged under cls. (a) to (d) of Section 5 (1) of the Act. It was suggested that the charge was defective inasmuch as it deprived the appellant of the opportunity to rebut the presumption raised under Section 5 (3) of the Act. The charge against the appellant reads as follows:

"First - that during the period of 1956 to 19th January, 1958 at Sahebganj Police Station, Sahebganj G.R.P. and Sahebganj Local, District Santhal Parganas and at other places, within and without the said district, you being a public servant, viz., Guard of trains in the Eastern Railway of the Railway Department and while holing the said post, habitually accepted or obtained from persons for yourself gratifications other than legal remuneration as a motive or reward such as mentioned in Sec. 161 of the Indian Penal Code, habitually accepted or obtained for yourself valuable things without consideration or for a consideration which you know to be inadequate from persons having connection with your official function, habitually, dishonestly and fraudulently, misappropriated or otherwise converted for your own use properties entrusted to you or put under your control as a guard of trains or otherwise, and habitually by corrupt and illegal means, or by otherwise abusing your position as a public servant obtained for yourself valuable things or pecuniary advantage, with

the result that during the search of your house at Sahebganj aforesaid on 19-1-1958 and during the investigation of the Sahebganj G.R.P.S. Case No. 12 dated 19-1-1958 under Section 170, etc., I.P.C., you were found, during the month of January 1958 in possession of cash amount to the extent of Rs.59,000 and other properties fully described in the Appendix No. 1 attached herewith and forming part of this charge (of Sahebganj P. S. Case No. 11(2)59), and that the said cash amount and properties are disproportionate to your known sources of income and that you cannot satisfactorily account the possession of the same and that you thereby committed the offences of criminal misconduct, under clauses (a) to (b) of Section 5 (1) of the Prevention of Corruption Act, 1947 (Act II of 1947), punishable under Section 5 (2) of the said Act, within the cognizance of this Court.

x x x x x"

9. It was argued that the charge did not disclose the amounts the appellant took as bribes and the persons from whom he had taken such bribes and the appellant had therefore no opportunity to prove his innocence. But, in our view, this circumstance does not invalidate the charge, though it may be a ground for asking for better particulars. The charge, as framed, clearly stated that the appellant accepted gratification other than legal remuneration and obtained pecuniary advantage by corrupt and illegal means. The charge, no doubt, should have contained better particulars so as to enable the appellant to prove his case. But the appellant never complained in the trial Court or the High Court that the charge did not contain the necessary particulars. The record on the other hand disclosed that the appellant understood the case against him and adduced all the evidence which he wanted to place before the Court. Section 225 of the Criminal Procedure Code says: "that no error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence or those particulars, shall be regarded at any stage of the case as material, unless the accused was in fact misled by such error or omission, and it has occasioned a failure of justice". It also appears that the appellant never raised any objection either before the Special Judge or in the High Court on the score that the charge was defective and that he was misled in his defence on the ground that no particulars of the persons from whom the bribes were taken were mentioned. We accordingly reject the argument of the appellant on this point.

10. for the reasons expressed we hold that the judgment of the High Court dated September 14, 1965, is correct and this appeal must be dismissed.

Appeal dismissed.