

Jotiram Laxman Surange

Vs

State of Maharashtra

Criminal Appeal No. 181 of 1968,

(V. Bhargava, K.S. Hegde JJ)

08.10.1969

JUDGMENT

BHARGAVA J. -

1. This appeal by special leave filed by Jotiram Laxman Surange who was convicted by the High Court of Bombay for offences punishable under Section 5(1)(d) of the prevention of Corruption Act and Section 161 of the Indian Penal Code, read with Section 5(2) of the said Act in appeal filed by the State Government against his acquittal by the Trial Court.
2. The prosecution case was that one Thakur was the Mukhtiar of a money-lender Shendure and used to look after his court work also. In 1946, Shendure advanced money to one Shindgonda Desai and had obtained a mortgage of Survey plot No. 78 in village Idarguchi with possession. On 25th June, 1960, Shendure purchased this plot in Court sale after obtaining decree on the basis of the mortgage. In August 1963, the appellant took charge of the post of Secretary of Gram Panchayat and of Talati of this village. On 9th January, 1964, the appellant sent a letter to Thakur informing him that the entry against this land had been made in the name his master Shendure. On the same day, one Dundappa presented an application to the appellant objection to the entry of Shendure's name in the record showing him in possession of this plot. Dundappa was claiming to be cultivating this plot on the basis of sharing of crop with Shendure. On 12th June, 1964, an application was made by Thakur on behalf of this master Shendure for investment of a sum of Rs. 50/- in small savings certificates, because that amount had been paid by Thakur to the appellant for this purpose. Here is some dispute as to the date when this sum of Rs. 50/- was paid. According to the prosecution the payment was made in December, 1963, while, according to the appellant, it was made in June, 1964, shortly before this application. In August, 1964, the application was returned by the Post Office refusing to issue small savings certificate on the ground that the application was signed by Thakur and not by Shendure in whose favour these certificates were to be issued. These proceedings took place because the appellant was also making collections for small saving certificates. About the same time, Shendure wanted that there should be a measurement and demarcation of his plot No. 78, and this purpose, he needed an extract of record-of-rights from the appellant. He directed Thakur to obtain the extract in view of the notice already received by Thakur from the appellant that Shendure's name had been entered against this plot. On 3rd December, 1964, Thakur met the appellant in a witness shed in the Court compound and asked the appellant to issue the extract. The appellant demanded a bribe of Rs. 500/- by informing Thakur that Shendure's name was not yet entered in the papers and that an objection had been filed by Dundappa on 9th January, 1964. The appellant promised to tear off the application of Dundappa if the bribe was paid to him. Ultimately, after negotiations, the amount of bribe was settled at Rs. 200/-. On 7th December, 1964, Thakur informed Shendure about this settlement, with the appellant, whereupon Shendure asked

Thakur to give information to the police. On 8th December, 1964, Thakur lodged a complaint with the police, as a result of which a trap was laid on 10th December, 1964. A sum of Rs. 150/- in currency notes was marked by purring anthracene powder on them and Thakur was given these notes in order to hand them over to the appellant. The Inamdar was asked to send for the appellant to happen to be busy in some meeting. He met the appellant at about 10.45 a.m. When the appellant came Thakur asked him whether he had brought the requisite register for issuing the extract of the record-of-rights. The appellant told Thakur that he had brought the extracts, though not the register. The extracts shown to Thakur were, however, undated. The appellant put the date in the presence of Thakur on the extracts and gave the extracts to Thakur after accepting the payment of Rs. 150/-. The arrangement was that this sum of Rs. 150/- together with the sum of Rs. 50/-, which was already with the appellant and which could not be spent for purchase of small savings certificates, would make up the full amount of bribe money of Rs. 200/- settled between them. After the appellant had received the money, Thakur went down from Inamdar's house and informed the police and other witnesses who were waiting outside. As the appellant attempted to go out, he was stopped and the money was demanded from him. The appellant procured the sum of Rs. 150/- in currency notes which were attached under a Panchanama and, ultimately, a charge-sheet was filed against the appellant for acceptance of this bribe.

3. The appellant admitted the receipt of both the sums of Rs. 50/- and Rs. 150/-, but his case was that both the amounts were given to him for purchase of small savings certificates and there was no question of payment of any bribe. He also admitted that the notes for Rs. 150/- were recovered from him but he did not know that any trap was being laid in order to charge him with the offence of accepting a bribe. According to him, he had been asked by his superior authorities to collect money for small savings certificates with a cautioning note that the efficiency of his work would be judged on the basis of success in making collection for the small savings. He accepted the case of the prosecution that he had kept the entries against Survey Plot No. 78 blank and had not entered the name of Shendure, but, according to him, the object was not to accept the bribe but to bring pressure on Shendure to contribute towards the small savings drive.

4. The Trial Court accepted the plea of the appellant and held that it was more likely that he accepted the money for purchase of small saving certificates for Shendure and, though a trap was laid at the instance of Thakur, the appellant was innocent because he at least did not accept the money as a bribe. It was Thakur who had this trap laid in order to get the appellant involved in this criminal case. The High Court, on appeal by the State, differed from the Trial Court and held that, on the facts and circumstances of this case, the finding given by the Trial Court was entirely wrong and the acquittal of the appellant was totally unjustified. Consequently, the High Court allowed the appeal of the State and convicted and sentenced the appellant as above.

5. In view of the case put forward by the prosecution and the appellant, mentioned above, the only question that really requires examination is whether Thakur's case that he paid this amount as a bribe to the appellant in order to obtain a copy of the extract and to ensure entry of Shendure's name against plot No. 78 is true. Rs. 150/- was given to the appellant in addition to the previous sum of Rs. 50/- for the purchase of small savings certificates for Shendure. The evidence of Thakur has been given on oath in support of the prosecution version, while, on the other side, there is no evidence except that the appellant made his statement under Section 342 of the Code of Criminal Procedure, giving his version. The High Court believed the evidence of Thakur and, in our opinion, very rightly, because there were a number of circumstances which showed that his version must be correct, while the plea put forward by the appellant cannot be true.

6. The circumstances which corroborate Thakur and show that his version must be correct are :

(1) The appellant in January, 1964, informed Thakur that Shendure's name had already been entered, but gave wrong information to Thakur that the name had already been entered, While he kept the entries open by not entering Shendure's name against plot No. 78. His plea that he kept the entries open for the propose of demanding money for small saving scheme from January, 1964, till December, 1964, under the instruction from superior authorities has been found to be entirely wrong :

(2) No receipt was given by the appellant to Thakur when he received the sum of Rs. 150/- from him. If the money was really received for purchase of small saving certificates, the appellant would surely have given a receipt to Thakur when he accepted the money for that purpose. The absence of the receipt is only consistent with the acceptance of this money as a bribe;

(3) When the appellant obtained this sum of Rs. 150/- from Thakur, he did not ask Thakur to give and application signed by Shendure for purchase of small saving certificates. Earlier, the application for purchase of small saving certificates of the value of Rs. 50/- had already been returned by the Pose Officer on the ground that it required the signature of Shendure. In case, the appellant was really taking this sum of Rs. 150/- for purchase of small saving certificates, he, in the light of that earlier experience, would have certainly insisted on taken a written application from Shendure for purchase of the certificates, because, if no such application was given subsequently by Shendure, the appellant would have been forced to return this money and would have failed to utilise if for the purpose of purchasing the certificates. If such application had been obtained, the appellant could have produced it as proof that the money was received not as a bribe, but for the propose mentioned by him. The absence of such an application is a very strong circumstances showing that the sum was to received for purchase of certificates, but as a bribe as stated by Thakur;

(4) On the very first occasion when the appellant was questioned by his superior authorities, he did not come forward with the explanation that the sum of Rs. 150/- was received by him for purchase of small saving certificates; and this plea was taken only as an after-thought;

(5) This sum of Rs. 150/- was accepted by the appellant not at his own house of office, but at the house of third person, viz., the Inamdar. If the money was being received for small savings certificate, he would have obviously accepted the money at his own place of work; and

(6) Nothing has been established on the record to sow that Shendure had any enmity with the appellant, so that he could have no motive to make out a false case of bribery against the appellant. Shendure, even according to the appellant, is a rich man and it cannot be expected that he would try to make out a false case simply because a small of Rs. 200/- was demanded from him by the appellant for purchase of small saving certificates.

7. On the other hand, there are no circumstances established from the evidence on the record which are consistent with the prosecution case which would show that this sum of Rs. 150/- could not have been paid as a part of the bribe of Rs. 200/- demanded by the appellant. The appellants case that on the 3rd December, 1964, when there were negotiations between him and Thakur, the meeting took place not in the witness shed of the Court but in the room of the Sheristedar has been right rejected

by the High Court. The Trial Court wrongly accepted this plea, purporting to rely on some admission made by Thakur which was only to the effect that defence witness Kulkarni used to sit in the Sheristedar's room. There was no admission by Thakur indicating that the meeting between him and the appellant took place in that room. There is the further circumstance that the version of the talk put forward by the appellant in his statement under Section 342. Criminal Procedure Code, is different from the version given by the defence witness Kulkarni in his evidence. Kulkarni says that in the talk in this presence the only question that arose was of the appellant giving an extract from the records to Thakur if Thakur paid the money for purchase of small saving certificate, will, according to the appellant, he had told Thakur on that very occasion that the entry had been kept blank and that Dundappa's application had been received by him claiming that his name should be entered and not Shendure's.

8. In these circumstances, the High Court was quite right in holding that the Trial Court went wrong in accepting the plea of the defence and in rejecting the prosecution case. There is no reason for out interference with the Judgment of the High Court. The appeal is dismissed.

</html