

Dr. M. C. Sulkunte

Vs

State of Mysore

Criminal Appeal No. 25(N) of 1967

(A. N. Ray, J. C. Shah, K. S. Hegde, A. N. Grover, G. K. Mitter JJ)

27.11.1970

JUDGMENT

MITTER, J. -

1. The appellant was convicted of an offence under Section 5(1)(d) of the Prevention of Corruption Act and sentenced to six months' simple imprisonment and a fine of Rs. 1,000/-; in default of payment of fine to further simple imprisonment for six months by the Special Judge, Bidar, in Special Case No. 1/2 of 1963. He appealed to the High Court against the conviction and on the admission of the appeal, the High court suo motu gave him notice for enhancement of the sentence. Subsequently the State also filed Criminal Petition No. 126 of 1965 for enhancement of the sentence on the ground that under Section 5(2) of the Act the minimum punishment was to be not less than one year unless the court for special reasons thought fit to do otherwise. The reasons given by the Special Judge did not appeal to the High Court which dismissed the appeal of the appellant and confirmed the conviction under Section 5(1)(d). It reduced the fine of Rs. 1,000/- to one of Rs. 100/- but increased the sentence under Section 5(2) of the Act for the offence under Section 5(1)(d) to simple imprisonment for one year and in default of payment of fine to simple imprisonment for one month.

2. The main point advanced by Mr. Mohan Kumar Mangalam appearing for the appellant was that the sanction to investigate the offence given by the Magistrate was not proper inasmuch as he had not recorded any reason as to why he had given permission to an Inspector of Police, P. Ramarao, to investigate the offence of criminal misconduct of obtaining illegal gratification.

3. Section 5-A of the Act contains certain safeguards from undue harassment of public offices from enquiry by ensuring that the investigation regard to the offences specified is conducted by a police officer of certain designated high ranks except under orders of a Presidency magistrate or a Magistrate of the first Class. A Police Inspector does not come within the designated ranks and such an order could only investigate into the offences wherewith the appellant was charged by order of a Magistrate.

4. In order to appreciate the point urged on behalf of the appellant, it is necessary to state in brief the events as disclosed in the prosecution case culminating in his trial and conviction. The appellant was the District surgeon in Bidar in 1961. One Abdual Qadeer who figured as the complainant in the case had submitted an application to the office of the Divisional Controller M.G.R.T.D., Gulbarga, for an appointment to the post of the bus conductor. To get the appointment he had to secure a certificate of training in First Aid. He approached the appellant who told him that no such certificate could be given from his office as there was no arrangement there for giving the requisite

training. After rejecting the complainant's written application to him as the District medical Officer, Bidar, the appellant asked the complainant to meet him at his residence the same day. On the 2nd March the complainant met the appellant as requested when the appellant demanded Rs. 150/- for issuing the required certificate. The appellant informed the complainant that as the certificate had to be issued without training the money asked of must be paid. The complainant met the appellant again on the 22nd March and told him that he had arranged for Rs. 50/- and could pay some more money afterwards. On receipt of Rs. 50/- the appellant gave him a letter addressed to the Medical Officer, Bhalki, and two typewritten first aid certificate forms. The appellant asked the complainant to give Rs. 20/- to the Medical Officer at Bhalki for getting the latter to sign the certificate and bring the same back to the appellant for his signature on payment of a further sum of Rs. 50/-. On the 25th March, 1961, the complainant went to Bhalki and gave the letter and the forms of the certificate to the medical Officer. He also paid Rs. 20/- and got the certificate signed by the said officer without receiving any training. On the 28th March the complainant met the appellant again at his residence and asked for his signature on the signature on the certificates. The appellant demanded a sum of Rs. 50/- for the purpose. The complainant told him that all that he could put up was Rs. 40/-. The appellant agreed to accept this amount but said that he would not put his signature on the certificate and issue the same unless the money and the certificates were brought to him immediately. The complainant then went to the Inspector to Police, Anti-Corruption, Gulbarga, P.W. 20, and narrated all the above facts in a written complaint. On the same day the Police Inspector submitted an application to the First Class Magistrate, Bidar, asking for permission under Section 5-A of the Act to investigate the offences under Section 161, I. P.C., and Section 5(1)(d) of the Act against the District Medical Officer. The application shows that the complainant had arranged for Rs. 40/- to be paid to the appellant and records the numbers of the currency notes to be given to the appellant. The Inspector stated in the application.

"The nature of the complaint is such as warrants immediate investigation."

The Police Inspector prayed that permission be accorded as asked for and that he be authorised to conduct the search of the person of the appellant and the place where he kept the bribe amount after accepting it from the complainant.

5. The Magistrate who figured as a prosecution witness in the case gave evidence to the effect that the application was put up before him on the 29th March and that the Police Inspector had gone to him along with the complainant and the currency notes that he had examined the complainant and made his order in writing then and there. The written order shows that the Magistrate was satisfied that there were grounds to investigate the case against the District Surgeon and that he was authorising the Inspector to investigate into the matter to search the person of the appellant and the premises where he kept the money and to seize the same and any other incriminating material. The Magistrate made it clear in his evidence that he had not enquired of the Inspector as to whether the Superintendent of Police or the Deputy Superintendent of Police were present at the headquarters : further the Inspector did not tell him why he and not the high ranking office mentioned in Section 5-A of the Act was going to investigate the case. In his cross-examination he stated that he felt that the matter was urgent and the offence was likely to be committed; otherwise he would not have given the sanction.

6. The evidence led by the prosecution shows that after the usual formalities a tap was laid and search witnesses P.W. 3 and P.W. 5 besides another Sub-Inspector, P.W. 18, were present on the occasion. The complainant went inside the examination room of the appellant after the patients had left. On enquiry by the appellant as to whether he had brought the money the complainant handed the

four currency notes smeared over with Phenolphthalein and the appellant put them in the pocket of his shirt. The appellant asked for the certificates which were handed over to him by the complainant and counter-signed by the appellant. On a signal being given the police, the search witnesses along with others entered the room. On being accosted the appellant denied having taken any money. He was asked to dip his hands in water mixed with soda powder. The water turned pink indicating the presence of Phenolphthalein on the appellant's hand. On the Inspector asking him to produce the money the appellant put his hand into his shirt pocket and brought out the notes and a Panchnama was drawn up.

7. It is unnecessary for the purpose of the appeal to examine the facts of the case in any greater detail. It appears that on April 1, 1961, P.W. 20, filed a second application before the Magistrate praying for sanction to investigate further into the case which was given. On August 14, 1961, on the transfer of P.W. 20 from Bidar his successor-in-office, Inspector Desai, asked for the magistrate's sanction to carry on the investigation from the stage at which it had been left by his predecessor and the Magistrate accorded permission. A charge-sheet was filed and the case registered in the Court of the Special Judge on November 14, 1961. On August 13, 1962, the appellant presented two applications before the Special Judge by one of which he questioned the legality of the proceedings, inter alia, on the ground that the investigation had not been carried on by a designated officer under Section 5-A of the Act. The Special Judge went into the question in some detail and held that on the facts of the case there was "administrative exigency to permit the Inspector to investigate". He however directed re-investigation as from April 1, 1961, by the Deputy Superintendent, Anti-Corruption Measures, State Level, Bangalore.

8. The matter was taken up in revision to the High Court of Mysore. The High Court dismissed the revision petition. In rejecting the appeal the High Court relying upon the decision in *Rishbud and Another v. State of Delhi*, ((1955) 1 SCR 1150) that the illegality, if any, had not resulted in miscarriage of justice observed the Magistrate was satisfied about the urgency of the matter and had therefore sanctioned permission to investigate.

9. Before us counsel for the appellant referred to the evidence of the Police Inspector, P.W. 20, to show that neither the Deputy Superintendent of Police nor the Superintendent of Police at Bidar had been contacted. It was argued that Section 5-A did not require that any officers of the Anti-Corruption Department could investigate into the matter and it should be held that the Magistrate did not apply his mind to the facts of the case when he granted the sanction to investigate to P.W. 20.

10. It is quite clear from the facts and circumstances that the Magistrate felt that the case required immediate investigation and it was only on that basis that he gave permission to the Police Inspector to investigate into the matter. The fact that there is no mention in the Magistrate's order as to whether he had asked the Inspector about the possibility of the case being investigated into by a Deputy Superintendent of Police is not of much moment in the circumstances of the case.

11. However the question still remains as to whether any prejudice was caused to the appellant by reason of the investigation being conducted and the trap being laid by the Inspector of Police in the way it was done. According to the High Court even if there was any irregularity committed at the early stage no miscarriage of justice had been caused thereby as re-investigation from April 1, 1961, had been made by P.W. 21, a Superintendent of Police, Bellary. It must be added here that the trap could not be laid for a second time and therefore the Special Judge could not have done anything about the initial investigation. He did all that was possible to be done on the facts of the case,

namely, order investigation from April 1, 1961, that is to say, immediately after the happening of the incident and the carrying out of the trap.

12. Counsel contended - as was done before the High Court - that prejudice had been caused to his client by the selection of the search witnesses, P.W. 3 and P.W. 5, who were said to be friendly with P.W. 18, the Assistant Sub-Inspector taking part in the laying of the trap and the conduct of the search. All that P.W. 3 said in his evidence was that he knew both the complainant and the appellant-accused and that when he was in front of the New Mysore Cafe, P.W. 18, a Police Officer had approached him and requested him to act as a search witness. P.W. 5 in his evidence similarly stated that he had been asked by P.W. 18 to be a search witness. He further admitted that he had formerly worked in the Reserve Police when P.W. 18 was a trainee under him. At the most all that can be said with regard to P.Ws. 3 and 5 is that P.W. 18 knew them but counsel was not able to point out any fact disclosing intimacy of P.W. 20 with the search witnesses.

13. The judgment of the High Court shows that no suggestion was made that either P.W. 18 or P.W. 20 bore any ill-will towards the appellant to get up a false case against him and the High Court found no reason for rejecting the evidence of P.W. 3, one of the search witnesses, as also of P.W. 18 and P.W. 20.

14. The High Court rejected the version put forward by the appellant with regard to the incident on the 29th March as false. According to the appellant, the complainant had rushed into his examination-room when he was treating another patient and had thrust the money into his pocket a story which is palpably false, for if he had not touched the notes himself the soda water solution would not have turned pink when he dipped his hand in it.

15. Although laying the trap was part of the investigation and it had been done by a Police Officer below the rank of a Deputy Superintendent of Police, cannot on that ground be held that the sanction was invalid or that the conviction ought not to be maintained on that ground. It has been emphasised in a number of decisions of this Court that to set aside a conviction it must be shown that there has been miscarriage of justice as a result of an irregular investigation. The observation in *The State of Madhya Pradesh v. Mubarak Ali* ((1959) Supp 2 SCR 201 at 210 and 211) to the effect that when the Magistrate without applying his mind only mechanically issues the order giving permission the investigation is tainted cannot help the appellant before us.

16. Counsel for the appellant wanted to raise an additional ground by producing certain documents and relying on certain rules of the Mysore medical Department to show that the appellant in counter-signing the certificate issued by the medical Officer of Bidar, P.W. 27, was only doing a professional act by way of private practice and that he was entitled to payment of fees therefor. Such a case requires investigation into facts, which were not brought forward in the trial and never mentioned either before the Special Judge or before the High Court. We therefore refused permission to counsel to urge the additional grounds.

17. In the result, the appeal fails and the conviction is maintained. The Appellant's bail bond is cancelled and he must surrender himself for serving out the sentence awarded by the High Court.

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