

Shri Durga Dass

Vs

State of Himachal Pradesh

Criminal Appeal No. 2 of 1970

(I.D. Dua, K.K. Mathew JJ)

13.04.1973

JUDGMENT

MATHEW, J. -

1. This is an appeal, by special leave, from the judgment of the High Court of Delhi confirming the conviction of the appellant for offences under Section 161, Indian Penal Code, Section 5(1), read with Section 5(2) of the Prevention of Corruption Act, 1947 and Section 420, Indian Penal Code, by the Special Judge, Simla, and sentencing him to rigorous imprisonment for a period of one year.

2. The prosecution case was as follows. In April, 1964 the accused was posted as a patwari in halqa Namhol. Village Pohani falls in that halqa. Sudama Ram, (P.W. 1) used to cultivate some land in village Pohani as a tenant under Gujjar, (P.W. 8), who was a gair-maurusi-awal of that land. In the girdawri for Kharif, 1963, the entry about the cultivation of the land was in the name of Sudama Ram. At the time of girdawri of Rabi, 1964, Sudama Ram was not present in the village. When Sudama Ram returned about five days after the girdawri he was told by Nand Lal (P.W. 2) and others that Gujjar had been shown in the girdawri for Rabi, 1964, as being in cultivating possession of the land. Sudama Ram then went to the accused and told him that the entry in the girdawri should be in his name as he had cultivated the land. The accused then stand that he would correct the entry in the girdawri if Sudama Ram paid him Rs. 40/-. Sudama Ram thereupon remarked that he was a poor man and the accused then agreed to receive Rs. 30/- from him for correcting the entry in the girdawri. Sudama Ram thereafter went to Gopala Ram, (P.W. 6) and requested him for Rs. 30/- for paying it to the patwari for getting the entry in the girdawri corrected. Gopala Ram said that he had no money but that Sudama Ram should contact the Superintendent of Police, and inform him about the matter. Sudama Ram thereupon filed a written application before the Superintendent of Police stating these facts. Sudama Ram was then taken by the Superintendent of Police to Bilaspur. There, three currency notes, P.W. 1-B to P.W. 1-D of Rs. 10/- each were handed by the Superintendent of Police to Sudama Ram after noting the numbers of the currency notes and Sudama Ram was told that if the accused demanded Rs. 30/- from him as bribe, Sudama Ram should pay those notes to him, Sub-Inspector Gian Chand (P.W. 9) was directed to take further action in the matter. A formal First Information Report was prepared on the basis of the application made by Sudama Ram, and a case was also registered.

3. After receipt of the currency notes from the Superintendent of Police, Sudama Ram met the accused on April 12, 1964, and told him that he had arranged the money and would pay the same to him on the next day in the village of Dunglu. He then informed Sub-Inspector Gian Chand about the arrangement and went to the village Dunglu and found that accused in the house of Dhani Ram. The accused took Sudama Ram to the back of a cow shed of Dhani Ram and there Sudama Ram

handed over the three currency notes to the accused. The accused put them in the pocket of his shirt and placed a handkerchief over those notes. The accused then went inside the house and Sudama Ram left the place and met Sub-Inspector Gian Chand at a distance of about 100 or 150 yards from the house where the accused was camping. Sudama Ram told the Sub-Inspector that he had paid Rs. 30/- to the accused and that the latter had assured him that the necessary correction would be made in the Khasra Girdawri. The Sub-Inspector accompanied by Sudama Ram, P.Ws. 13 and 14 came and found the accused making entries in the girdawri while sitting in the verandah of the upper floor of Dhani Ram's house. The Sub-Inspector searched the person of the accused and recovered the three currency notes from the pocket of the shirt worn by the accused. The numbers of the currency notes were found to tally with those that had been noted by the Superintendent of Police.

4. Thereafter the case was investigated and the accused was challenged.

5. The appellant denied that in the girdawri relating to Rabi, 1964, Gujjar had been shown as in cultivating possession of the land. He also denied having demanded Rs. 40/- from Sudama Ram for showing him as in possession of the land of his subsequent agreement to receive Rs. 30/-. He said that Sudama Ram came to him and put the currency notes forcibly in his pocket and ran away.

6. The special Judge believed the evidence of Sudama Ram as also the evidence furnished by the recovery of the currency notes on search of the person of the appellant and convicted him for offences under Section 161, Indian Penal Code, Section 5(1), read with Section 5(2) of the Prevention of Corruption Act, 1947, and Section 420 of the Indian Penal Code and sentenced him to rigorous imprisonment for one year and a fine of Rs. 500/-. It was against this judgment that the appellant filed the appeal before the High Court. The High Court concurred with the conclusion of the special Judge and confirmed the conviction and sentence except as regards the fine.

7. In this appeal, counsel for the appellant submitted that there was no evidence to show that the appellant received the amount from Sudama Ram or that it was received as illegal gratification. In the light of the evidence of Sudama Ram, Sub-Inspector, Gian Chand, P.W. 13 and P.W. 14, there can be no manner of doubt that those currency notes were recovered from the pocket of the shirt of the accused on April 13, 1964, at the house of Dhani Ram. It is difficult to believe the version of the appellant that Sudama Ram put the three currency notes in his pocket forcibly and against his wish. It is significant that according to the appellant a number of persons were present at that time near him when the notes were forcibly put in his pocket. It sounds most improbable that in the presence of all these persons Sudama Ram would have forcibly thrust the currency notes in the pocket of the appellant. The evidence adduced by the appellant that the currency notes were put in his pocket forcibly was disbelieved by the Special Judge as well as by the High Court. In this appeal under Article 136, of the Constitution, we do not think we would be justified in interfering with the concurrent finding.

8. The appellant, however, contended that the Sub-Inspector, Gian Chand was not authorised to investigate the case and the conviction was therefore bad. The High Court considered this contention and rejected it. We agree with the High Court in thinking that even if there was any irregularity in the investigation that would not vitiate the trial or the conviction, in the absence of evidence that the appellant has been prejudiced.

9. The appellant was released on bail by this Court on January 21, 1970, after the application for leave to appeal was granted. The appellant had already undergone the sentence of imprisonment for a period of more than six months. The offence in that case was committed on April 13, 1964. We do

not think it proper in these circumstances to sent the appellant to jail again. In Jagdish Prasad v. The State of West Bengal ((1972) 1 SCC 326 : 1972 SCC (Cri) 63.) this Court has said that even when a statute prescribes a minimum sentence for an offence but gives a discretion to the Court to impose a lesser sentence for reasons to be given, the fact that the accused was on bail for a pretty long period would be relevant ground in exercising the discretion to impose a lesser sentence. We confirm the conviction of the appellant but reduce the sentence to the period of imprisonment already undergone by the appellant.

10. The appeal is allowed only to the extent indicated but dismissed in all other respects.

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