B. G. Goswami

Vs

Delhi Administration

Criminal Appeal No. 23 of 1970

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

04.05.1973

JUDGMENT

DUA J., -

1. The appellant in this appeal by special leave challenges the judgment and order of a learned single Judge of the High Court of Delhi, dated October 29, 1969, upholding on appeal, the appellant's conviction under Section 5(2), read with Section 5(1)(d) of the Prevention of Corruption Act, 1947 and under Section 161, I.P.C. The Special Judge convicting the appellant by his order, dated May 24, 1967, had imposed a sentence of rigorous imprisonment for 1 1/4 years and also imposed a fine of Rs. 200/- with three months' further imprisonment in case of default of payment of fine under Section 5(2), read with Section 5(1)(d) of the Prevention of Corruption Act; a similar substantive sentence of imprisonment was imposed under Section 161, I.P.C. Both the substantive sentences were to run concurrently. The High Court on appeal reduced the substantive sentence of imprisonment under both counts to rigorous imprisonment for one year each. The sentence of fine and imprisonment in default of payment of fine was maintained.

2. Shri R. L. Kohli, the learned counsel for the appellant has addressed elaborate arguments in support of this appeal and has severelly criticised the judgments and orders of both the courts below. Before considering the grounds of challenge, we may appropriately refer to the broad features of the prosecution story.

3. One Madan Singh, who was appeared as P.W. 3 at the trial court, was holding contract for supply of vegetables to the Sewa Kendra run by Delhi Administration for the benefit of beggars. The Store-keeper of the Kendra, B. G. Goswami, (appellant), is said to have told the contractor that if the latter paid bribe to him, then all sorts of vegetables supplied by him would be acceptable, but in case he did not do so, no vegetable brought by him would be received. Madan Singh brought this demand to the notice of Shri Har Narain Singh, P.W. 10, D.S.P., Anti-Corruption Police on January 7, 1966. The D.S.P. thereupon organised a raiding party consisting of Shri Kewal Ram (P.W. 1) and Shri Ram Rikh (P.W. 5), two official of the Sales Tax Department and some policemen. Madan Singh produced five currency notes of Rs. 10/- each and the witnesses are stated to have seen their numbers. The D.S.P. duly recorded those numbers in his proceedings. Madan Singh is then said to have paid the five currency notes to the appellant at Kiran Restaurant and the D.S.P. is stated to have recovered them from the right side pocket of the appellant's coat immediately thereafter.

4. The trial Court after considering the evidence led in the case, accepted the prosecution story in essential particulars and relying on the presumption embodied in Section 4(1) of the Prevention of Corruption Act and convicted the appellant as already noticed.

5. In the High Court, the learned single Judge also felt that the prosecution case was fully supported by the evidence of the complainant P.W. 3 and the two independent witnesses, Kewal Ram (P.W. 1) and Ram Rikh (P.W. 5). The High Court noticed the fact that Kewal Ram and Ram Rikh who had been directed by the D.S.P. to hear the conversation between the complainant and the appellant were not able to here distinctly such conversation as the radio in the Restaurant was being played at a very high pitch, but as both of them had disposed to have themselves seen with their own eyes the currency notes being given by the D.S.P. from the same pocket of the appellant's coat in which currency notes had been put by him after acceptance, their failure to distinctly hear the conversation was held to be immaterial. The High Court also referred to the presumption embodied in Section 4(1) of the Prevention of Corruption Act and observed that this presumption would apply only if it was established that the appellant had actually accepted the currency notes. If, however, the prosecution evidence falls short of what is required to prove the fact of acceptance or if the money had either been planted or foisted on the appellant by means of deception or a trick, then this statutory presumption could not be invoked for establishing the appellant guilt. After noticing this principle the learned single Judge dealt with the appellant's explanation. That explanation was that the currency notes in question had been concealed within the folds of the bills which the appellant had to submit in respect of the supplies of vegetables by him and that, therefore, the appellant was unaware of the existence of the currency notes within the folds of the said bills. Reliance in support of this suggestion was sought, on behalf of the appellant in the High Court, from the statement of the complainant Madan Singh, P.W. 3 that the appellant had refused to accept the currency notes in the Restaurant in the first instance but they were later handed over to the appellant along with the bills. The learned single Judge did not believe this version for the reason that Kewal Ram (P.W. 1) and Ram Rikh (P.W. 5) had not referred to any such refusal by the appellant and it was not put to them in cross-examination that any bills had been passed on to the appellant along with the currency notes. These witnesses having clearly stated that what was passed on by the complainant to the appellant were currency notes which were clearly visible to them, the defence suggestion was also unacceptable. Assuming, however, for the sake of argument, that the complainant was telling the truth that the appellant had initially declined to accept the bribe, the complainant's later statement that he actually passed on the currency notes to the appellant who accepted them with full knowledge, although the bills also accompanied the currency notes, could not be of any avail to the appellant's defence. The initial hesitation on the part of the appellant must, according to the High Court, have been overcome when the complainant placed the currency notes inside the folds of the bills. The High Court in this connection added that the witness must have been seen the complainant putting the money with the folds of the bills and then passing the same on to the appellant. The appellant was accordingly held to have accepted the currency notes from the complainant with full knowledge of the fact that what was being passed to him was money that was not legally due to him. The presumption under Section 4 (1) of the Prevention of Corruption Act was in the circumstances considered to be applicable to the case with force. On this view, the High Court recorded the order as already noticed.

6. Before us, Shri R. L. Kohli, the learned counsel for the appellant has very strongly contended that the appellant's conviction is wholly unsustainable both on facts and in law. According to him, Madan Singh complainant, P.W. 3 had a grudge against the appellant because the defected supplies of vegetables made by him had not been condoned. The appellant had declined to receive the bills for the supply of vegetables which Madan Singh wanted to hand-over to the appellant personally. Madam Singh, it appears, played a trick by placing the currency notes in question concealed within the folds of the bills and handed over the bills to the appellant in the restaurant. The appellant, according to the submission, was wholly unaware of the existence of the currency notes within the

folds of those bills. It was, therefore, not possible to come to a finding that the appellant had accepted the currency notes which were later recovered from him along with the said bills. The next argument strongly pressed on behalf of the appellant relates to the presumption permissible under Section 4(1) of the Prevention of Corruption Act. This presumption according to Shri Kohli, expressly excludes cases covered under Section 5(1)(d) of that Act. The appellant's convictions under that clause of Section 5(1) would, therefore, have to be examined by ignoring the presumption. Once that presumption is excluded, the evidence on the point falls for short of the required standard for sustaining conviction in a criminal court. This, the learned counsel says, would only leave the offence under Section 161, I.P.C. But with respect to the offence under this section, if the presumption is forthcoming and if the argument with respect to the appellant's plea of ignorance about the existence of the currency notes within the folds of the bills is not accepted, the counsel had practically nothing more to say on the question of conviction thereunder. In that event, the learned counsel made a plea of, what he called, mercy, by submitting that the offence was committed as far back as January 1966 and he has undergone the harassment of the trial and of the appellate proceedings during all these years and has been on bail since 1970. This, according to the submission, should be considered a sufficient punishment, particularly when the appellant must also lose his job.

7. In our opinion, the evidence in the case which has been properly appraised by the Special Judge and by a learned single Judge of the High Court fully establishes that the appellant accepted the currency notes on January 7, 1966, in Kiran Restaurant from Madan Singh and the same were recovered from his possession soon thereafter by the raiding party headed by the D.S.P., Anti-Corruption, Shri Har Narain Singh, P.W. 10. We no doubt permitted the learned counsel for the appellant to take us through the relevant evidence because it was suggested that the presumption permissible under Section 4(1) of the Prevention of Corruption Act was not at all permissible in this case because there was no evidence with regard to the acceptance of money on which any rational or reasonable conclusion to that effect would be based. After going through the evidence we entertain no doubt that the two courts below have appraised the evidence correctly and their conclusion is not further re-examination by this court by way of independent re-appraisal of the evidence for itself.

8. Now with respect to the question of presumption we feel that there is merit in Shri Kohli's submission with respect for the offence under Section 5(1)(d) of the Prevention of Corruption Act that the statutory presumption is not available with respect to it. No doubt, this point was not raised in the Courts below and it also escaped the attention both of the Special Judge and the High Court. The decision in R. C. Mehta v. State of Punjab, ((1971) 3 SCC 284 : 1971 SCC (Cri) 574) was apparently not brought to the notice of the courts below. But being a question of pure law which goes to the root of the matter to the appellant's conviction under Section 5(1)(d) and Section 5(2) of the Prevention of Corruption Act, this Court would be fully justified in taking notice of this arguments. The appellant has, however, also been convicted under Section 161, I.P.C., an offence to which the presumption embodied in Section 4(1) of the Prevention of Corruption Act is admittedly applicable. According to the respondent, even without pressing into service the said presumption the offence under Section 5(2) and Section 5(1)(d) is fully established by cogent evidence on the present record. In view of these considerations and in view of our decision on the question of sentence to which we will advert later, we feel it is unnecessary from the point of view of substantial justice to go into the question of presumption in this appeal. If we uphold Shri Kohli's submission on this point, then we will have to either examine the evidence ourselves or to remand the case to the trial court for a fresh decision whether or not the offence under Section 5(1)(d), read with Section 5(2) of the Prevention of Corruption Act is proved beyond doubt on the evidence after ignoring the statutory presumption. In this connection it is noteworthy that the offence in question

was committed in January, 1966, more than seven years ago. The appellant was released on bail in February, 1970 by this Court and now we are in May, 1973. Criminal proceedings lasting for more than seven years would by itself mean considerable harassment for an accused person. It causes not only mental worry but it also means a expense apart from attendance in Court and a feeling of agonising suspense caused by the prolonged uncertainty of the result obstructing the continuity of his normal life. We also cannot ignore the fact that the appellant must lose his job.

9. On the facts and circumstances of this case, we do not think could be fair or just to further prolong these proceedings by remanding the case to the trial court. This Court also does not examine the evidence for itself under Article 136 of the Constitution except where the larger interest of justice so demands. In the present case it is the facts which constitute an offence under Section 161, I.P.C. and under Section 5(1)(d), read with Section 5(2) of the Prevention of Corruption Act. Therefore, there is no question of grave failure of justice or of a guilty party escaping justice, if we do not examine the evidence for ourselves for determining the guilt of the appellant under Section 5(1)(d), read with Section 5(2) of the Prevention of Corruption Act

10. As already observed the appellant's conviction under Section 161, I.P.C. was rightly upheld by the High Court and there is no cogent ground made out for our interference with that conviction. The sentence of imprisonment imposed by the High Court for both these offences is one year and this sentences is to run concurrently. The only question which arises is that under Section (5) (1)(d), read with Section 5(2) of the Prevention of Corruption Act the minimum sentences prescribed is rigorous imprisonment for one year and there must also be imposition of fine. The sentences of imprisonment can be for a lesser period but in that event the Court has to assign special reasons which must be recorded in writing. In considering the special reasons the judicial discretion of the Court is as wide as the demand of the cause of substantial justice. Now the question of sentence is always a difficult question, requiring as it does, proper adjustment and balancing of various consideration which weigh with a judicial mind in determining its appropriate quantum in a given case. The main purpose of the sentence broadly stated is that the accused must realise that he has committed an act which is not only harmful to the society of which he forms an integral part but is also harmful to his own future, both as an individual and as a member of the society. Punishment is designed to protect society by deterring potential offenders as also by preventing the guilty party from repeating the offence; it is also designed to reform the offender and re-claim him as a law abiding citizen for the good of the society as a whole. Reformatory, deterrent and punitive aspects of punishment thus play their due part in judicial thinking while determining this question. In modern civilized societies, however, reformatory aspect is being given somewhat greater importance. Too lenient as well as too harsh sentence both lose their efficaciousness. One does not deter and the other may frustrate thereby making the offender a hardened criminal. In the present case, after weighing the considerations already noticed by us the fact that to send the appellant back to Jail now after seven years of the agony and harassment of theses proceedings when he is also going to lose his job and has to earn a living for himself and for his family members and for those dependent on him, we feel that it would meet the ends of justice if we reduce the sentences of imprisonment to that already undergone but increase the sentences of fine from Rs. 200/- to Rs. 400/-. Period of imprisonment in case of default will remain the same.

11. This appeal is accepted in part in the terms just stated.

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