

Nanak Chand

Vs

State of Himachal Pradesh

Criminal Appeal No. 180 Of 1070

(M. H. Beg, P. N. Bhagwati, P. K. Goswami JJ)

14.01.1974

JUDGMENT

BHAGWATI, J. -

1. This appeal by special leave, is directed against the judgment of the Delhi High court confirming the conviction of the appellant by the Special Judge, Kangra under Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act, 1947 and Section 161 of the Indian Penal Code and sentencing him to rigorous imprisonment for one year and a fine of Rs. 200, or in default, further rigorous imprisonment for three months.

2. The appellant was employed as a Wasil-Waqi-Nawis in Tehsil Office at Kangra. He was assigned the work of realising loans advanced by the Government under various schemes which included the Low income Group Housing Loan Scheme. One Sat Prakash had obtained a loan of Rs. 4500, from the Government in 1956. It appears that he was irregular in repayment of the loan and in 1968 a balance of Rs. 2,500 remained due and payable by him to the Government. On August 21, 1968 Deputy Commissioner, Dharamsala permitted him to make payment of the outstanding amount in monthly installments of Rs. 150 each commencing from November 1968, but he failed to make payment of any installment. A proceeding for recovery of the balance of the loan was, therefore, started against him and a warrant of arrest was issued by the Naib-Tehsildar, Dharamsala. On learning about the issue of the warrant of arrest Sat Prakash approached Alok, Sub-Divisional Officer, Kangra on January 4, 1969 and submitted an application to him, which is Ex. DA, and requested him to stay the execution of the warrant of arrest. Alok told Sat Prakash that he should first deposit as much amount as he could and then only his request for stay of the execution of warrant of arrest would be considered. Sat Prakash could not deposit any amount in the treasury on that day because it happened to be a Saturday and the treasury was closed by noon time. On the next day, i.e., January 5, 1969, Sat Prakash went and saw the appellant at his residence at village Sakoh. The appellant was admittedly incharge of the file relating to recovery of the loan advanced to Sat Prakash [Vide the answer of the appellant to the question under Section 342 of the Code of Criminal Procedure.] Sat Prakash requested the appellant to set tight over the papers relating to the recovery proceedings for about a fortnight so that in the meantime he could pay up the amount of the loan and save himself from arrest. The appellant started that he could help in the matter but complained that though formerly Sat Prakash used to meet him he had latterly become indifferent and had not cared to supply even three or four bags of cement asked for by the appellant. Sat Prakash thereupon told the appellant that construction work for which he had a contract was going on at Mataur and he could give cement to the appellant there at any time. The appellant, however, said that it was not possible for him to collect cement from the place where the work of construction was going and asked Sat Prakash to please him otherwise by giving him cash. Sat Prakash stated that he did not

have cash at that time, but on the next day when he went to the Tehsil office for depositing the installment of Rs. 150 in the treasury he would pay cash to the appellant. Sat Prakash then deposited the installment of Rs. 150 in the treasury on January 6, 1969 and thereafter went and saw Alok at his office. He informed Alok of the talk which had taken place between him and the appellant on the previous day. Alok asked Sat Prakash to call again on January 7, 1969. When Sat Prakash met Alok in the morning of January 7, 1969, Alok recorded a statement of Sat Prakash which is Ex. PA. Alok then telephoned to Kumar, Assistant Superintendent of Police, Kangra at Dharamsala and requested him to come immediately to Kangra, Kumar with his Reader Ram Swarup came down to Kangra in the forenoon of that day and it was decided to lay a trap for catching the appellant. Sat Prakash was asked as to how much amount he was going to pay by way of illegal gratification and Sat Prakash stated that he proposed to pay Rs. 30. Sat Prakash thereafter took out three currency note of Rs. 10 each. These three currency notes were initialed by Alok and Kumar and their numbers were noted down in a memo Ex. PB. These three currency notes were then given to Sat Prakash and he was asked to go with one Charanjit Parmar to the office of the appellant and hand over the three currency notes to the appellant. The arrangement was that as soon as the three currency notes were passed to the appellant, a signal would be given by Sat Prakash to Charanjit Parmar and Charanjit Parmar would immediately call Alok and kumar who would be waiting in the Chauk. Sat Prakash accordingly went to the office of the appellant and handed over to the appellant the challan for the amount of Rs. 150 which had been deposited on the previous day as also the three currency notes. The appellant places the challan in a file and so far as the three currency notes were concerned he put them in left hand outer pocket of the jacket which he was wearing. During this time Charanjit Parmar was waiting near the door and as soon as the appellant accepted the three currency notes and put them in the left hand outer pocket of his jacket, Sat Prakash gave a signal to Charanjit Parmar and the latter immediately called Alok and Kumar. As soon as Alok and Kumar entered the room with Ram Swarup, the appellant immediately got up and Kumar disclosing his identity stated to the appellant that he was to be searched. Kumar then searched the person of the appellant and recovered three currency notes from the left side outer pocket of the jacket of the appellant. These three currency notes recovered from the left side outer pocket of the jacket of the appellant were the same which had been initialed by Alok and Kumar and of which the numbers were noted down in Ex. PB. These three currency notes as also the jacket of the appellant were taken possession of by Kumar under a recovery memo Ex. PC. The appellant was then charge-sheeted for the offence under Section 5(2) read with Section 5(1)(d) of the Prevention of corruption Act, 1947 and Section 161 of the Indian Penal Code.

3. The case was tried by the Special Judge, Kangra at Dharamsala. The appellant denied that he had any meeting with Sat Prakash on January 5, 1969 or that he had at any time demanded illegal gratification from Sat Prakash. So far as the recovery of the three currency notes from the Left side outer pocket of his jacket was concerned, the appellant put forward a two fold suggestion in his examination under Section 342 of the Code of Criminal Procedure. One suggestion made by the appellant was that Kumar while pretending to search the person of the appellant planted the three currency notes in the left side outer pocket of the jacket and purported to recover them from the appellant. The other suggestion was that whilst the appellant was busy doing his work Sat Prakash came into the room and stood close to him on his left and at that time surreptitiously introduced the three currency notes in the outer pocket of the jacket which he was wearing. The Special Judge believed the evidence of Sat Prakash in regard to what transpired between him and the appellant on January 5, 1969 as also the evidence of Sat Prakash, Alok, Kumar and Ram Swarup in regard to the recovery of the three currency notes from the left side outer pocket of the jacket of the appellant, and held, rejecting both the suggestions made on behalf of the appellant, that the three currency

notes recovered from the left side outer pocket of the jacket of the appellant were handed over by Sat Prakash to the appellant and the appellant obtained the same by way of illegal gratification as a motive or reward for showing favour to Sat Prakash. The appellant was accordingly convicted of the offence under Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act and Section 161 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for one year and a fine of Rs. 200 or in default of payment of fine, further rigorous imprisonment for three months. This led to the filing of an appeal before the Delhi High Court, but the High Court concurred with the view taken by the Special Judge and confirmed the conviction and sentence passed against the appellant.

4. The learned Counsel appearing on behalf of the appellant in this appeal raised two contentions of law for our consideration. The first contention he urged was that the sanction given by the Deputy Commissioner, Kangra at Dharamsala for the prosecution of the appellant was not a valid sanction under Section 6 of the Prevention of Corruption Act and the conviction of the appellant was, therefore, illegal. It may be pointed out that the validity of the sanction given by the Deputy Commissioner, Kangra at Dharamsala was at no time challenged before the Special Judge, and though it appears from the order passed by the Delhi High Court at the time of admitting the appeal that the question of the validity of sanction was raised on behalf of the appellant, it does not seem to have been pursued at the time of the hearing of the appeal before the Delhi High Court, for there is no discussion of it in the judgment of the Delhi High Court. Moreover, no attempt appears to have been made in the cross-examination of Kumar to show that the sanction given by the Deputy Commissioner, Kangra at Dharamsala was not a valid sanction. Kumar stated in his examination-in-chief that the sanction obtained from the Deputy Commissioner, Kangra at Dharamsala was a "sanction of the competent authority" and this statement was not challenged on behalf of the appellant in cross-examination. The sanction given by the Deputy Commissioner, Kangra at Dharamsala cannot, therefore, now be allowed to be challenged as invalid.

5. The second contention of law advanced on behalf of the appellant was that the investigation in the present case was carried out by Kumar who was an Assistant Superintendent of Police below the rank of Deputy Superintendent of Police and this was done without the order of a Magistrate, First Class as required by section 5A of the Prevention of Corruption Act and the trial and conviction of the Appellant following upon such investigation must, therefore, be held to be vitiated. Now, this contention was neither taken before the Special Judge, nor was it urged before the Delhi High Court. It is for the first time before this Court that the appellant has sought to raise this contention. That cannot be permitted to be done. It is now well settled by the decision of this Court in *Din Dayal Sharma v. State of U. P.* (1959) Supp 2 SCR 776 : AIR 1959 SC 131 : 1959 Cri LJ 1120. that where an objection that the investigation had been made by an officer below the rank of Deputy Superintendent of Police in contravention of the provisions of the Prevention of Corruption Act has not been raised before the trial Court and the High Court, it cannot be allowed to be raised for the first time in this Court in an appeal by special leave. Moreover, it is clear from the decision of this Court in *H. N. Rishbud v. State of Delhi*, (1955) 1 SCR 1150 : AIR 1955 SC 196 : 1955 Cri LJ 526. and that has been followed in *Din Dayal Sharma v. State of U. P.* (supra), that generally a conviction is not vitiated because there has not been strict compliance with the provisions of the Prevention of Corruption Act in the matter of investigation by a police officer unless the accused is shown to have been prejudiced. Here there is no such evidence of prejudice.

6. The learned Counsel for the appellant also sought to contend that the view taken by the Special Judge and the High Court that the appellant received the three currency notes from Sat Prakash as illegal gratification was incorrect. We do not think that in this appeal by special leave we would be

justified in permitting the learned Counsel for the appellant to challenge the concurrent finding of fact reached by the Special Judge and the High Court on this point. Both the Special Judge and the High Court on appreciation of the evidence of Sat Prakash, Alok, Kumar and Ram Swarup that the three currency notes were not planted by Sat Parkash or Alok but were received by the appellant from Sat Parkash and placed in the left side outer pocket of his jacket by the appellant. It is indeed difficult to believe either of the two suggestions made by the appellant in regard to the recovery of the three currency notes from the left side outer pocket of his jacket. There is absolutely no reason suggested why Kumar should have tried to falsely implicate the appellant by planting the three currency notes in his pocket at the time of taking search. Whatever motive Alok or Sat Parkash might have had in falsely implicating the appellant though of that also there is no satisfactory evidence at all, there could absolutely be no reason for Kumar to falsely involve that appellant by planting the three currency notes in his pocket. Kumar had no grudge or enmity whatsoever against the appellant and it would be fantastic to suggest that an officer like Kumar, occupying a fairly high position of Assistant Superintendent of Police, should have agreed to falsely implicate an innocent person in order to oblige Alok or Sat Parkash. The suggestion that Sat Parkash surreptitiously planted the three currency notes in the left hand outer pocket of the jacket of the appellant is also incredible. It is impossible to believe that Sat Parkash could have dared to take the risk of showing the three currency notes in the pocket of the appellant's jacket without the appellant noticing it. It is also difficult to understand as to why the appellant should have allowed Sat Parkash to stand close to him on his left instead of sitting on the chair opposite to him and how Sat Parkash could have slipped the three currency notes in the pocket of the appellant's jacket without the appellant realising what was happening. There can be no manner of doubt that the three currency notes recovered from the left hand outer pocket of the appellant's jacket were not planted there by SAT Parkash or Kumar but were put there by the appellant after receiving them from Sat Parkash. Once this conclusion is reached, there is no alternative but to hold that the case of the prosecution is established. A presumption then arises under Section 4(1) of the Prevention of Corruption Act that the appellant accepted or obtained the three currency notes as a motive or reward such as in mentioned in Section 161 of the Indian Penal Code, and this presumption is clearly not rebutted by the appellant, as he has not even attempted to show that he received the three currency notes for any other reason. In fact, it is nobody's case that the three currency notes were handed over by Sat Parkash to the appellant for any purpose other than by way of illegal gratification for showing him favour and therefore, as soon as it is found that the three currency notes were received by the appellant from Sat Parkash, it must follow as a necessary conclusion that they were given as a motive or reward for showing favour to Sat Parkash as alleged by the prosecution.

7. We, therefore, confirm the conviction and sentence and dismiss the appeal.

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