Raghubir Singh

Vs

State of Haryana

Criminal Appeal No. 15 of 1971

(H. R. Khanna, Y. V. Chandrachud, P. K. Goswami JJ)

28.03.1974

JUDGMENT

KRISHNA IYER, J. -

1. Mr. Frank Anthony arguing the case for the accused, in this appeal by special leave, has put forward four main contentions against the appellant's conviction, namely, (a) that the prosecution is invalid for want of competent sanction; (b) that the investigation is not merely illegal but has in consequence inflicted serious prejudice on the accused; (c) that the non-examination of key witnesses, like the Deputy Superintendent of Police, should have driven the court to draw an adverse inference fatal to the case, and the uncorroborated testimony of accomplices or quasi-accomplices should not have been the foundation for a conviction, and (d) that the Court had drawn a presumption under Section 4 of the Prevention of Corruption Act, although there was no warrant for it in the present case, the charge having been one under Section 5(1)(d), read with Section 5 (2) of the said Act.

2. A brief statement of the facts will lead to a better appreciation of the arguments urged. The accused (appellant) was an Assistant Station Master as Ateli in May 1967. P.W. 3 a member of the Armed Forces, was going back home by train from Udaipur with his wife and child on railway concession pass, carrying with him a trunk and bedding. When the train reached Ateli Railway station in the afternoon of May 9, 1967, P.W. 3 got down with his baggage and, when he handed over his ticket to the accused, was told that he had to pay extra, for his wife and child and excess luggage - a sum around Rs. 45 or more. P.W. 3 pleaded that he had no money on him then and was suggested a way out by the payment of Rs. 10 at once a bribe and a bargain. Promising to bring the money the next day, P.W. 3 left the station leaving his bedding as something of a non-human 'hostage' which was to be released on the payment of the illicit sum. On reaching his village late in the night, P.W. 3 the Jawan, thought of informing the authorities about this harassment. Accordingly, he contacted the Deputy Commissioner, Narnaul, on May 11 and related to him what had happened. The Deputy Commissioner instructed the Superintendent of Police to look into the matter who directed the Deputy Superintendent of Police, Natural to take suitable action. He also sent a telephonic message to Shri Dharamvir, Sub-Divisional Magistrate, Narnaul, and told him that Sis Ram had been directed to contract the Deputy Superintendent of Police Narnaul, in connection with his complaint. Thereupon, the Sub-Divisional Magistrate, P.W. 5, together with the Deputy Superintendent of Police, decided to organise a trap, on being apprised of the story by P.W. 3. The team consisted of the Deputy Superintendent, the sub-divisional Magistrate, a head constable of the railway police and P.W. 3 himself. The party moved to the railway station and P.W. 4, Lakshmi Narain, also joined them on the way. A ten-rupee note (Ex. P1) was handed over by P.W. 3 to the Sub-Divisional Magistrate, who signed on it, in taken whereof a memo was prepared, Ex. PF. P.W. 3

took back the note, his body was searched as part of the usual precaution and he was directed to go to the accused and give signal after the money was paid. As arranged P.W. 3 met the accused, made over the money, gave a signal whereupon the party of the Sub-Divisional Magistrate closed in on the accused. The marked note was recovered from his right hand (vide memo. Ex. PG). Therefore, the Sub-Divisional Magistrate lodged a First Information Report with the police, a case was registered and on completion of investigation by the Deputy Superintendent of Police having jurisdiction over the Railways, P.W. 7, and after obtaining the statutory sanction, Ex. PD/1, the accused was charged with an offence of having accepted illegal gratification of Rs. 10 on May 11, 1967 from P.W. 3 thereby committing criminal misconduct in the discharge of his duties, punishable under Section 5 (2) of the Prevention of Corruption Act, 1947. The Special Judge convicted the accused overruling the defence version set up under Section 342, Cr. P.C. and disbelieving the defence witnesses. The High Court confirmed the conviction. The sentence of one year rigorous imprisonment and a fine of Rs. 200 was also confirmed.

3. Shri Frank Anthony sought to make good his contention regarding the invalidity of the sanction, Ex. PD/1, by urging that P. W. 2, a Divisional Officer (Senior Scale), who granted the sanction did not and, under the rules, could not appoint or dismiss the accused. It has to be mentioned right at the beginning that P.W. 2, was working as Divisional Operating Superintendent, Western Railway, Udaipur, has sworn that by virtue of delegated powers he was competent to remove an Assistant Station Master like the accused. Although his evidence was a little ambiguous in that he first swore that he was competent to remove but not to dismiss the accused, on a later date he was recalled, and gave evidence bringing with him the relevant rules and regulations. He testified that under the rules he was competent to dismiss a Class II servant drawing a pay rising up to Rs. 250. The accused came within this category. The High court, not content with mere oral evidence on this issue, went elaborately into the legality of the sanction and found that the Indian Railway Establishment Code (Rule 134) authorised delegation of powers, and in the schedule there is a clear delegation of the powers in favour of Divisional Officer (Senior Scale) to make initial appointments to posts in scales of pay rising up to Rs. 380 per month P.W. 2 is a Divisional Officer, Senior scale, and the accused holds a post in a scale of pay not exceeding Rs. 380 per month. The Court, therefore, concluded that the power to appoint, which also carried with it the power to dismiss, vested in P.W. 2.

4. Counsel for the appellant contended that even though Rule 134 of the Indian Railway Establishment Code appeared to vest power in Divisional Officers, Senior Scale, if read in the light of the Schedule of Powers delegated by the General Manager, control in regard to appointments was vested only in the Divisional Personnel Officer as such. To substantiate this argument counsel invited our attention to certain earlier potions of the Code. He placed reliance on Rule 3(a), which reads :

> "As the DPOs are in executive charged of the staff of the Divisional Offices, exclusive of those working under the Divisional Accounts Officers, the powers delegated to Divisional Officers (Senior Scale) in Establishment mattes will, in respect of staff of the Divisional Offices, be exercised by the DPOs."

5. There are two difficulties in the way of our accepting the contention. For one thing, this point admittedly has not been taken before the High Court or the Special Judge. It is not, therefore permissible for us to allow it to be argued for the first time in the Supreme court since the State has no opportunity to explain whether there are other orders and what the expression 'Establishment mattes' means. In special circumstance, the validity of a sanction which goes to the root of the case may be permitted to be raised for the first time in this Court. This case is not one such. For another,

the rule is clear that persons like P.W. 2, namely, Divisional Officers, Senior Scale, have the power to appoint Class III officers like the accused. The construction sought to be put on it by counsel that only DPOs are in executive charge of the staff of Divisional Offices and are entitled to control them, and by implication, therefore, other Divisional Officers are excluded front delegation of powers in regard to appointments had no substance. 'Establishment matters' ordinarily cover routine items, not appointments and dismissals. Maybe, for better co-ordination and and avoidance of conflict among divisional officers directions may have been issued regarding exercise of powers of by one which do not contradict existence of powers in others. Moreover, it was easy for the appellant to produce his appointment order if his additional case that only a Divisional Personnel Officer and not a Divisional Officer appointed him. Again, all that Ex. P.E. and like documents prove is that allotments of selected persons are made by the higher officer (the R.T.S) but the actual appointment is made by the D.T.S. There is thus no force in the 'last straw' plea that the R.T.S. alone could or did appoint him.

6. Two decisions were pressed before us by Shri Frank Anthony. The first, Vinayak V. Joshi v. State (AIR 1968 Punj 120 : 1968 Cri LJ 372) is easily distinguishable. There, a Divisional Medical Officer who was of equal status with a Divisional Personnel Officer granted sanction but he had on delegation of powers of appointment which only the latter enjoyed. Mere equality of official status with a delegate cannot clothe the other office with delegated powers and so in that decision it was held that the Medical Officer's sanction was incompetent, the being no delegation in his favour. The other ruling of the Rajasthan High Court, Sudarshanlal Bajaj v. S. P. Agarwala (AIR 1966 Raj 37 : ILR (1965) 15 Raj 205 : 1965 Raj LW 115) has no application whatsoever. In these circumstances we have no hesitation in rejecting the plea of the illegality of the sanction. Counsel is certainly right that if there is infirmity in the sanction the prosecution must fail. While it is true that provision for sanction before prosecution of a public servant not be an umbrella for protection of corrupt officers but a shield against reckless or malevolent harassment of officials whose upright discharge of duties may provoke unpleasantness and hostility, that is an area of law reform covered, we find, by the 47th Report of the Law Commission of India.

7. Now we proceed to consider a kindred contention that the investigation grossly illegal and, without more, spells and acquittal. Shri Anthony asked why the Deputy Commissioner did not record the statement of P.W. 3, the aggrieved jawan. Why did the Superintendent of Police or even the Deputy Superintendent of Police desert his duty to register a case on being apprised of the offence ? Was it not a subversion of the provision of Section 5-A of the Prevention of Corruption Act, 1947, to bypass the police establishment by employing a magistrate to lay a trap ? These interrogations do not legally wreck the conviction because they do not brand the investigation as invalid. As explained by counsel for the State P.W. 3 may well have complained of harassment by the accused detaining his bedding and the Deputy Commissioner would have in the usual course directed him to the District head of the police. The latter, not improperly, may well have asked his subordinate to take action. Since this D.S.P. had no jurisdiction over the railway premises, he did not act directly but requested the executive magistrate of the place. P.W. 5, (who had already been informed by the Deputy Commissioner) to initiate steps for catching the alleged bribe taker. We do not share Shri Anthony's grave suspicion about the alleged inaction of the police and the misuse of the executive magistracy. The simple legal issue is whether Section 5-A has been violated or fraudulently frustrated and consequent failure of justice inflicted ? The mandate of Section 5-A is merely that no police officer below rank of a Deputy Superintendent of Police shall investigate any of the offence specified there. Here, no investigation was done by a lesser police officer for P.W. 7, who did the investigation, was of competent rank and what the Magistrate, P.W. 5, did was not investigation and was de hors Section 5-A. By definition, only a police officer can investigate

[Section 4(1) Cr. P.C.] a magistrate cannot. In the present case, after the trap episode was completed and the offence committed, P.W. 5, laid information before the police whereupon P.W. 7 started investigation. Until then, no investigation in law did or could commence. Moreover, while laying a trap by a police officer may be a step in investigation if a case has already been registered in a police station pursuant to which the trap is set, it cannot be part of investigation where the exercise is only to find out whether an offence is going to be committed. Hira Lal v. State of Haryana ((1970) 3 SCC 933 : 1970 SCC (Cri) 177) hardly rescues the accused. There is nothing in Section 5-A preventing an executive magistrate or other public officer laying a trap to catch on allegedly corrupt official. The ruling in State of Bihar v. Basawan Singh (1959 SCR 195 : AIR 1958 SC 500 : 1958 SCJ 856) by implication upholds this position. In fact, in the current crisis of rampant corruption polluting the public services-so the public mind demoralisingly believes-the need for superior officers vigilantly organising Operation Anti-Corruption cannot be discouraged by legalisms. For the present case it is enough to say that no violation of law nor serious prejudice has been made out (vide H. N. Rishbud and Inder Singh v. State of Delhi). ((1955) 1 SCR 1150 : AIR 1955 SC 196 : 1955 SCJ 283)

8. The meat of the matter, if one may say so, is whether the accused has been proved to have helped himself to an illegal gratification of Rs. 10, as alleged. At the threshold we must remind ourselves that the special jurisdiction under Article 136 of the Constitution cannot be diluted into a second appeal on facts. The end of the appellate journey is normally the High Court and exceptional circumstances alone can justify the exercise of the extraordinary power of the Supreme Court to review the evidence. The strange and expensive spectable of multi-tiered appeals built into the system does more injury than justice and strictness in this regard brings finality to litigation early instead of holding out to one who would not have ventured on the costly project had be the limitation on the jurisdiction under Article 136, more so when the are concurrent.

9. We shall briefly examine the strong made by Shri Frank Anthony on the evidence adduced and the credence given to it by the courts below. The sharp castigation of traps as immoral, of trap witnesses as accomplices of involving magistrates in such exercises as reprehensible, may have had some presidential support but time and circumstance, the compulsions of public demand for arresting an insidious but expanding evil and a sense of judicial realism and appreciation of the specific facts of each case guide the pragmatic yet principled approach the court has to make. It is not necessary that executive magistrates should always keep away from operations intended to catch the criminal red-handed. He is not so strongly motivated to get a suspect somehow or other punished. He is professionally detached and has a public responsibility to help detect a bribe-taker if credible requests are made. Such a magistrate is not a cloistered virtue unconcerned with social claims on his services. It is apathy of good citizens that induces police officers to go after the lesser bread of search witnesses in the enforcement of social welfare statutes. To condemn roundly every public official or man of the people as a quasi-accomplice for participating in a raid is to harm the public cause. Maybe, a judicial officer, unlike an executive magistrate, should hesitate to get involved in police trap experiments and expose himself to charges of unveracity. However, there is force in the censure made in Rao Shiv Bahadur Singh v. State of Vindhya Pradesh when the police provide inducements and instruments to commit crimes and judicial personages willingly lend themselves to be enmeshed in such shady attempts, sullying the image of independence of the judiciary. But we cannot exaggerate these dicta into a total ban on public officers, even though executive magistrates, playing a socially useful rule in checking public men's corruption when the situation needs it. This is best illustrated by the observations of Das, J., in State of Bihar v. Basawan Singh (supra) where the learned Judge emphasized that a flexible, realistic approach is the sound course. In the present case, the magistrate was not a full-blooded judicial officer but only exercised.

Limited preventive powers after separation of the judiciary from the executive. No de novo temptation nor bribe money was offered by the police in the present case. The magistrate merely sought to do his public duty of interrupting a crime which was otherwise in the process of fulfillment. It was service, not sin to have done it. No ground to discredit the veracity or taint the testimony of P.W. 5 has been elicited. And, what dissolves scepticism and builds up credence is the seizure of the marked currency note from the accused's right hand and the presence of the bedding of the jawan on the railway station. The original story of P.W. 3 fits to with the facts while the accused's strained version stands unproven. The murky evidence of the military man P.W. 3 who perhaps stood in gain by paying Rs. 10 and avoiding excess baggage and extra passenger charges may be insufficient to prove guilt if uncorroborated by better testimony. A bribe deal is usually a benefit-both syndrome and the payer's lips carry little conviction in the absence of re-assuring support. Before us, the executive magistrate P. W. 5, and the casual member of the trap team, P.W. 4, have given testimonial boost. But real reinforcement comes from the right hand of the accused which held the guilty note and gave it over to P.W. 5 on being challenged. The counter-story of the Assistant Station Master (accused) was that the jawan was stopped by the attender (or water carrier) of the station at the gate for insufficient tickets and excess baggage but, after some sound and fury over an interpolation in the military pass, was allowed to go by the accused who promptly reported to the Jaipur Station Master to know how many passengers were covered by the pass. The inconvenient 'bedding' of the Jawan was explained by the accused as having been left behind by P.W. 3 in the heat of the moment and had been kept in the lost property room and entered in the relevant register. The courts below have rejected this exculpatory case of the appellant and we see nothing too add in the appreciation or too unnatural in the inference to warrant our interference. True, P.W. 1, the follow station master, has endeavored to substantiate the appellant's plea but has been disbelieved. After all, the successful and sustained prevalence of rackets like corruption is built on the artful network of sharing agencies and the rescue operations of P.W. 1 cannot be regarded as independent evidence of an unconnected officer. We hope that the authorities in charge of cleansing our public sector of corruption will view each detected act as symbolic of a chain scheme and symptomatic of a deeper systemic malady and not as an isolated aberration of a delinquent official. A massive purge, not stray traps, can alone be the strategy. That P.W. 1 support the accused is not surprise if we realise how dubious 'distributive justice' works in some of these public offices where money is illicitly collected. An honest Assistant Station Master in the place of the accused could not have allowed P.W. 3 to leave without reporting to the railway police. Nor is the frivolous explanation that the ten-rupee note was brought by P.W. 3 when the accused wanted only one rupee as official charge for keeping the bedding in the lost property room worth a serious look. We regret our inability to accede to the forceful submissions of Shri Frank Anthony on this aspect of the case.

10. In passing we may mention that the criticism made by learned counsel that P.W. 1 has been illegally permitted to be treated as 'hostile' is pointless. It is a discretionary power of the trial judge and when a witness strikes him as imbued with partisan zeal cross-examination may be allowed by the party who calls him. After all, these rules are only to further the end of truth, not clogs in the quest for it. We see no merit in the argument. To sum up, The case against the accused has been made out beyond reasonable doubt. Infallibility is the attribute of the omniscient and judges can only act on pragmatic sense and reasonable doubts.

11. The last submission turns on the presumption under Section 4 of the Act. The contention of counsel for the appellant that the presumption available under Section 4 of the Act cannot be raised in the present case since the charge in under Section 5(1)(d), read with Section 5(2), is apparently attractive. But we may notice that even if the statutory presumption is unavailable, courts may presume what may in the ordinary course be the most probable inference. That an Assistant Station

Master like the accused has in the hand a marked currency note made over to him by a passenger whose bedding has been detained by him for which no credible explanation is forthcoming, and he is caught red-handed with the note, is a case of res ipsa loquitur. The very thing speaks for itself in the circumstances. We need not, therefore, scrutinise the substance of the argument based on the inapplicability of Section 4. We also feel that there may be some force in the argument of counsel that the jawan, P.W. 3 might have duped the railway by using a pass for one passenger and carrying a family of wife and child together. Of course, we cannot finally pronounce on this matter for want of sufficient documents. All that we need say is that even assuming that the passenger so tried to dupe the railway, that is no alibi for the Assistant Station Master to help himself to illicit gratification. Nor is the non-examination of the Deputy Superintendent of Police of any consequence in the case.

12. In these circumstances we find no reason for interfering with the concurrent conviction and sentences. The appeal is dismissed.

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