V. K. Sharma

Vs

State (Delhi Administration)

Criminal Appeal No. 73 of 1971

(A. Alagiriswami, N. L. Untwalia JJ)

13.03.1975

JUDGMENT

UNTWALIA, J. –

1. The appellant in this appeal by special leave has been convicted under Section 5(2) of the Prevention of Corruption Act, 1947, - hereinafter called the Act, read with Section 5(1)(d) and under Section 161 of the Indian Penal Code. The trial Judge sentenced the appellant under each count to undergo rigorous imprisonment for 2.1/2 years. Sentences to run concurrently. He was also sentenced to pay a fine of Rs. 1,000 under Section 5(1)(d) of the Act. The Delhi High Court dismissed the appellant's appeal subject to the reduction in his sentences. The concurrent sentence of rigorous imprisonment for 2.1/2 years has been reduced to one year under each count and the imposition of fine of Rs.1,000 has been reduced to Rs. 500.

2. The appellant was a quasi-permanent Lower Division clerk of the Central Secretariat Clerical Service, Grade II and was borne on the cadre of Community Development and Co-operation. At the relevant time he was working as Inspector in the Rationing Department.

3. PW 3 Madan Lal was the owner of a rationing depot in Gandhi Nagar, Delhi. His complainant was that the appellant had been demanding Rs. 100 per month by way of bribe under threat of implicating him in some false case. The appellant came to the said witness on July 1, 1967 and demanded the payment of Rs. 100 that very day. Madan Lal complained to PW Gain Chand Sharma, a municipal councillor about this demand and the latter called him to his house in the afternoon. PW S. L. Arora, Assistant Controller of Rationing was called to the councillor's place. He after recording the statement of Madan Lal, initialled eight currency notes of Rs. 10 each, of the total value of Rs. 80. Shri Arora instructed Madan Lal to go to the appellant's office with PW 5 Agya Ram Batra and PW 8 Deputy Lal Talwar. He handed over the amount of Rs. 80 to the appellant saying that he would pay Rs. 20 later on. On the giving of signal by Deputy Lal, Arora arrived and recovered the currency notes from the pocket of the appellant's bush-shirt consisted of the same eight currency notes which had been earlier initialled by Arora. After obtaining the sanction of PW 1 S. P. Iyer, Deputy Secretary, Department of Community Development and Co-operation, Government of India for the prosecution of the appellant and after investigation the police filed a challan against him under Section 5(1)(d) of the Act and under Section 161 of the Penal Code.

4. The appellant admitted the receipt of the sum of Rs. 80 in the eight currency notes from Madan Lal but denied to have received the sum by way of illegal gratification or by corrupt or illegal means abusing his position as public servant. He gave an interesting and curious explanation of the receipt of Rs. 80 by him from Madan Lal.

5. The two courts below relying upon the evidence of prosecution witnesses Madan Lal, Arora, Agya Ram and Deputy Lal and rejecting the explanation of the appellant as untrue have convicted and sentenced him as stated above.

6. Mr. K. B. Rohtagi learned Counsel for the appellant made the following submissions to press for the acquittal of his client :

> (1) That the sanction given by PW Iyer in this case was invalid and not in accordance with Section 6 of the Act.
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> (2) That PW Arora had no authority to lay a trap or to search the person of the appellant or to make an investigation in the case. Whatever was done by him was in contravention of Section 5A of the Act.
>
> (3) That neither of the charges under Section 5(1)(d) of the Act or Section 161 of the Penal Code was legally proved against the appellant.

7. The High Court has elaborately and fully dealt with the submission made on behalf of the appellant many of which were repeated in this Court. We see no justification to interfere with the order of the High Court.

8. As already stated the appellant was a quasi-permanent Lower Division Clerk of the Central Secretariat Clerical Service. He was borne in the cadre of Community Development and Co-operation. PW Iyer was a Deputy Secretary of that Department. He was competent to remove the appellant from his office within the meaning of clause (c) of sub-section (1) of Section 6 of the Act. There was no dispute or debate in that regard. No question was put to him in his cross-examination to challenge his authority. But the contention on behalf of the appellant has been that at the time of committing the alleged offence he was working in the post of Rationing Inspector having been appointed to that post sometime back. The Chief Controller of Rationing was the proper authority who could remove him from that post and hence he was the only competent authority to accord sanction for the prosecution of the appellant. We see no substance in this argument. It is not clear whether the appellant came as a loanee to the Rationing Department from the Central Secretariat. What is, however, clear on the basis of the various documents considered in the judgment of the High Court is that the appellant was relieved of his duties in the Ministry of Community Development and Co-operation, Government of India on the afternoon of November 20, 1965 and thereafter he joined his duties as Rationing Inspector on being appointed to that post a few days earlier on November 15. On a consideration of the relevant materials the High Court has rightly held that the appellant was an employee of the Central Secretariat at the time of the commission of the offence but was appointed to the temporary post of Inspector, Rationing. We may add that even assuming the argument put forward on behalf of the appellant to be correct that he did not come to the Rationing Department as a loanee from the Central Secretariat, there is no difficulty in appreciating that he must have come temporarily to the Rationing Department with his lien on his post in the Central Secretariat. The purport of taking the sanction from the authority competent to remove a corrupt government servant from his office is not only to remove him from government service. The Chief Controller Rationing would have been competent to remove the appellant from his office as Rationing Inspector but not from his office in the Central Secretariat. That being so PW Iyer in our judgment was the competent authority to accord sanction for the prosecution of the appellant.

9. The second submission made on behalf of the appellant is devoid of any substance. After the incident in the office of the appellant in the afternoon of July 1, 1967 the first information report was lodged with the police. The investigation within the meaning of Section 5A of the Act started thereafter. No semblance of any argument could be advanced before us to show the investigation made thereafter was not in accordance with the said provision of law. Section 5A is not meant to clothe a person with authority or competency to lay a trap. It is not necessary to go into the question as to whether PW Arora was legally competent to search the person of the appellant. Even assuming it to be illegal it is of no consequence in this case. On search the eight notes of Rs. 10 each were recovered. The recovery of the notes is admitted by the appellant.

10. The High Court has relied upon several decisions of this court for coming to the conclusion that the charges against the appellant must be deemed to have been proved. We may make a slight clarification here. The presumption arising under Section 4 of the Act when a public servant accepts gratification other than legal remuneration is not available to the prosecution for proving the charge under Section 5(2) of the Act with reference to clause (d) of sub-section (1). The presumption arises in regard to an offence under Section 161 of the Penal Code or to an offence referred to in clause (a) or clause (b) of sub-section (1) of Section 5 of the Act. On the facts of this cases, therefore, it must be held that the charge against the appellant that he obtained for himself pecuniary advantage in the sum of Rs.80 by corrupt or illegal means and by abusing his position as a public servant has been proved on the evidence of PWs Madan Lal, Agya Ram and Deputy Lal and not on the basis of the rule of presumption engrafted in Section 4, On the other hand the charge under Section 161 of the Penal Code must be held to have been proved by pressing into service the rule of presumption enacted in Section 4 of the Act. The explanation given by the appellant even on the test of preponderance of probability was not only satisfactory and unacceptable but untrue. In that view of the matter acceptance of the gratification of Rs. 80 by him from Madan Lal must be presumed to have been done as a motive or reward such as is mentioned in Section 161 of the Penal Code. Almost an identical case on the point is the decision of a Constitution bench of this Court in C. I. Emden v. State of U. P. ((1960) 2 SCR 592 : AIR 1960 SC 548 : 1960 Cri LJ 729). There also the appellant before the Supreme Court demanded from the complainant Rs. 400 per month in order that the complainant may be allowed to carry out his contract peacefully without any harassment. A sum of Rs. 375 was proved to have been paid to the appellant. The conviction under Section 161 of the Penal Code was maintained only on the basis of the presumption arising under Section 4 of the Act. On identical facts conviction under Section 5(2) was also upheld. We may refer to the decision of this Court in V. D. Jhangan v. State of U. P. ((1966) 3 SCR : AIR 1966 SC 1762 : 1966 Cri LJ 1357). On the facts of that case it was held that the prosecution evidence sufficiently established the charges under Section 5(2) read with Section 5(1)(d) of the Act and Section 161 of the Penal Code. In regard to the latter charge the rule of presumption was applied as laid down by this Court in the case of C. I. Emden referred to above.

11. For the reasons stated above, we find no substance in the appeal and maintain the order of conviction and sentence passed against the appellant.

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