

Sita Ram

Vs

The State of Rajasthan

Criminal Appeal No. 98 of 1971

(N. L. Untawalia, Syed Fazal Ali JJ)

29.04.1975

JUDGMENT

UNTWALIA, J. –

1. This is an appeal by special leave. The appellant along with one Vikram Singh was convicted by the Special Judge, Sikar under Section 161, Indian Penal Code and each of them was sentenced to undergo rigorous imprisonment for one year and pay a fine of Rs. 500. The appellant was further convicted under Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act, 1947 - Hereinafter called the Act. But no separate sentence was awarded to him under this count. Both the them filed appeal in the Rajasthan High Court. The appeal of Vikram Singh was allowed by the High Court. His conviction and sentence were set aside. It has, however, maintained the conviction of and the sentence imposed upon the appellant.

2. The case against both the accused was initiated on report Ext. P-7 lodged by complainant Mohan Lal, PW 11 on June 4, 1963 before the Superintendent of Police, Anti-Corruption Department, Jaipur. Mohan Lal at the relevant time was the Secretary of the Gram Sewa Sahakari Samiti, Dadia. In the complaint it was alleged by Mohan Lal that in the month of January, 1963 he handed over charge to PW 7 Bhuraram, Chairman of the Samiti, and proceeded to Sikar in order to impart Chief Officer's training. On his return to Dadia in February, 1963, he requested Bhuraram to hand over charge back to him. Bhuraram informed Mohan Lal that appellant Sitaram, Assistant Inspector, Co-operative Societies, Shri. Madhopur had taken away the whole record of the samiti from him. Mohan Lal further alleged that he had approached accused Vikram Singh, Inspector, Co-operative Societies, Shri. Madhopur as well as Sitaram for return of the record but they evaded doing so on one pretext or the other. Eventually both the officers demanded Rs. 400 as bribe from him for setting right the record, which according to them, revealed embezzlement of a huge amount. Along with his report Ext. P-7 complainant Mohan Lal produced four currency notes of Rs. 100 each before PW 13 Paneysingh, Superintendent of Police. The latter noted down the numbers of the currency notes on the back of Ext. P-7 and after making initials on them handed over the report as well as the notes to the Deputy Superintendent of Police, Anti-Corruption Department, PW 12 I. D. Pant. The Dy. S.P. alongwith other police officers and constables reached Shri. Madhopur railway station on June 4, 1963 at 9.30 p.m. In presence of PW 2 Mukandsingh honorary Secretary of the Samiti, the Dy. S.P. made over the initialled currency notes to the complainant for passing them on to accused Vikram Singh and Sitaram in compliance with their demand for bribe. The two motbirs were directed to watch, see and hear the talks between the complainant and the accused at time of the handing over of the notes to them. Mohan Lal along with Sugansingh and two motbirs then proceeded to the office of the panchayat samiti at Shri. Madhopur. Mohan Lal and Sugansingh went inside the office. The two motbirs remained standing on the road outside the office. Some time later

the two accused, complainant Mohan Lal and PW 9 Sugansingh left the panchayat office and went to a hotel. After taking tea there, accused Vikram Singh went away saying that the amount be paid to appellant Sitaram. Thereafter the complainant, the appellant and Sugansingh left the hotel. When they had covered some distance on the road the appellant is said to have demanded the amount from the complainant. Thereupon the latter handed over the initialled currency notes Exts. 1 to 4 to him. The complainant then made the appointed signal by rubbing his head. The raid followed and the Dy. S.P. asked the appellant to produce the four currency notes worth Rs. 400 which he had accepted as bribe. On his evading to do so his person was searched and the initialled four currency notes were recovered from the pocket of the appellant's shirt. After completing the investigation and on obtaining sanction under Section 6 of the Act from the Registrar, Co-operative Societies, Rajasthan, Jaipur the two accused were put trial before the Special Judge.

3. Both the accused denied to have committed any offence. No bribe, according to them, was ever demanded. Accused Vikram Singh denied the allegation of his asking Mohan Lal to pay the bribe to Sitaram and Sitaram denied to have accepted any bribe.

4. The learned Special Judge, as noted in the judgment of the High Court, recorded the following findings :

(1) That both the accused were public servants at the relevant time.

(2) That both the accused demanded illegal gratification from complainant Mohan Lal.

(3) That accused Vikram Singh asked the complainant to hand over the amount to accused Sitaram.

(4) That the currency notes Exts. 1 to 4 were recovered from the possession of accused Sitaram and this fact gave rise to a presumption under Section 4(1) of the Prevention of Corruption Act that accused Sitaram had received the said currency notes for showing favour or for any of the purpose mentioned in Section 161 I.P.C.

(5) That the sanction Ex. P-5 is valid.

5. The fact that both the accused were public servants at the relevant time has been in dispute. The findings of the recovery of the four currency notes from possession of the appellant could not be assailed in the High Court. The complainant had turned hostile in the Court of the Special Judge. On consideration of the relevant pieces of other evidence the learned Single Judge of the High Court held :

In my opinion, the prosecution has failed to prove beyond a reasonable manner of doubt that the accused demanded Rs. 400 as bribe from the complainant Mohan Lal.

This finding was not only in favour of accused Vikram Singh but also in favour of the appellant. The High Court thought that there was only some vague evidence against accused Vikram Singh that he authorised Sitaram to accept illegal gratification on his behalf and therefore gave the benefit of doubt to the former and acquitted him of the charge under Section 161 of the Penal Code. Conviction of the appellant, however, was maintained after affirming a further finding on the basis of the evidence of PW 2 Mukandsingh (one of the motbirs) and PW 9 Sugansingh that the amount had in fact been paid by Mohan Lal to the appellant, although Mohan Lal had denied giving of the

tainted currency notes to Sitaram. Thus believing the acceptance of the gratification of Rs. 400 from Mohan Lal by the appellant the rule of presumption engrafted in Section 4(1) of the Act was applied. Since the appellant could not give any explanation of the receipt of the gratification his guilt was held to have been established beyond reasonable doubt. The sanction given by the Registrar, Co-operative Societies was held to be valid on the view that the Registrar was the competent authority to remove from service accused Vikram Singh and Sitaram who at the relevant time were Inspector and Assistant Inspector respectively of the Co-operative Societies.

6. Mr. A. K. Sen appearing for the appellant pressed only two points in support of the appeal :

(1) That the Registrar, Co-operative Societies was not the appointing authority of the appellant under Section 3 of the Rajasthan Co-operative Societies Act, 1965. The appointing authority was the State Government. Hence the sanction given by the Registrar for prosecution of the accused was not in accordance with Section 6 of the Act.

(2) That on the facts and in the circumstances of this case the conviction of the appellant has wrongly been sustained drawing upon the rule of presumption engrafted in Section 4(1) of the Act. Or, in any view of the matter the presumption stood rebutted when the story of demand of bribe by the appellant from Mohan Lal the complainant has not been held to be true.

7. We do not see any substance in the first point urged on behalf of the appellant. The Registrar was examined as PW 5 in the case. Inspectors of Assistant Inspectors are not appointed by the State Government in accordance with Section 3 of the Rajasthan Co-operative Societies Act. The appointing authority of such persons was the Registrar. The sanction was therefore valid.

8. We are, however, of the opinion that the conviction of the appellant cannot be sustained on the basis of Section 4(1) of the Act. As pointed out in the judgment of his Court delivered by one of us (Untwalia, J.) in Criminal Appeal No. 73 of 1971 decided on March 13, 1975 (V. K. Sharma v. State (Delhi Administration), ((1975) 1 SCC 784 : 1975 SCC (Cri) 277), Section 4(1) does not permit the drawing of presumption in Section 5 of the Act. The only clauses incorporated in Section 4(1) by Act 40 of 1964 are clauses (a) and (b) of sub-section (1) of Section 5 and not clause (d). We now proceed to discuss whether the rule of presumption for sustaining the appellant's conviction under Section 161 of the Penal Code can be applied in this case.

9. On the point of payment of money by complainant Mohan Lal to the appellant the evidence of the former was of no help to the prosecution. The High Court found this fact established, as stated above, on the evidence of PW 2 Mukandsingh and PW 9 Sugansingh. Learned Counsel for the appellant rightly pointed out that the former on being further cross-examined had stated "When Mohan Lal gave currency notes to Sitaram I did not see it". The attention of the High Court does not seem to have been drawn to the above statement of PW 2 in cross-examination. That makes his evidence hearsay on the point of acceptance of gratification by the appellant from Mohan Lal. So many jerks and jolts seem to have been given to the prosecution case by contradictory and hostile statements of the witnesses that a good part of it had to be rejected by the High Court. In the background of the High Court's findings that it had not been proved that the appellant had demanded any bribe from Mohan Lal, we do not consider it safe to sustain its finding on the point of payment of the bribe by the complainant to the appellant on the testimony of PW 9 alone when the evidence of PW 2 is not admissible on the point. The result is that not only the story of demand of

bribe by appellant from the complainant is not proved but even the story of payment of the money by the complainant is not established beyond reasonable doubt. That being so the rule of presumption engrafted in Section 4(1) cannot be made use of for convicting the appellant.

10. The main ingredients of the charge under Section 161 of the Penal Code with reference to the facts of this case are these :

- (1) That the accused was a public servant.
- (2) That he must be shown to have obtained from any person any gratification.
- (3) That gratification should be other than legal remuneration as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to the person.

When the first two ingredients are proved by evidence then a rebuttable presumption arises in respect of the third ingredient. In absence of the proof of the first two facts, the presumption does not arise. On mere recovery of certain money from the person of an accused without the proof of its payment by or on behalf of some person to whom official favour was to be shown the presumption cannot arise. We are not very much impressed with the argument of Mr. Sen that the presumption, even if it arose, stood rebutted on the finding of the High Court that the prosecution has failed to prove that the appellant had demanded any gratification from the complainant. The charge against the appellant was not that he had agreed to accept gratification. But the charge was that he had accepted gratification. If the accusation against the appellant would have been the former the argument put forward on his behalf as to the rebuttal of the presumption could have been acceptable. But the contention put in that form does not stand scrutiny in respect of the charge of acceptance of gratification. On the proof of the charge of acceptance of gratification from the complainant unless the contrary was proved it could have been presumed against the appellant as has been done by the courts below that the acceptance of the gratification was taking a bribe within the meaning of Section 161 of the Penal Code. But on reversal of the finding of the High Court on the question of acceptance of money by the appellant from the complainant and being against the prosecution, the rule of presumption cannot be pressed into service. In the circumstances we are constrained to hold that the conviction of the appellant under Section 161 of the Penal Code cannot be sustained.

11. In the result the appeal succeeds and is allowed. The convictions of appellant and the sentences imposed upon him are set aside. He is acquitted of the charges levelled against him. His bail bond will be cancelled.

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