

Hari Dev Sharma

Vs

State (Delhi Administration)

Criminal Appeal No. 237 Of 1971

(A.C. Gupta, Syed M. Fazal Ali JJ)

04.05.1976

JUDGMENT

GUPTA, J. –

1. In January, 1969 the appellant Hari Dev Sharma was working as an Upper Division Clerk in the Land and Development Office, New Delhi, Admittedly, the appellant used to deal with applications relating to sale of properties which could be finalised only on permission being granted by the Land and Development Officer. Complainant Hari Chand had made several applications for such permission in connection with a property purchased by his wife in the year 1964. It appears that the appellant who started dealing with this case from July 1968 raised objections on the ground of some defect or other. According to the prosecution what happened is as follows. The complainant met the appellant in his office on January 29, 1969 and requested him to get his application passed. The complainant was a tailor by profession. The appellant visited the complainant was a tailor by profession. The appellant visited the complainant's shop on the following day and in the presence of the complainant's employee Mangal Ram told the complainant that he would see his application through if the complainant paid him Rs. 100. The complainant having ultimately agreed to pay the appellant made over a draft application instructing the complainant to file a typed copy of the same in his office. The appellant took Rs. 20 from the complainant and it was agreed that the balance of Rs. 80 would be paid after the permission was granted. The complainant had the draft given to him by the appellant photographed before returning the manuscript to the appellant on January 31, 1969. The complainant saw the appellant in his officer several times in February, 1969 and he was assured that the matter would be finalised very soon. On the day of his last visit on February 24, the appellant told the complainant that he would see him in the latter's shop the next day for the balance of Rs. 80. Next day, when the appellant saw the complainant in his shop the latter was first unwilling to pay. On being warned by the appellant that this would mean rejection of his application for permission, the complainant asked him to come the following day for the balance. The complainant then went to the Office of Special Police Establishment, Kotah House, and made a statement before Inspector B. K. Shukla who recorded the same. Eight currency notes of Rs. 10, each belonging to the complainant, were treated with Phenol Phathelene powder and handed back to the complainant with the direction to pass these on to the appellant on his demand. A raiding party headed by Inspector Shukla and including the complainant, two paunch witnesses and some police officials reached the complainant's shop at about 4 p.m. The appellant reached the shop at about 5.45 p.m. One D. C. Chaudhry (PW 3), who was among the raiding party and who had been given four cloth pieces before arrival of the accused came into the shop at the time posing as a customer. The rest of the raiding party were waiting at a tea stall opposite the shop. On the arrival of the accused, complainant's employee Mangal Ram (PW 7) came out of the shop as if to fetch some Coca Cola but really to signal the arrival of the appellant. The appellant demanded money from the

complainant in the presence of (PW 3) D. C. Chaudhry assuring the complainant that the work would be done before Holi. The complainant then took out the currency notes from his pocket, retained one of them, and requested the appellant to accept Rs. 70 saying that he had been able to collect the money by pawing his golden ring. As the appellant was counting the notes, the complainant gave a signal upon which Inspector Shukla arrived at the spot and caught hold of the appellant. The currency notes fell down on the floor in the scuffle between the appellant and Inspector Shukla. The appellant also attempted to remove the power that stuck to his fingers from the currency notes by licking the fingers and rubbing them on the matting on the floor. He was made to dip his hands in two glass tumblers containing solution of Sodium Carbonate and the shade of the solution turned violet as expected. The two bottles were sealed and the currency notes were picked up by Inspector Shukla. On receipt of the sanction for prosecution of the appellant after the investigation was complete, the appellant was charged by Special Judge, Delhi, as follows :

Firstly, that you being a public servant in the office of the Land and Development Officer, New Delhi, namely, working as a UDC, Property III Section, demanded an illegal gratification of Rs. 100 from Shri Hari Chand, Attorney of Shri N. C. Lakhnupal, owner of property No. 6/38/A, Vijay Nagar for expediting the accepted Rs. 20 as part payment of your demanded illegal gratification from the said Shri Hari Chand and agreed to accept the balance of Rs. 80 on February 26, 1969, as a motive or reward for the issue of sale permission for the aforesaid property and thereby you committed an offence punishable under Section 161, I. P. C. and within my cognizance.

Secondly, that you being a public servant in the office of the Land and Development Officer, New Delhi, namely, working as a dealing U. D. C., Property III Section by corrupt or illegal means or by otherwise abusing your position as a public servant, obtained a pecuniary advantage of Rs. 20 from Shri Hari Chand, attorney of Shri N. C. Lakhnupal. Owner of property No. 6/38/A Vijay Nagar for expediting the issue of sale permission for the said property as apart payment of Rs. 100 which you had demanded as illegal gratification from the said Shri Hari Chand and agreed to accept the balance of Rs. 80 on February 26, 1969 as a motive or reward for the issue of sale permission for the aforesaid property and thereby you committed an offence under Section 5 (1) (d) punishable under Section 5 (2) of the Prevention of Corruption Act (Act II of 1947).

Thirdly, that you on February 26, 1969 being a public servant and employed as U. D. C. in the office of the Land and Development Officer demanded the balance of Rs. 80 from the said Shri Hari Chand for the issue of sale permission for the aforesaid property, i.e. house No. 6/38/A B. S. A. Vijay Nagar and accepted a sum of Rs. 70 as illegal gratification from the said Shri Hari Chand at shop No. 73, Amrit Kaur Market, Delhi which amount of Rs. 70 was recovered from your possession and thereby you committed an offence punishable under Section 161 I.P.C. and within my cognizance.

Fourthly that you on February 26, 1969 being a public servant and employed as U. D. C. in the office of the Land and Development Officer, viz., working as a U. D. C. property III Section by corrupt or illegal means or by otherwise abusing your official position as a public servant, obtained a pecuniary advantage of Rs. 70 from the said Shri Hari Chand for the issue of sale permission for the aforesaid property i.e. House No. 6-38/A. B. S. A., from the said Shri Hari Chand at shop No. 73, Amrit Kaur Market, Paharganj, Delhi, which amount of Rs. 70 was recovered from your possession and whereby you committed an offence punishable under Section 5 (1) (d) read with Section 5 (2) of the Prevention of Corruption Act (Act II of 1947).

2. The prosecution examined 8 witnesses to prove the case against the appellant as appearing from the four charges framed against him. Complainant, examined as PW 1, said that he had paid to the appellant Rs. 20 on January 28, 1969 and Rs. 70 on February 26, 1969 and described how the sum of Rs. 70 was recovered from the appellant. Examined under Section 342 of the Code of Criminal procedure, the appellant admitted that he had given a draft application in manuscript to the complainant, photostat copy of which is Ex. PW 1/A, but denied that he asked the complainant to return the same or that the complainant did in fact return it to him. He denied that the complainant met him in his offence on January 29, 1969 when he demanded from him Rs. 100 as bribe and the rest of the allegations against him. He examined two witnesses in defence. His case was that his friend Devki Nandan Wahi, DW 2, had given some cloth pieces for stitching to the complainant who was a tailor which the complainant spoiled. On the intervention of Om Prakash Dhingra, DW 1, another shopkeeper of the same market where the complainant had his shop, it was settled on February 25, 1969 that the complainant would pay Rs. 70 by way of compensation to DW 1. As the complainant did not then have the money with him, he asked the appellant to come next day. Accordingly the appellant went to the complainant's shop on February 26, to demand Rs. 70 as compensation for his friend, and when the currency notes were handed over to him, someone from behind caught hold of him and the currency notes fell down. He denied to have licked his fingers or rubbed them on the mat. He admitted that his fingers were dipped in a solution of Sodium Carbonate but denied that the shade turned violet. DW 1 and DW 2 supported this case. The Special Judge, Delhi, held on the evidence that all the charges against the appellant had been proved. The Special Judge was not impressed by the testimony of the two defence witnesses and found the decree version unconvincing. The appellant was convicted under Section 161 Indian Penal Code and Section 5 (1) (d) read with Section 5 (2) of the Prevention of Corruption Act and sentenced to rigorous imprisonment for one year under each count and also fined Rs. 100 for each of the offences under Section 5 (1) (d) and Section 5 (2) of the Prevention of Corruption Act; in default of payment he was further sentenced to rigorous imprisonment for one month. The substantive sentences were to run concurrently.

3. The High Court on appeal preferred by the appellant before us did not accept the prosecution case on the first two charges on the ground that it would be unsafe to hold on the bare testimony of the complainant that Rs. 20 had been paid to the appellant as alleged. Apparently, the High Court looked upon the complainant as a witness not to be believed unless his evidence was corroborated by other evidence. The High Court however accepted the other part of the prosecution case that the appellant had been caught while accepting Rs. 70 as bribe from the complainant. One circumstance which appears to have impressed the learned Judge was that the complainant was being harassed by various objections raised on his application ever since 1964 when the property was purchased. It appears however that the appellant started dealing with the file only from July, 1966, and the earliest of the notes made by him on the file was dated July 20, 1968. Admittedly, the complainant met the appellant for the first time on January 29, 1969 and, that being so, it is difficult to hold that the objections raised prior to this date were calculated to put pressure on the complainant. It is hardly reasonably to think that the appellant could anticipate what in fact followed. Besides, the appellant could not have been responsible for any objection raised between 1964 and July 1966. But the main difficulty we feel in accepting the prosecution case arises out of the fact that the High Court disbelieved the part of it which, according to the prosecution, was the genesis of the case. Having disbelieve the story that the appellant had asked for a bribe of Rs. 100 of which Rs. 20 was paid in advance, we do not think the High Court could reasonably proceed on what was left of the prosecution case to affirm the order of the conviction passed by the trial Court. The prosecution case was one integrated story which the trial Court had accepted. If the High Court did not find it

possible to accept a vital part of the story, it is difficult to see how the other part, which did not stand by itself, could be accepted. It was not the prosecution case that Rs. 70 which was recovered from the appellant was the amount that the appellant had asked for from the complainant. This was a new case made by the High Court. Undoubtedly there are circumstances in this case which are highly suspicious against the appellant, but the High Court having disbelieved an essential part of the prosecution case on which the other part was dependent, we do not consider it safe to sustain the conviction of the appellant. Accordingly, we allow the appeal and set aside the order of conviction and sentences passed against the appellant.

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