

Bhupesh Deb Gupta (Dead) By Lrs.

Vs

State of Tripura

Criminal Appeal No. 74 of 1972

(A. D. Koshal, Jaswamt Singh P.S. Kailasam JJ)

22.09.1978

JUDGMENT

KAILASAM, J. -

1. This appeal is by special leave against the judgment of the Judicial Commissioner at Agartala convicting the appellant, Bhupesh Deb Gupta of an offence under Section 161 Indian penal Code and sentencing him to a fine of Rs. 200.
2. Pending appeal in this Court, the appellant died and his widow brought on record as the legal representative of Bhupesh Deb Gupta, as she was adversely affected by the sentence of fine and conviction under Section 161, as it deprived her of receiving the pay and other allowance which the accused would have been entitled to but for his conviction.
3. The accused Bhupesh Deb Gupta alias Erick was working as an Upper Division Clerk in the Tripura Territorial Council in the year 1959. While investigating some other offence, PW 1 Shri T. Ganguly who was the Deputy superintendent of police in Tripura in 1963 came across certain postal envelopes in the office of the Chief Executive Engineer which disclosed that the accused was receiving bribes. After investigation, the accused was charged with various offences. In this appeal we are only concerned with the charge that the accused received a sum of Rs. 75 from Nikhil Chakraborty as gratification as a motive or reward for showing favour to him and that on or about December 2, 1961 he received Rs. 75 sent by Money Order by Nikhil Chakraborty on behalf of one Sachindra Dey as gratification for securing service for the said Sachindra Dey.
4. The trial Court found the accused guilty of the charge of receiving Rs. 75 from Nikhil Chakraborty on or about December 2, 1961 and convicted him of an offence under Section 161 Indian penal Code and sentenced him to suffer rigorous imprisonment for two months. The Trial Court framed other charges but found him guilty of another charge which need not be referred to as finally he was acquitted by the High Court of all charges except the one referred to above. The High Court while confirming the conviction under Section 161 Indian Penal Code regarding the receipt of Rs. 75 from Nikhil Chakraborty reduced the sentence to a fine of Rs. 200 only, taking into account the age and the long lapse of time between the date of offence and the date of conviction.
5. The charge with which we are concerned as framed by the sub-Judge, Agartala reads as follows :

That you Shri Bhupesh Deb Gupta, alias Erick Deb Gupta. Assistant, Civil Secretariat, Tripura, while working as Upper Division Clerk in the Office of the Chief Executive officer of the Tripura Territorial Council (now defunct) accepted on or before 2nd day of December, 1961 a gratification

other order from Shri Sachindra Deb, remitted by Shri Nikhil Chakraborty for Showing in exercise of your official function, favour to the said Sachindra Deb, on the plea of securing service for the said Sachindra Deb and thereby committed an offence punishable under Section 161 of the Indian Penal Code and within the cognizance of this Court.

6. The charge states that accused was a public servant and that he accepted a gratification other than legal remuneration of an amount of Rs. 75 from Nikhil Chakraborty for showing, in exercise of his official function, favour to Sachindra Dey by securing service for Sachindra Dey. Before the accused can be held guilty of offence under Section 161 of the Indian Penal Code, the following ingredients will have to be proved :

- (1) That the accused at the time of the offence was a public servant.
- (2) That he accepted from some person a gratification.
- (3) That such gratification was not a legal remuneration due to him.
- (4) That the accused accepted the gratification as a motive or reward for one of the following purposes -
 - (a) doing or forbearing to do an official act;
 - (b) showing or forbearing to show favour or disfavor to someone in the exercise of his functions;
 - (c) rendering or attempting to render, any service or disservice to someone, with the Central or any State Government or Parliament or the Legislature of any State, or with any public servant.

7. It is not in dispute that the first three requirements are satisfied, namely, that the accused was a public servant, that he accept a gratification and that the gratification was not a legal remuneration due to him. The contention that was raised by Mr. Ramamurthy, the learned Counsel appearing for the accused is that the fourth requirement has not been fulfilled. He submitted that the prosecution case is not clear as to whether the gratification was accepted as a motive or reward for showing a favour in exercise of his official function or whether the gratification was accepted for payment to another public servant. In order to appreciate the contentions of the learned Counsel it is necessary to state what has been found by the High Court against the appellant.

8. Nikhil Chakraborty was not examined as the summons sent to him were returned unserved on the ground that his whereabouts are not known. The only witness that was examined was the person on whose behalf the money was sent, namely, Sachindra Dey. Sachindra Dey turned hostile leaving the prosecution with only a few documents to rely on to prove their case. The documents relied on are Exhibits P-5, P-6, P-7 and P-3. P-6 is the earliest in point of time. It is a letter written by the accused to Nikhil Chakraborty on November 23, 1961. The letter acknowledges an earlier letter from Nikhil Chakraborty. It refers to the matter about the gentleman of Kamalpur presumably Sachindra Dey and states that he was given word that a job of social worker would be given. It further states that the recruitment will be done in the last week of December. By that letter the accused asked Nikhil Chakraborty to remit a sum of Rs. 80 or Rs. 90 by T.M.O. Which was to given to the gentleman "who is Office Head Clerk". On receipt of this letter, a money (Exhibit P-5) for Rs. 75 was sent by Nikhil Chakraborty on November 31, 1961 at Agartala Post Office. The accused signed the money

order form and received the money. The receipt was received back at Kamalpur Post office on December 2, 1961. After receipt of Rs. 75 the accused again wrote on December 3, 1961 (Exhibit P-7) asking for the balance of Rs. 15 to be remitted. It is also indicated that in all a sum of Rs. 150 will have to be given. The Courts below accepted the prosecution case that Exhibits P-6, P-7 were written by the accused, and that the money order receipt (Exhibit P-5) was signed by him. The trial Judge also compared the signature in Exhibit P-5 and the writing in P-6 and P-7 and with his admitted signatures and found that Exhibits P-6 and P-7 and the signature in Exhibit P-5 were of the accused. The learned Counsel for the appellant does not question the correctness of these findings. It is, therefore, clear that the accused under Exhibit P-6 demanded a sum of Rs. 90 for securing a job for Sachindra Dey and in response to that letter money order for Rs. 75 was sent by Nikhil Chakraborty and received by the accused. Again under Exhibit P-7 on December 3, 1961 the accused had asked for the balance of Rs. 15. There can be no doubt that these documents prove that the accused was a public servant at the relevant time and received an illegal gratification which was not due to him as legal remuneration. It is not clear from the correspondence whether the person "Office Head Clerk" is a public servant. But the learned Counsel appearing for the State referred us to Exhibit P-3b another letter by the accused to Nikhil Chakraborty dated February 21, 1962 wherein the accused stated that the recruitment to the job of the candidate had been postponed due to elections and all appointments were stopped for the time being. This letter also refers to an order of the Chief Commissioner. It is submitted that the internal evidence furnished by the appellant and a reading of these letters would show that the person to whom the money was intended was a public servant. On behalf of the State Government our attention was drawn to the presumption that is available to the prosecution under Section 4(1) of the Prevention of Corruption Act which provides that when it is proved in any trial of an offence punishable under Section 161 of the Indian Penal Code, that an accused person had accepted for himself or for any other person, any gratification it shall be presumed unless the contrary is proved that he accepted that gratification as a motive or reward such as is mentioned in Section 161 or, as the case may be, without consideration or for a consideration which he knows to be inadequate. The explanation to Section 161 states that a person who receives a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done, comes within the words "A motive or reward for doing".

9. A reading of section 4(1) of the Prevention of Corruption Act Explanation to Section 161 of the Indian Penal Code would show that when it is proved that the accused has accepted a gratification it shall be Presumed unless the contrary is proved that he accepted it as a motive or reward such as is mentioned in Section 161. This section, therefore, provides a presumption in favour of the prosecution. When once it is proved that the accused had accepted an illegal gratification, it shall be presumed that it is for one purposes mentioned in Section 161. The Explanation to Section 161 makes it clear that a person who receives a gratification as a motive for doing what he does not intended to do, or as a reward for doing what he has not done comes within the words "A motive or reward for doing". Relying on the two provisions referred to above, it was submitted by the learned Counsel for the State that the prosecution having proved that the accused has received a sum of Rs. 75 as an illegal gratification, the Court should presume the necessary motive or reward as is mentioned in Section 161. While there can be no doubt that the submission of the learned Counsel for the State is sound, we find that there is one obstacle in the way of the prosecution succeeding on the facts of this case.

10. The charge states that the amount of Rs. 75 was remitted for showing favour in exercise of his official function. It is admitted that though the accused was a public servant, in exercise of his official position that could not secure a job which he promised. It is not the case for the prosecution that he received a gratification but he had no intention to do what he promised. Equally, it is not

alleged in the charge that the gratification was intended for being paid to a public servant. The prosecution would be entitled to rely on the presumption under Section 4(1) and Explanation to Section 161, if necessary averments were made in the charge and the accused was given an opportunity to explain the circumstances appearing against him. While the charge mentions the gratification being paid for showing favour in exercise of his official function, the prosecution case is that the gratification was for inducing a public servant to show favour in this respect. It is, no doubt, true that the accused cannot complain of any defect in the charge, if he is not prejudiced. The accused when questioned under Section 342 of the Criminal Procedure Code, the purpose of receipt of the gratification was not put to him and explanation asked for. The second question which relates to the charge is in the following terms :

What have you got to say regarding the charge brought by the complainant's party that on December 2, 1961 A.D. or any time near about that, you received a gratification other than legal remuneration of an amount of Rs. 75 by post through Shri Nikhil Chakraborty, from one Shri Sachindra Deb, giving him assurance of securing a service for him ? The accused answered that it was false.

11. It was not suggested that the money was intended to be paid to another public servant or that he retained the money without intending to do what he promised.

12. The wording of the charge framed by the Special Judge is that the money was remitted by Nikhil Chakraborty for showing, in exercise of official function a favour to the said Sachindra Dey on the plea of securing service for the said Sachindra Dey. The High Court understood the charge as meaning that the money was sent by Nikhil Chakraborty on behalf of Sachindra Dey as a gratification for securing service for the said Sachindra Dey. It appears from the charge and from the judgment of the courts below that the courts proceeded on the basis that the gratification was received by the accused for showing favour as a public servant. As the basis of the charge is entirely different from what is sought to be made out now i.e. the gratification was paid to the accused for influencing a public servant, it cannot be said that the accused was not prejudiced by the frame of the charge. It would have been open to the prosecution to rely on the presumption if the charge was properly framed and the accused was given an opportunity to meet the charge which the prosecution was trying to make out against the accused. On a careful scrutiny of the facts of the case, we are unable to reject the contentions of the learned Counsel for the accused that he was prejudiced by the defect in the charge and that he had no opportunity to meet the case that is put forward against him.

13. In the result, we accept the contention of the learned Counsel for the appellant and allow the appeal and set aside the conviction and sentence imposed on him.

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