

Man Singh

Vs

Delhi Administration

Criminal Appeal No. 216 of 1974

(Syed M. Fazal Ali, A. D. Koshal JJ)

06.04.1979

JUDGMENT

FAZAL ALI J.

1. This appeal by special leave, against the judgment of the Delhi High Court, the appellant has been convicted under Sections 5(1)(d) and 5(2) of the Prevention of Corruption Act read with Section 161, IPC and sentenced to RI for one year on each count. The appellant was also sentenced to pay a fine of Rs. 100 under Section 5(2), in default RI for one month. A detailed narrative of the prosecution case has been given in the judgment of the High Court and it is not necessary for us to repeat the same all over again.

2. We have heard learned Counsel for the parties and have gone through the judgment of the High Court and the evidence on record. In our opinion, the appeal must succeed on a short point. The facts leading to the recovery of a sum of Rs. 5 which the appellant is said to have received as bribe from the complainant is proved beyond doubt and the only question is as to whether or not the appellant gave a reasonable explanation for the recovery of the money from his person. According to the prosecution, the money was paid to the appellant by PW 2 as illegal gratification to prevent his shop from being challaned. The complainant was a Khoncha Wala and used to sell fruit juice and other articles. According to PW 2 the appellant demanded Rs. 5 so as to enable PW 2 to carry on his business failing which the appellant threatened to get him challaned. Ultimately it was settled that a sum of Rs. 5 would be paid per week to the appellant as bribe. The complainant then informed the Vigilance Department and a raid was arranged and in the presence of some of the independent witnesses, the complainant offered a sum of Rs. 5 to the appellant who took the money and put it into his pocket. Thereafter the Vigilance Inspector recovered the money from the person of the accused. Fingers of the accused were dipped in the solution of sodium carbonate and they became pink. The accused did not dispute that PW 2 had paid Rs. 5 on the day of the occurrence. But his defence was that this amount was due from the complainant on account of the balance of Rs. 10 which had been paid to the complainant for the fruit juice supplied to the appellant which cost Re. 1 only. The appellant stated that he received Rs. 4 and Rs. 5 remained to be paid by the complainant and he promised to pay the same at some other time. The courts below held that the prosecution case was proved and in view of the provisions of Section 4 of the Prevention of Corruption Act, a presumption could be drawn against the appellant that the money recovered from him was received as illegal gratification. The defence was held to be false by both the courts. We have gone through the evidence and we find that there are intrinsic circumstances in the case which fully probalilise the defence of the appellant and show that the explanation given by him is reasonable. To begin with the complainant himself categorically stated at page 6 of his evidence that there was undoubtedly a dispute between him and the appellant regarding the return of money which has been paid to the

appellant. In this connection, the witness stated as follows :

It is correct that about 3/4 days before the date of incident, the accused had taken a glass of juice from my shop. He had given me a Rs. 10 G.C. Note and I had returned Rs. 9 to him then. It is further correct that the accused came on a subsequent date and told me that I had paid Rs. 5 less but I told him that I had returned him Rs. 9. There was an altercation between us on that issue. It is also correct that then he threatened to get me challaned.

PW 3 another witness who was present at the time when the raid was conducted, also admitted that at the time when the note was recovered, the appellant did explain something regarding the recovery of the money before the Inspector but he did not hear. The witness further added that he could not confirm or deny if the accused told the Inspector that he has taken back his money. It is well-settled that in such cases the accused is not required to prove his defence by the strict standard of proof of reasonable doubt but it is sufficient if he offers an explanation or defence which is probable and once this is done, the presumption under Section 4 stands rebutted. In the instant case, from the evidence referred to above, the defence of the appellant has been clearly proved under Section 3 of the Evidence Act. For these reasons, therefore, the conviction as also the sentence passed on the appellant cannot be sustained. The appeal is accordingly allowed and the appellant is acquitted of the charges framed against him. The appellant will now be discharged from his bail bonds.

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