

Banshi Lal Yadav

Vs

State of Bihar

Criminal Appeal No. 181 of 1981

(D.A. Desai, V.B. Eradi JJ)

16.03.1981

JUDGMENT

DESAI, J. -

1. In this case, the appellant Banshi Lal Yadav was convicted by learned Special Judge, for having committed an offence under Section 161 of the Indian Penal Code and Section 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act and was sentenced to suffer rigorous imprisonment for two years and to pay a fine of Rs. 500 and in the default, to suffer further rigorous imprisonment for six months on each account. The appellant filed Criminal Appeal 223 of 1978 in the High Court of Judicature of Patna.

2. At the hearing of the appeal, the learned Judge first referred to the statement of the appellant recorded under Section 313 of Criminal Procedure Code at the conclusion of the trial. In this statement the relevant portion relied upon by the High Court may be extracted :

On December 14, 1973, I alone came out of my office at 5.00 p.m. and proceeded towards north at the gate of Apsara Cinema. Naushad all of a sudden appeared before me. He thrust money in my pocket and within no time the C.B.I. personnel arrested me without asking explanation. The C.B.I. people got seated in the car and took me to C.B.I. office situated on Boring Canal Road.

3. After referring to the statement of the accused, the learned judge hearing the appeal reached the conclusion that the accused-appellant had admitted receiving the marked tainted currency notes and therefore presumption under Section 4 of the Prevention of Corruption Act, 1947 would arise. The learned Judge then proceeded to hold the accused-appellant was not able to rebut the presumption and thereupon confirmed the conviction but reduced the sentence. The learned Judge did not examine other evidences led by the prosecution to prove that not only bribe was demanded by the appellant and a trap was arranged and the marked currency notes were offered by the decoy witness to the accused in the presence of panchas but the accused accepted the same as bribe. There was evidence of the decoy witness as well as the panchas who witnessed the passing of the money. All this evidence was not examined by the High Court though in the opening portion of the judgment, the prosecution case has been set out in meticulous details.

4. Mr. R.K. Garg, counsel for the appellant contended that on the statement made by the accused that the marked currency notes were thrust in the pocket of the accused, presumption under Section 4 cannot be invoked. Section 4(1) reads as under :

4. (1) Where in any trial of an offence punishable under Section 161 or Section 165 of the Indian Penal Code or of an offence referred to in clause (a) or clause (b) of sub-section (1) of Section 5 of this Act punishable under sub-section (2) thereof, it is proved that an accused person has accepted or obtained, or has agreed to accept or attempted to obtain, for himself or for any other person, any gratification, other than legal remuneration or any valuable thing from any person, it shall be presumed unless the contrary is proved that he accepted or obtained, or agreed to accept or attempted to obtain, that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in the said Section 161, or, as the case may be, without consideration or for a consideration which he knows to be inadequate.

5. Before presumption can be raised, the burden is on the prosecution to prove that the accused has accepted or obtained, or has agreed to accept or attempted to obtain, for himself any gratification other than legal remuneration etc. If the accused when examined under Section 313 of the Code of Criminal Procedure with reference to the circumstances appearing against him in evidence, stated only that currency notes were thrust in his pocket, that statement by itself without anything more is not sufficient to satisfy the necessary ingredients of Section 4(1) that accused accepted or obtained or has agreed to accept or attempted to obtain, any gratification other than legal remuneration so as to be able to raise the presumption. Acceptance or obtaining, or agreeing to accept or attempting to obtain is a voluntary act. In the statement of the accused, this element of voluntary acceptance is missing. Therefore the statement of the accuse by itself in the facts and circumstances of this case and especially the language used cannot provide the necessary factual basis or fact situation which must exist before presumption can be raised. In fact accused denied having accepted bribe and stated that he was the victim of malevolent act of Naushad in thrusting marked currency notes in his pocket. This statement will not show acceptance of illegal gratification and the High Court was in error in raising the presumption under Section 4.

6. Mr. K.G. Bhagat, learned counsel for the State urged that there is evidence led by the prosecution to show that bribe was offered and accepted and that the statement that the money was thrust in his pocket is wholly incorrect. May be, he may be right but that evidence has not been examined by the High Court. The appeal to the High Court was both on the question of fact and on the question of law. Therefore, in order to do justice between the parties, it is just and proper that the judgment of the High Court confirming the conviction and reducing the sentence be set aside and the matter be remitted to the High Court with a direction to admit the appeal to its original number and to dispose of the same according to law after giving opportunity to both the parties to appear before it. The appellant to continue on bail till the appeal is disposed of by the High Court.

7. The appeal is disposed of accordingly.

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