Niranjan Patnaik

Vs

Sashibhusan Kar and Another

Criminal Appeal No. 421 of 1985

(V. B. Eradi, S. Natarajan JJ)

11.04.1986

JUDGMENT

NATARAJAN, J. -

1. A peculiar feature of this appeal by special leave is that it is not an appeal against conviction or against acquittal but one preferred by a prosecution witness for expunction of several highly derogatory remarks made against him by a learned Judge of the High Court of Orissa while allowing Criminal Appeal 31 of 1982 on the file of the High Court of Orissa. Shri Niranjan Patnaik, the appellant before us was examined as PW 8 in the trial of T R Case 6 of 1980 on the file of the Special Judge (Vigilance), Sambalpur against the first respondent. The trial ended in conviction against the first respondent and when the appeal filed by him came to be heard by the High Court the appellant had become a Cabinet Minister in the State of Orissa. On account of the disparaging remarks made by the Appellate Judge the appellant tendered his resignation and demitted office for maintaining democratic traditions. It is in that background this appeal has come to be preferred.

2. Pursuant to a trap laid by the Vigilance Police on the complaint of the appellant's Manager, Gopi Nath Mohanty (PW 2) the first respondent was arrested on April 26, 1979 for having accepted a bribe of Rs 2000 from Gopi Nath Mohanty. The marked currency notes MOs to XXVI were recovered from the briefcase MO II of the first respondent prior to the arrest. The prosecution case was that the first respondent had been extracting illegal gratification at the rate of Rs 1000 per month during the months of January, February and March, 1979 from Gopi Nath Mohanty but all of a sudden he raised the demand to Rs 2000 per month in April 1979 and this led to Gopi Nath Mohanty laying information (Ex. I) before the Superintendent of Police (Vigilance). Acting on the report, a trap was laid on April 26, 1979 and after Gopi Nath Mohanty had handed over the marked currency notes the vigilance party entered the office and recovered the currency notes from the briefcase and arrested the first respondent. The first respondent denied having received any illegal gratification but offered no explanation for the presence of the currency notes in his briefcase.

3. Eleven witnesses including the appellant who figured as PW 8 were examined by the prosecution and the first respondent examined there witnesses DWs 1 to 3 substantiate the defence set up by him, viz., that the sum of Rs 2000 had been paid by way of donation for conducting a drama and publishing a souvenir by the Mining Officers' Club and also towards donation for Children's Welfare Fund. The Special Judge accepted the prosecution case and held the first respondent guilty under Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act, 1947 (hereinafter referred to as the 'Act') and Section 161 of the Indian Penal Code (hereinafter referred to as the 'Code'). The Special Judge awarded a sentence of rigorous imprisonment for one year for the conviction under the first charge but did not award any separate sentence for the conviction under

Section 161 of the Code.

4. Against the conviction and sentence the first respondent preferred Criminal Appeal 31 of 1982 to the High Court of Orissa. A learned Judge of the High Court has allowed the appeal holding that the prosecution has not proved its case by acceptable evidence and besides, the first respondent's explanation for the possession of the currency notes appeared probable. While acquitting the first respondent the learned Judge has, however, made several adverse remarks about the conduct of the appellant and about the credibility of his testimony and it is with that part of the judgment we are now concerned with in this appeal.

5. Mr F.S. Nariman, learned counsel for the appellant argued that the appellant's limited role in the case has been unnecessarily and unjustly magnified by the Appellate Judge and furthermore the legal presumptions against the first respondent have been failed to be applied and these errors have led the learned Judge to make uncalled for caustic comments against the appellant. Mr Nariman further argued that it was not at all necessary for the learned Judge to have dwelt at length on the value of the testimony of the appellant for allowing the appeal of the first respondent. Mr K. Parasaran, learned Attorney-General participated in the debate pursuant to the notice issued to him and rendered assistance by placing before us certain earlier decisions laying down the principles to be followed if adverse comments are to be made by courts affecting the character and reputation of litigants, witnesses and third parties. Mr Jitender Sharma, learned counsel for the first respondent did not advance any arguments as no disturbance of the acquittal of the first respondent by the Appellate Judge is sought for in the appeal.

6. Having regard to the limited scope of the appeal it is not necessary for us to traverse at length or refer in detail the circumstances under which a trap was laid and the first respondent was arrested. Suffice it to say that Shri Niranjan Patnaik, the appellant was the licensee of an iron mine known as Murgabada Mines at Joda. Gopi Nath Mohanty (PW 2) had been employed by him as Manager of the mines and he was attending to the affairs of the mines. The first respondent who was the Senior Mining Officer for Joda had insisted on payment of Rs 1000 to him for allowing mining operations to be carried on peacefully and Gopi Nath Mohanty had complied with the demand and paid Rs 1000 every month during January to March, 1979. Unexpectedly when the first respondent raised the demand to Rs 2000 per month Gopi Nath Mohanty reported the matter to the Superintendent of Police (Vigilance) and on his instructions a trap was laid on April 26, 1979 and marked currency notes MOs V to XXVI were passed on to the first respondent and thereafter the raiding party consisting of the Inspector of Police, Vigilance (PW 10) and an Executive Magistrate (PW 9) recovered the money from the first respondent and arrested him. The first respondent was subjected to a chemical test of having his hands washed with sodium carbide solution. The solution turned pink in colour established his having handled the marked currency notes treated earlier with phenolphthalein powder.

7. The appellant was cited as a prosecution witness to speak to the fact that his Manager, Gopi Nath Mohanty (PW 2) had informed him in March 1979 of his having parted with a sum of Rs 3000 to the first respondent by way of bribe during the first three months of 1979 and subsequently about the trap that had been laid for the first respondent. The appellant was not, therefore, a material witness in the case and had only been cited to corroborate the testimony of Gopi Nath Mohanty in some measure. As he was not a material or crucial witness the appellant did not evince any interest in the trial of the case. He, therefore, failed to appear in court in spite of being summoned to attend the court on February 3, 1981 and again on March 6, 1981. His disregard of the summons from court led to a third summons being issued on August 17, 1981 with a warning that if he failed to

appear in court on September 7, 1981 he would be compelled to attend court by means of a warrant. It was on such compulsion the appellant appeared in court on September 7, 1981 and gave his testimony. These facts are not controverted by anyone but even so the appellant has filed an affidavit before this court to substantiate these matters.

8. As earlier stated the first respondent did not deny his receiving the currency notes from Gopi Nath Mohanty or the recovery of the notes from his briefcase MO II. He, however, stated that the money was given by way of donation for the welfare projects launched by the Mining Officers' Club. Of the three defence witnesses examined by him DWs 1 and 3 were Mines Inspectors while DW 2 was a peon attached to the office of the first respondent. DWs 1 and 3 had, however, to admit that the records produced to substantiate the case of donation had been prepared after the first respondent had been arrested and released on bail and the writings were made to the dictation of the first respondent.

9. The Trial Judge while assessing the merits of the prosecution case took note of the fact that since the first respondent did not deny the receipt of money or the seizure of the currency notes from him the burden of proof shifted to him under Section 4(1) of the Act. The Special Judge was of the view that the explanation of the first respondent was belated and, therefore, was not believable or acceptable and hence he convicted and sentenced him.

10. The learned Appellate Judge, while dealing with the appeal has failed to take note of Section 8 of the Act and secondly he has given recognition to the rule of presumption contained in Section 4(1) of the Act only at a belated stage of the judgment. These factors have to a large extent distorted the perspective to be taken in the case. Section 8 of the Act which is extracted below confers immunity from prosecution under Section 165-A on persons who figure as witnesses in any proceeding against a public servant for an offence under Section 161 or Section 165 under Section 5(2) or Section 5(3-A) of the Act :

> Notwithstanding anything contained in any law for the time being in force, a statement made by a person in any proceeding against a public servant for an offence under Section 161 or Section 165 of the Indian Penal Code, or under sub-section (2) or sub-section (3-A) of Section 5 of this Act, that he offered or agreed to offer any gratification (other than legal remuneration) or any valuable thing to the public servant, shall not subject such person to a prosecution under Section 165-A of the said Code.

11. Oversight of this provision has made the Appellate Judge conclude that the appellant and Gopi Nath Mohanty (PW 2) are as much guilty as the first respondent in the commission of the offences and as such they stand self-condemned as accomplices to the crime and furthermore the two of them stood exposed to prosecution under Section 165-A of the Code.

12. Insofar as the rule of presumption under Section 4(1) is concerned the learned Judge has no doubt recognised in the later portion of the judgment that even though Section 4(1) would not apply to the charge under Section 5(2) read with Section 5(1)(d) of the Act it would undoubtedly stand attracted to the charge under Section 161 of the Code. If the learned Judge had visualized this position at the outset itself there would not have been any necessity for a microscopic examination of the evidence of the appellant or for making sweeping remarks against him. Mr Nariman is, therefore, justified to some extent in contending that even though the Appellate Judge was aware that for the charge under Section 161 of the Code the first respondent was under an obligation to

rebut the legal presumption raised against him, the learned Judge has recognised this position only after devoting the earlier portion of the judgment for decrying the appellant and Gopi Nath Mohanty for having willingly played the role of bribe-givers.

13. Yet another serious infirmity in the judgment of the Appellate Judge is that the learned Judge has castigated the appellant and Gopi Nath Mohanty for having given bribes of Rs 1000 per month for three months to the first respondent and decried both of them for putting forth a false case while at the same time holding that the receipt of bribe of three thousand rupees is not the subject-matter of charge and as such the first respondent was under no obligation to disprove the evidence of the appellant and Gopi Nath Mohanty on that aspect of the matter. Since the payment of Rs 3000 during the earlier months was not the subject-matter of charge there was no need or necessity for the learned Judge to have critically examined the evidence of the appellant and Gopi Nath Mohanty on that aspect of the matter. Conversely if the learned Judge felt that the evidence relating to those payments had a material bearing on the case he should not have absolved the first respondent of any obligation to deny those allegations. The error that has crept in because of the different standards adopted can be seen from the conflicting expressions in the judgment extracted as under :

14. In para 12 of the judgment it is stated as below :

> The statements made by Mr. Patnaik (PW 8) and his Manager (PW 2) with regard to willing participation in the matter of payments of bribe money to the appellant would bring about their own condemnation. These two persons, on their own showing, were bribe-givers. A bribe-giver must be condemned as much as a bribe-taker. Givers of bribe amounts to public servants are undoubtedly accomplices to the crime... Being accomplices to the commission of crime because of their statements of payments of bribe moneys to the appellant for three months, the evidence of these self-condemned persons, who, on their own showing, had thrown moral scruples and sense of honesty, if they had any, to the winds for which instead of refusing to meet the demand of the appellant, they had willingly paid bribe amounts for three months, would be unworthy of credit without corroboration in material particulars and through reliable sources.

15. However, in para 16 of the judgment it is held that the first respondent was under no obligation to meet the allegations relating to the payment of Rs 3000 to him. The relevant portion is worded as follows :

> He had neither been charged under Section 5(2) and 5(1)(d) of the Act or under Section 161 of the Code for receiving illegal gratification during the months of January to March, 1979 and had not been asked to meet these allegations. No person can be condemned unheard and for that reason the appellant could not be condemned on the basis of the statement made by PW 2 and PW 8 that he had been paid bribe amount for 3 months @ Rs 1000 per month.

16. Nevertheless the learned Judge has again reverted to his original perspective and commented in para 17 as under :

> If as submitted by the defence, the evidence of PWs 2 and 8 with regard to the monthly payment of bribe money @ Rs 1000 per month and the increased demand of Rs 2000 is not accepted for the aforesaid reasons, it would expose the utter falsity of

the evidence of PWs 2 and 8.

17. Over and above all these, the learned Judge has failed to consider whether a detailed examination of the testimony of the appellant was really called for in order to allow the appeal of the first respondent and set aside his convictions. From what has already been stated it will be apparent that what fell for consideration has whether a sum of Rs 2000 which was admittedly recovered from the first respondent had been received by him by way of bribe or by way of donation. For this limited question the appellant was not a material witness in the case. It was only his Manager, Gopi Nath Mohanty (PW 2) who claimed to have made the earlier payments to the first respondents as well as to have given a report and participated in the trap proceedings when the first respondent raised the demand of bribe from Rs 1000 to Rs 2000 per month. The assumption of the Appellate Judge that Gopi Nath Mohanty would not have paid any sum of money to the first respondent or given the FIR (Ex. p. 1) against him without securing the prior approval of the appellant is only based on conjecture and not on evidence. The learned Judge has also overlooked the fact that the appellant had not exhibited any anxiety to depose against the first respondent and on the other hand he appeared in court and gave evidence only after being warned in the summons issued for the third time that a warrant would be issued against him if he failed to respond to the summons. If all these factors had been perceived it would have been clear that there was no need whatever for a minute examination of the appellant's testimony or a critical inquisition of his character and conduct and the judgment of acquittal could have as well been rendered with reference to the failings in the evidence of Gopi Nath Mohanty and the acceptable features in the explanation of the first respondent for his possession of the currency notes MOs V to XXVI series.

18. The defective approach made by the Appellate Court has resulted in paragraphs 9 to 17 being devoted to an evaluation and criticism of the appellant's evidence out of the total 36 paragraphs contained in the judgment. In these paragraphs the Appellate Judge has severely criticised the appellant and has made harsh remarks which are now sought to be expunged. They are extracted below :

> These two persons, on their own showing, were bribe-givers... Being accomplices to the commission of crime because of their statements of payments of bribe moneys to the appellant for three months, the evidence of these two self-condemned persons, who, on their own showing, had thrown moral scruples and sense of honesty, if they had any, to the winds for which instead of refusing to meet the demand of the appellant, they had willingly paid bribe amounts for three months, would be unworthy of credit without corroboration in material particulars and through reliable sources. (para 12)

....in which case both PWs 2 and 8 would be liable for abetment of commission of the said offence by the appellant... The acts of PWs 2 and 8 would also be culpable under Section 165-A of the Code...both PWs 2 and 8 were liable to be punished under Section 165-A of the Code. The investigating agency did not choose to prosecute the appellant and PWs 2 and 3 for commission of these offences. (para 13)

Undoubtedly, PWs 2 and 8 belong to the first category (para 14)

...these two accomplices, namely ... (para 15)

While, as observed by me, PWs 2 and 8 have condemned themselves as habitual bribe-givers by

their own statements and for this, they have to blame none but themselves. (para 17)

19. It will be apposite to mention here that the appellant has nowhere stated in his evidence that Gopi Nath Mohanty made the payment of Rs 3000 for the three months in question after obtaining his permission or approval. On the other hand he has only deposed that in March 1979 Gopi Nath Mohanty had informed him of the payment of these amounts, and in order to balance the accounts he had given directions for the amounts being shown as impressed cash with the Manager. The Appellate Judge has also proceeded on the assumption that the appellant was holding a public office at the relevant time while in fact the appellant had neither joined the Ministry nor even became Member of the Legislative Assembly when the first respondent was trapped and arrested.

20. We may now refer to certain earlier decisions where the right of courts to make free and fearless comments and observations on the one hand and the corresponding need for maintaining sobriety, moderation and restraint regarding the character, conduct, integrity, credibility etc. of parties, witnesses and others are concerned.

21. In State of U.P. v. Mohammad Naim ((1964) 2 SCR 363, 374 : AIR 1964 SC 703 : 1964 (1) Cri LJ 549) it was held as follows :

> If there is one principle of cardinal importance in the administration of justice, it is this : the proper freedom and independence of Judges and Magistrates must be maintained and they must be allowed to perform their functions freely and fearlessly and without undue interference by anybody, even by this Court. At the same time it is equally necessary that in expressing their opinions Judges and Magistrates must be guided by considerations of justice, fair play and restraint. It is not infrequent that sweeping generalisations defeat the very purpose for which they are made. It has been judicially recognised that in the matter of making disparaging remarks against persons or authorities whose conduct comes into consideration before courts of law in cases to be decided by them, it is relevant to consider (a) whether the party whose conduct is in question is before the court or has an opportunity of explaining or defending himself; (b) whether there is evidence on record bearing on that conduct justifying the remarks; and (c) whether it is necessary for the decision of the case, as an integral part thereof, to animadvert on that conduct. It has also been recognised that judicial pronouncements must be judicial in nature, and should not normally depart from sobriety, moderation and reserve.

22. Vide also in R.K. Lakshmanan v. A.K. Srinivasan ((1976) 1 SCR 204 : (1975) 2 SCC 466 : 1975 SCC (Cri) 654 : AIR 1975 SC 1741) wherein this ratio has been referred to.

23. In Panchanan Banerji v. Upendra Nath Bhattacharji (AIR 1927 All 193, 194 : 25 ALJ 100 : 27 Cri LJ 1407) Sulaiman, J. held as follows :

> The High Court, as the Supreme Court of revision, must be deemed to have power to see that courts below do not unjustly and without any lawful excuse take away the character of a party or of a witness or of a counsel before it.

24. It is, therefore, settled law that harsh or disparaging remarks are not to be made against persons and authorities whose conduct comes into consideration before courts of law unless it is really necessary for the decision of the case, as an integral part thereof to animadvert on that conduct. We

hold that the adverse remarks made against the appellant were neither justified not called for.

25. Having regard to the limited controversy in the appeal to the High Court and the hearsay nature of evidence of the appellant it was not at all necessary for the Appellate Judge to have animadverted on the conduct of the appellant for the purpose of allowing the appeal of the first respondent. Even assuming that a serious evaluation of the evidence of the appellant was really called for in the appeal the remarks of the learned Appellate Judge should be in conformity with the settled practice of courts to observe sobriety, moderation and reserve. We need only__ remind that the higher the forum and the greater the powers, the greater the need for restraint and the more mellowed the reproach should be. 26. As we find merit in the contentions of the appellant, for the aforesaid reasons, we allow the appeal and direct the derogatory remarks made against the appellant set out earlier to stand expunged from the judgment under appeal.

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