

Tarsem Lal

Vs

State of Haryana

Criminal Appeal No. 208 of 1978

(M. M. Dutt, G. L. Oza JJ)

30.01.1987

JUDGMENT

OZA, J. -

1. This appeal has been filed by the appellant after the grant of special leave by this Court against his conviction under Section 5(2) of the Prevention of Corruption Act and sentence to rigorous imprisonment for 2 years and fine of Rs. 150 and also under Section 161 of the Indian Penal Code and rigorous imprisonment for one year and a fine of Rs. 100 awarded by Special Judge, Ambala and maintained by the High Court of Punjab & Haryana by its judgment dated December 23, 1977.

2. According to the prosecution Shri M. G. Devasahayam PW 4 Sub-Divisional Officer, Jagadhri had sent a complaint against the appellant to the Station House Officer, Jagadhri on June 7, 1972 on the basis of which the First Information Report was recorded at police station at about 4 p.m. on June 7, 1972. The Sub-Divisional Officer has received an application from one Gian Singh complainant about the conduct of the appellant. It was alleged by Gian Singh PW 2 in the complaint that the appellant who was a Patwari of Bambhol Circle, had been demanding money for supply of copies from the revenue record and Gian Singh needed those copies in connection with the execution of a sale deed. Gian Singh was to purchase land from Brij Bhushan who was to act as an attorney for his mother. It was alleged that for this Rs. 200 were settled out of which Rs. 50 were paid and Rs. 150 were to be paid on the date of the sale deed. The copies of the documents required were obtained after Rs. 50 were paid. The sale deed was to be executed on June 7, 1972 and therefore on this date Gian Singh and Brij Bhushan approached the Sub-Divisional Officer with an application making these allegations against the appellant. The Sub-Divisional Officer attempted to contact the Deputy Superintendent of Police and the Sub-Inspector of Police incharge of the police station concerned, but when none of them were available he himself decided to lay a trap. It is alleged that Gian Singh PW 2, Brij Bhushan PW 3, Raj Kumar and Mangal Singh PW 1 had gone to the house of the Sub-Divisional Officer at 2.40 p.m. on June 7, 1972. Gian Singh narrated the whole story and stated that he had promised to pay the appellant Rs. 150 on the date on which the sale deed was to be executed. Rs. 150 were produced by Gian Singh which included a 100-rupee note and 5 notes of Rs. 10 each. Their numbers were noted and the Sub-Divisional Officer initialled the currency notes which were given to Gian Singh and a trap was laid. Brij Bhushan was asked to act as a witness. Gian Singh and Brij Bhushan therefore reached the canteen near the Tehsil. The Sub-Divisional Officer, Raj Kumar and Mangal Singh went to Tehsil premises in a jeep and waited near the tea stall for a signal. On receiving the signal they reached there and on personal search currency notes of Rs. 150 were recovered from the person of the appellant. On these facts the appellant was prosecuted and was convicted and sentenced as mentioned above. The facts are not disputed. The

money has been recovered from the possession of the appellant and it is also not disputed that he received this money from Gian Singh. Even before the High Court these facts were not disputed. The plea taken by the appellant was that the Government wanted to collect money from the landholders for small schemes and the Patwaris were instructed to collect this amount. Appellant also examined some defence to indicate that such circulars were issued to the Patwaris and they were collecting the amounts to be deposited in the small savings schemes and on this basis they received appreciation and those who could not collect sufficient amount to meet the target also received remarks. It was contended before the High Court and also before this Court that this amount the appellant had received as a deposit for the small saving scheme and which was ultimately recovered by the Sub-Divisional Officer. It was also contended that in fact the copies of the revenue record which were needed by Gian Singh had already been supplied to him and in fact the sale deed was registered on June 7 before this trap and therefore it was alleged that Rs. 150 were paid as alleged by appellant and it was on this basis contended that the explanation given by the appellant that he had received the money to be deposited under the small savings scheme appears to be reasonable.

3. It is significant that when the Sub-Divisional Officer on getting the signal reached the canteen alongwith the witnesses and conducted the search it was not the stand of the appellant that he had received the money for small scale deposits as it is apparent that if the money was received for that purpose, as soon as the Sub-Divisional Officer reached the canteen with the witnesses and wanted to search the appellant, appellant would have immediately come out with this explanation. Learned counsel for the appellant frankly conceded that this was not the case of the appellant that he come out with this explanation on the spot at that time. This is not his case even in the statement recorded at the trial nor was such a suggestion put to any one of the prosecution witnesses in the course of cross-examination. In view of this it could not be disputed that this explanation has been given as an afterthought and this itself goes to show that this explanation is just an imagination.

4. There appears to be some controversy about the fact as to whether the Patwaris were directed to collect funds for small saving schemes and in this respect the learned trial court also examined the Tehsildar as a court witness and after considering all the evidence disregarded the explanation given by the appellant in respect of the money (Rs. 150) recovered from his person.

5. The learned trial court after considering the defence evidence and the evidence of the Tehsildar did not accept the defence version and convicted the appellant. The trial court also considered the evidence of PW 5 Jeet Ram who was the keeper of the tea stall who was examined by the prosecution but he turned hostile and supported the defence version.

6. Learned counsel for the appellant went through the evidence in detail and attempted to contend that as the copies of the documents had already been received there was no occasion for Gian Singh to pay Rs. 150. According to the prosecution the bargain was settled for Rs. 200. Rs. 50 were paid in advance and therefore copies were given but the appellant was to receive the balance of Rs. 150 for which Gian Singh had promised to pay it on the date of the registration and accordingly on the date of registration it was fixed up that the appellant will be available at the tea stall near the Tehsil where this amount would be paid and it was because of this that Gian Singh approached the Sub-Divisional Officer with the complaint. In fact where the receipt of the amount and its recovery is not disputed it is not necessary for us to go through the evidence and examine it afresh, although learned counsel went through the evidence in detail. The only question is as to whether the court below were right in rejecting the explanation of the appellant for receipt of Rs. 150. The explanation given by the appellant which was seriously pressed by the learned counsel for the appellant was that he

had received this amount to be deposited in the small savings scheme on behalf of Gian Singh but it is significant that neither he had made any note of this fact nor given any receipt to Gian Singh. Apart from it it is significant that the Sub-Divisional Officer who was a revenue officer and the appellant being a Patwari was his subordinate. The normal conduct of the appellant would have been to tell him as soon as he arrived for search that in fact he had received this amount to be deposited in the small savings scheme. It is impossible to believe that if the appellant had received this amount for being deposited in the small savings scheme he would not have opened his mouth and permitted the search and recovery of this amount from his pocket to be done by the Sub-Divisional Officer and allowed the matter to be handed over to the police and still would not have come out to say what he chose to say at the trial. This conduct of the appellant in not coming out with this explanation instantaneously goes a long way to make this explanation just an afterthought specially when Sub-Divisional Officer conducted the search and recovered this amount from his person. In this view of the matter therefore in our opinion both the courts below were right in discarding this explanation of the appellant. We therefore see no substance in this contention advanced on behalf of the appellant.

7. Learned counsel ultimately contended that this appellant a Patwari who had faced the trial and pendency of this appeal for about 14 years will now have to go to jail for serving out a part of this sentence which remained to be served. It is no doubt true that having been convicted for these offences the appellant is bound to lose his service. It was also stated that he had served out some sentence of the imprisonment also. The incident is of 1972 and we are now in 1987. In view of these circumstances in our opinion the sentence of the imprisonment already undergone and sentence of fine imposed by hon'ble the trial court will meet the ends of justice. Consequently appeal is partly allowed. The conviction of the appellant under Section 5(2) of the Prevention of Corruption Act and Section 161 of the Indian Penal Code is maintained.

However his sentence as regards sentence of imprisonment is reduced to the sentence already undergone but the sentence of fine is maintained. He is on bail. His bail bond shall be cancelled and if he had not paid the amount of fine he shall do so within one month from today.

</html